

9 A Study on Joint Infringement of Network-related Patent

- Focused on the Comparisons of the Cases and Theory in Korea, Japan and United States^(*)

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Patent infringement is established only if a single entity is subjected to any component of the claim. However since the patent infringement by multiple entities is caused by the carrying out of some elements of the claims by multiple entities, there arises a problem which were the directly infringed cannot be specified. Therefore patent infringement by multiple entities has the limitation that indirect infringement or general tort liability on existing patent law is hard to regulate. Also, recently patent infringement cases are caused by multiple entities especially in Japan and the US. Neglecting patent infringement through divided implementation by multiple entities could weaken patent protection and reduce the meaning of the Patent Law. In other words, a patentee will obtain the unenforceable and useless right though acquired a patent. Therefore, in order to investigate the recognition methodology for patent infringement by multiple entities, the recent cases and theory in Japan and the US were compared and weighed in this report. Through this, analytics and methodology which can recognize the infringement by multiple entities were found. Especially it was drawn that indirect copyright infringement related jurisprudence (control/management and benefit) is appropriate to be applied in patent law.

I Raising an issue

The development of industrial technology, with the IT technology at the forefront, and the changes in business models are giving rise to new issues in protection of patents. The scope of patent protection arises in accordance with what is written in the patent claim, and patent infringement arises in the event that all of the invention listed in the patent claim is implemented without the consent of the patent holder. This is in accordance with the “all elements rule” which says that there is infringement only if all elements making up a patent claim are implemented, which is a principle of the patent system. In the case of method invention such as a system invention using networks, there are cases where the defendant implements only a portion of the essential elements of the patented invention and arranges for a third person to implement the remainder.

In the event where multiple parties are involved in the implementation of an invention, a question arises as to whether one who has implemented only a portion of the patent claim could be held liable for patent infringement.

However, due to the technological characteristics of patent invention, it does not constitute patent infringement when multiple parties implemented the said patent invention. As such, there are demands to revise the interpretation of the concept of implementation itself or of the parties involved in the act of implementation. Therefore, this paper seeks to examine, based on the analysis of case precedents in the US and Japan, the methodology for patent infringement liability where multiple parties implements one network-type patented invention separately, thereby causing, as a consequence, patent infringement.

II Japanese case precedents

As to patent infringement by a third party through separate implementation by multiple parties which cannot be resolved through current patent laws, the Japanese courts have responded through various interpretations. For example, as to method invention in the electrodeposited image case,¹ the court affirmed direct infringement by reasoning that there is a control/management relationship between the contractor and subcontractor, by using the tool

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theory.

Among Japanese legal scholars regarding the electrodeposited image case, the view that is gaining support is the one which mentions the rationale behind the expandable poly styrofoam first and then asserting that, in order for a partial implementation of the patented method to constitute an indirect infringement, there must not only be a simple result of having implemented a part of the patented method. Just as in the case of jointly determining distribution of duties, if there is a strong coming together of intent for the implementation of the whole of the patented invention jointly among those who have implemented the whole, or if there is a relationship where one controls another's conduct, such as in the case of subcontracting, then all of those who are engaged in the implementation should be viewed² as one entity.

Moreover, in the eye glasses frame case,³ which is a relatively recent case, business's liability for partially implementing the essential elements of an invention using the network was affirmed. Among the legal scholars who agree with this, there are those who maintain that in recognizing whether there was an act of implementation in relation to the implementation of the invention concerning the system related to the system using the network (if the structure proposed in this decision is adopted, then the decision will be based on the application of the criteria called 'control/management.'). the relevant 'thing' (system) is used as a means of accomplishing the purpose of the invention by the defendant, and depending on whether there was the act of 'use' it is justified⁴ to examine in detail the relationship between the defendant's conduct and the relevant 'thing' (system).

Also, in the Internet number case and the car-mounted navigation case, which are relatively recent cases, the court assessed liability of patent infringement by multiple parties through the interpretation of claims. As can be seen, whereas there is an increase in the number of network-type patent infringement by multiple parties in Japan, discussion as to the basis for liability is ongoing centered around case precedents and legal scholars. However, it could be said that a clear conclusion has not been reached. But, it could be said that the Japanese courts have been making substantially proactive decisions with respect to the patent infringement liability by multiple parties. In conclusion, it could be said that in relation to the patent infringement of the network-type, using the conduct of others,

the Japanese courts have been expanding the scope of formation of patent infringement in response to the diverse changes in the business model.

III Case precedents in the US

In the US, patent infringement following the separate implementation by multiple entities is being discussed around joint infringement. Joint infringement could be said to be a type of direct infringement, but it is different from the direct infringement set forth in the US Patent Law Section 271 (a).⁵ This is because this provision is about liability that is accepted when all the elements of the patent invention are implemented by a single party. Also, due to the limitations of not being able to define patent infringement by multiple entities, the US courts have been applying the concept of joint infringement under the common law. However, the US CAFC in the Akamai decision⁶ suggested a stricter standard than the BMC case, saying there needs to be an "agency relationship or contractual obligation." In particular, in the re-examination of the Akamai case: (1) the appropriate conditions required for method patent's joint infringement; (2) in the event of determination of method patent's joint infringement, the amount of liability the method patent's implementer bear became issues. In other words, whether the strict standards proposed in the December 2010 decision ("agency relationship or contractual obligation") are appropriate conditions to determine joint infringement was reconsidered.

In fact, in cases where the method patent's joint infringement became an issue, there are reasons for the difference in the CAFC's opinion. For instance, in the Golden Hour Data Systems decision,⁷ there was Judge Newman's dissenting opinion that it is not desirable to apply the provision that, considering that while there is a "strategic cooperation relationship" between the method patent implementer A and B even though the "mastermind" does not exist, there was no direction or control by the implementer A of the other implementer B. Also, even in the Mckesson Technologies Inc. v. Epic Systems Corporation case⁸ which was decided by CAFC immediately before re-examination of the Akamai case, Judge Newman is questioning having it as an absolute condition that the use of the patented technology be done by a single entity. Moreover, in this dissenting opinion, it was suggested that in order to determine joint infringement liability, instead

of having as an absolute condition for the acknowledgment of patent infringement the direction and control of another implementer by the mastermind implementer, it is desirable to understand the matters related to participation and cooperation by multiple implementers as in the case of determining joint tort under common law.

The Akamai full-member court decision⁹ criticized the existing precedents and theorized the jurisprudence applicable for the multiple entity's patent infringement liability with Patent Law Section 271(b)'s induced infringement liability. In particular, the majority in the Akamai full-member court held that all stages claimed in a patent must be implemented in order to find induced infringement liability. It held, however, that not all stages have to be proved to be implemented by a single entity. In particular, the Akamai full-member court majority excluded treating multiple parties' patent infringement liability with Patent Law Section 271(a)'s direct infringement, and opined that such cases could be resolved by applying the principles of induced infringement liability. As a basis for this, stating that the one who knowingly induced the other parties to conduct the implementation of each of the stages in the method patent has the same effect as the one who induced the same infringement by a single entity, it stated that there is no reason to treat the two inducers differently, in terms of statutes or as a policy. As to this, Judge Linn, who offered a dissenting opinion asserted that induced infringement requires the existence of direct infringement, and that there is a need to protect the one who has not implemented all elements of a claim. On the other hand, Judge Newman, who had to make his decision based on the traditional tort, criticized the full-member court's decision as new and unrestricted, and argued that it created a theory without limitation for patent infringement.

In the end, while the Federal Supreme Court affirmed the jurisprudence for the existing inducement liability as to the Akamai full-member court's decision, it made its decision based on the Federal Appeals Court's Muniuction case which held that the same party may be held liable if stages in a method patent were actually all implemented by the defendant or if other parties were directed or controlled to implement it.¹⁰ Also, the Federal Supreme Court held that since implementation of all stages of the relevant patent by the respondent does not belong to any one party, the appellant is not liable for ant

method patent infringement.

US courts have been suggesting various jurisprudence as to the level of patent liability of parties or tests. Such applied jurisprudence has evolved and changed over time. For instance, it could be said to have evolved from (1) joint infringement based on joint torts or agency, (2) joint infringement based on cooperation or some connection, (3) joint infringement based on recent control or direction, to (4) divided infringement as a form of induced infringement. However, in the end, the Federal Supreme Court, while denying the inducement liability based on Section 271(b), noted that it is necessary to re-examine the Akamai case at the Federal Appeals Court and the Federal Appeals Court granted the opportunity to review the Patent Law Article 271(a) once again.

Currently, the Akamai case, which was reversed and remanded to the Federal Appeals Court is awaiting re-examination. It would be worthwhile to see what decision the Federal Appeals Court makes.

IV Approaches for recognizing network-type patent infringement by multiple entities

1 Theoretical approach trends: centered around Korea, Japan and the US

(1) Korea

It is insufficient to attribute liability or network-type liability infringement in which multiple parties are involved only based on indirect infringement provision under Patent Act. Therefore, when patent infringement has occurred by multiple entities and it is difficult to hold any one entity liable for the infringement, in order to hold everyone accountable, the legal idea of "joint direct infringement" is being discussed. Some of the scholars in Korea have the view that when joint actors conduct infringement conduct as an organic unity by objectively dividing the conduct under the subjective conspiracy of a single infringement, (similar to principle co-conspirator) all parties involved could be held liable for injunction and tort liability.¹¹

(2) Japan

A majority of the Japanese scholars takes an affirmative position with regard to legally assessing the one who partially implemented the essential elements of patented invention to be the acting entity for the direct infringement of the relevant patent.¹² From the position of the Patent Act that the direct infringement of a patent does

not negate the fact that it was committed jointly by many parties, if it appears that the conduct of multiple parties was one implementation act from an objective standpoint because they are related to each other, then it will be reviewed whether the patent invention's essential elements were satisfied based on the joint implementation act. If multiple entity infringement is affirmed through this, request for prohibition for all entities that have engaged in the joint direct infringement could be accepted.¹³ However, it could be said that the conditions under which the multiple parties' joint direct infringement conduct will be accepted could vary depending on the discourse. As to this, there are such views as (i) subjective joint intent is necessary for multiple infringers,¹⁴ (ii) subjective joint relationship is sufficient and, subjective joint intent is not necessary,¹⁵ (iii) and recently, that the patent infringement conduct involved in by multiple entities should be divided into direct infringement and control-type infringement and applied based on the various conditions.¹⁶ (iv) there is also the view that the karaoke jurisprudence regarding the copy rights law should be applied to network-type patent infringement by multiple entities.¹⁷ That is to say, anyone who is in the position of the control/management over rights infringement or reaping benefit from it, it could be viewed as the same entity as the party that actually commits the infringement under the Patent Act or the Copyright Act.

(3) US

In the discourse in the US, there is the view regarding the multiple party's patent infringement liability issue, that by adopting vicarious liability under the Copyright Law, if one party implements the teaching instruction whereby one party provides information regarding the act of another party or provides guidance, and reaps obvious and direct financial benefit from such act, then such party could be held legally liable for direct infringement.¹⁸

On the other hand, the concept of "use" regarding direct infringement under the Patent Law Section 271(a) arose from invention of a thing in the past, so some view that this could be applied to method patents to resolve the issue of multiple party patent infringement.¹⁹ In this connection, there is also the view that in the case of method patents where multiple parties were involved, the method of drafting a claim should be established.²⁰

2 Composition of multiple party patent infringement liability theory

The multiple party joint infringement is conduct where direct infringement exists but a direct infringer does not. This could be viewed as an interpretation in accordance with the rules of indirect infringement in Korea, Japan and the US. By adopting the concept of divided infringement as to the multiple party joint infringement, the majority of the US Akamai full-member court as a consequence surpassed the case precedents relating to US Patent Law Section 271(b) and the scope of interpretation established on the legal rules in the form of applying induced infringement liability. This was once denied in the Akamai Federal Supreme Court decision. Also, among Japanese scholars, some assert that, as to multiple party patent infringement liability, it should be viewed as joint direct infringement while some say that it should be treated as control/management type infringement. However, multiple party patent infringement liability should not be viewed as a third party infringement but as a joint direct infringement, and its application should be defined using the elements of "control/management" and "benefit." It is thought that it could be resolved through the US's traditional tort theories and the application of karaoke jurisprudence under the Japanese Copyright Act to the Patent Act. The following will examine the relevant jurisprudence in the US, Japan and Korea.

(1) US's traditional torts liability

The common law Tort Principles could be divided into direct tort liability (joint torts) and secondary tort liability. Although joint tortfeasorship under the US law is difficult to define, generally, if there were two or more cowrongdoers, it views that all of them are liable for the direct infringement. According to a dissertation on torts law, "all of those who planned or intended the tort, who actively participated or abetted or demand such action, aided or supported the tort or approved or elected torts for one's own benefit are equally liable."²¹ Here, the promise among the tortfeasors does not have to be clear and a "tacit understanding" would be sufficient. On the other hand, the secondary tort liability is understood to be the liability of the one who cause damages to the plaintiff by providing the grounds for direct torts by another person, while he himself does not directly commit such tort. There are two types of secondary torts liability under traditional US torts law. One is vicarious liability and the other is

contributory liability.²²

First, it is understood that one could be held vicariously liable even when a party had played no role in another person's torts, i.e., not only when there was no conduct of supporting or encouraging conduct but also when all action to prevent the tort was done. Such vicarious liability arises from the defendant's ability to control or direct the conduct of the direct tortfeasor. An example is the principal-agent relationship. In the *Free Standing Stuffer, Inc. v. Holly Development Co.*, case,²³ the court held that infringement could not be avoided by contracting with another party to carry out the method patent. And just because an agent or an independent contractor comes in between the principal and the infringement, it does not indemnify the principal from such liability. Similarly, in the *Metal Film Co. v. Melton Corp.*, case,²⁴ the court of first instance held that the defendant could not avoid liability by the fact that the first stage in a method claim was implemented by an external supplier. Using such approach based on such type of agent, the court was able to hold the multiple parties liable for patent infringement without devising a new legal theory. It also maintained the patent law within the scope of its traditional common law principles.

Generally, the US tort law holds individuals liable for consequences of intentional or negligent acts as a part of the tortfeasor. This is because vicarious liability arises from the relationship between the defendant and direct tortfeasor, and the vicarious liability arises from the concept that compensation is necessary for the injured party. Such vicarious liability does not have the element of intent or mens rea. That is to say, liability is assessed even in the absence of special intent for the tortious conduct.²⁵

(2) Japan's karaoke jurisprudence

Japan's case precedents established the "karaoke jurisprudence" through the case where the liability of the operator of a karaoke establishment which has a personal relationship with a customer became an issue.²⁶ In order to understand the copyrights infringer, it used the two elements of "management/control" and "benefit" in determining infringement. These two standards are being used in other cases as well.²⁷ Especially, the most recent cases include those who provide the things (aiding and abetting type) in the liable parties because the server which is in charge of the duplication or air transmission processes, which are essential parts of the

indirect infringer's service, is under management and control of the indirect infringer.²⁸

As can be seen here, lessons could be learned from how Japan evaluates the indirect infringer as direct infringer and defines it. This shows the need to view the copyrights indirect infringer's liability as an individual liability as well as the possibility of solving the indirect infringement issue within the Copyright Act.

(3) Korea's control/management and comprehensive intent

In Korea, in order to hold liable those who cause copyrights infringement by providing Internet bulletin boards or space or providing file sharing programs like P2P to encourage copyrights infringement of another person, case precedents have been recognizing interpretationally the jurisprudence of expanding the copyrights infringing entity.²⁹ It interpreted the existing Copyright Act Article 123(1)'s "rights that need to be protected by measures other than the Copyright Act" as including duplication rights and equity rights and conduct seen as infringement under Article 124 (indirect infringement). However, by interpreting the law to include in the interpretation of the text the act of suborning and abetting of copyrights infringement and expanding the scope of the infringer for copyrights infringement, it was able to impose liability for infringement.

On the other hand, in addition to cases that expand the scope of the infringement entity, there have been cases which accepted the liability of those who contributed to copyrights infringement by expanding the user entity of copyrights. That is, it could be said to be a kind of principal-type attributable liability. The *Ental* case³⁰ and *My TV* case³¹ falls into this category. In these two cases, the courts expands the copyrights user entity based on the "comprehensive intent of duplicating conduct" and "management and control" which are important elements in expanding the user entity.

3 Sub-conclusion

The final stage of the method patent which is implemented by multiple entities mostly have the form of the user (consumer) implementing them. This is a phenomenon that is manifested commonly in the US and Japanese cases. In particular, in cases of a method patent which uses a business method patent or method patent using network, business takes place with the final user as the target. This is similar to the issue that arises in the copyrights indirect infringement

area. It is the question of who implements the final stage in the end, and if it is the issue of copyright indirect infringement, then if the final user becomes the infringer of duplication rights for example, (excluding when it is private duplication), then there is a difference in that there are no direct infringers in the patent area. However, it could not be said that the issue of the nature of liability under patent law and copyrights law is the same, and in that perspective, such legal theories that are centered around control/management and benefit as a response in the copyrights area should also be accepted in the patent law area. It appears that the US's adoption of copyrights vicarious liability or traditional torts law principles, Japan's application of the karaoke jurisprudence (both copyrights and patents), as well as Korea's control and management and comprehensive intent (consideration of awareness element) offer many hints as to the definition of multiple party patent infringement liability.

V Conclusion

Neglecting patent infringement through divided implementation of network-type method invention by multiple parties could weaken patent protection and reduce the meaning of the Patent Law. As could be seen in the US Federal Supreme Court decision and Japan's control/management theories, we need to have an interpretation theory in the direction of recognizing joint direct infringement. On the other hand, from the policy perspective, as in the case of business method patent or network related patent, for method patents which are comprised of multi-steps involving multiple parties, a good approach would be to establish guidelines or claim a drafting method through the joint cooperation and research of IP5.

¹ Judgment of the Tokyo District Court, September 20, 2001, *Hanrei Jiho* No. 1764, p. 112.

² Hisanori Oguri, "Fukusū Shutai no Kanyo" [Involvement of multiple parties], Minoru Takeda et al., *Bijinesu Hōhō Tokkyo* [Business method patent] (Seirin Shoin, 2004), p. 408.

³ Judgment of the Tokyo District Court, December 14, 2007 (accessible on the Supreme Court website).

⁴ Shunji Matsuda, "Fukusū Shutai ga Kanyo suru Mono no Hatsumei ni tsuite Tokkyoken no Shingai wo Kōtei shita Jirei---Tokyo Chi Han Heisei 19.12.14 (Megane Furēmu Jiken) wo Daizai ni shite" [Case in which the court found infringement of a patent right for an invention of a product involving multiple

parties---Judgment of the Tokyo District Court, December 14, 2007 (eyeglasses frame case)], *Patent* Vol. 62, No. 8 (Japan Patent Attorneys Association, 2009), p. 58.

⁵ Reza Dokhanchy, "Cooperative Infringement: I get by (Infringement Laws) with a Little Help From My Friends", *26 Berkeley Tech. L.J.* 135, 2011, p. 144.

⁶ 629 F.3d 1311 (Fed. Cir. 2010).

⁷ 614 F.3d 1367 (Fed. Cir. 2010).

⁸ 98 U.S.P.Q.2d 1281 (Fed. Cir. 2011).

⁹ Akamai Technologies, Inc. v. Limelight Networks, Inc. and McKesson Technologies, Inc. v. Epic Systems Corp., 692 F.3d 1301 (Fed. Cir. 2012) (en banc).

¹⁰ 134 S. Ct. 2111 (2014).

¹¹ Korea's case precedent related to this is where A, who had been doing business with the grant of distribution rights of goods affixed with trademark from the trademark holder, conspired with B to manufacture products bearing a trademark which is similar to the trademark holder's mark for distribution in Korea through a separate route in Korea by A and B. A & B's joint infringement and joint tort was recognized in this case. (Cho Young Sun, page 216).

¹² Ryuta Hirashima, "Fukusū Shutai ga Kaizai suru Tokkyoken Shingai Hōri wo Meguru Aratana Hōkōsei ni tsuite---Oboegaki teki Kentō" [A new direction concerning the legal theory of infringement of a patent right involving multiple parties---Review as a memorandum] *Chitekizaisanken: Hōri to Teigen: Makino Toshiaki Sensei Sanju Kinen Ronbunshū* [Intellectual property right: Legal theory and recommendation: A collection of papers in memory of the 80th birthday of Professor Toshiaki Makino] (Seirin Shoin, 2013), p. 127.

¹³ This is being criticized in that it fails to clearly set forth the legal basis for recognizing legal elements for joint direct infringement. If the position that assertion and proof of the subjective elements is necessary aside for such critiques, plaintiff's assertion/burden of proof is quite significant. Therefore, the difficulty arises as to legal liability in the cases premised on the involvement of the non-specific multiple entities such as the B2C system that has only a specific entity as a defendant. (Shunji Matsuda, p. 62).

¹⁴ Naoki Mizutani, "Bijinesu Hōhō Tokkyo no Kōshi ni tomonai Aratani Shōjitekuru Mondai" [New issues arising from the enforcement of business method patents], *Jurist* No. 1189 (Yuhikaku, 2000), p. 40, Eiji Tomioka, "Fukusūno mono ga Kyōdō shite Tokkyoken Shingai wo Okonatta Baai no Hōritsu Kankei ni tsuite" [Legal relationships in the case of infringement of a patent right committed jointly by multiple parties], Toshiaki Makino et al. ed., *Chitekizaisanhō no Riron to Jitsumu (dai 1 kan)* [Theory and practice of intellectual property law, vol. 1] (Shinnihon Hoki, 2007), p. 220.

¹⁵ Hideo Ozaki, "Konpyūta Puroguramu to Tokkyo Shingai no Shomondai" [Computer programs and various issues on patent infringement litigation], Toshiaki Shimizu and Ryuichi Shitara, ed., *Gendai Saibanhō Taikei 26 Chitekizaisanken* (Contemporary case law 26, intellectual property right) (Shinnihon Hoki, 2006), p. 230.

¹⁶ Makoto Hattori, "Shihai Kanri-gata no Tokkyo Shingai ni tsuite" [Control/management-based patent infringement], *Katayama Eiji Sensei Kanreki Kinen Ronbunshū*,

Chitekizaisanhō no Atarashii Nagare [A collection of papers in memory of the 60th birthday of Professor Eiji Katayama, A new trend of intellectual property law] (Seirin Shoin, 2010), pp. 453-472.

- ¹⁷ Makiko Takabe, "Kokusaika to Fukusū Shutai ni yoru Chitekizaisanken no Shingai" [Internationalization and infringement of intellectual property rights by multiple parties], *Akiyoshi Minoru Sensei Kiju Kinen, Chitekizaisanken Sono Keisei to Hogo* [In memory of the 77th birthday of Professor Minoru Akiyoshi; Intellectual property rights---Creation and protection] (Shinnihon Hoki, 2002), p. 161.
- ¹⁸ Alice Juwon Ahn, "Finding Vicarious Liability in U.S. Patent Law: The "Direct or Control" stand for Joint Infringement," *Berkeley Technology L.J.*, vol.24, 2009, pp.173-175.
- ¹⁹ Dolly Wu, "The Use of use for Patented Systems in a Single or Joint Infringement World," *14 Colum. Sci. & Tech. L. Rev.* 514, 2013, p.556.
- ²⁰ Alton Hornsby III, "Divided Infringement for Software Patent in View of Limelight Networks v. Akamai Technologies," *7 No. 2 Landslide* 46, 2014, p.49.
- ²¹ W. PAGE KEETON ET AL., *PROSSER AND KEETON ON THE LAW OF TORTS* § 46, pp. 323-324 (1984).
- ²² Mark Bartholomew & John Tehranian, "The Secret Life of Legal Doctrine: The Divergent Evolution of Secondary Liability in Trademark and Copyright Law," *21 BERKELEY TECH. L.J.* 1363, 2006, pp. 1366-69
- ²³ No. 72 C 1070, 1974 U.S. Dist. LEXIS 11420 (N.D. Ill. Dec. 24, 1976).
- ²⁴ 316 F. Supp. 96 (S.D.N.Y. 1970).
- ²⁵ John Gardner, *Complicity and Causality*, 1 CRIM. L. & PHIL. 127, 130 n.2 (2007).
- ²⁶ Judgment of the Supreme Court, March 15, 1988, Minshu Vol. 42, No. 3, p. 199.
- ²⁷ Judgment of the Tokyo District Court, August 4, 2006, *Hanrei Jiho* No. 1945 [Maneki TV case]; Judgment of the Tokyo District Court, May 25, 2007, *Hanrei Jiho* No. 1979, p. 100 [MYUTA case], etc.
- ²⁸ Refer to the MYUTA case.
- ²⁹ Seoul High Court 2007. 10. 10. Ja2006Ra 1245 decision.
- ³⁰ Seoul Central District Court 2008. 7. 10. Announced 2008GaHap25126 decided and its appeal Seoul High Court 2009. 4. 30. Announced 2008Na86722 decided (Although, as the defendant asserts, the recording of a separate program is being done upon choice of the users and if the recording reservation application details are encrypted, the defendant comprehensively intended the copying act of the plaintiff's program and controlled and managed the act of copying of the individual programs" so the copying entity in this case was the defendant.
- ³¹ Seoul Central District Court 2010. 9. 28. Ja2009KaHap4625 injunction for copyrights infringement ("Since the defendant has many PVR units for the subscribers, that there is no need for the subscribers to individually purchase, lease or install the recording device, that the space for installation and storage of the PVR was made by the defendant, and since its maintenance and management is also done by the defendant, the role of the subscriber in the program copying process is limited to only designating the program to be copied.").