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China Southeast Technology Trading Corporation V. Beijing Wangma Computer Corporation

Citation: *The Beijing Higher People's Court's Judgment No. Gaojingzhizhongzi 30/1994*

Date of judgment: July 18, 1997

Procedural history

The Beijing Wangma Computer Corporation (Wangma) sued, in the Beijing Intermediate People's Court, the China Southeast Technology Trading Corporation (Southeast) for infringement of the patent for the invention of "optimized five-stroke character encoding method and the keyboard therefor". The first-instance court found Southeast infringing the patent right, and Southeast appealed to the Beijing Higher People's Court.

Issue

Whether use of a Chinese character input technology in computer is dependent on the use of a prior patent for invention of a Chinese character input technology using the same encoding method, so that the former infringed the latter?

Facts

An application was filed by Wangma on April 1, 1985 for a patent for the invention of the "optimized five-stroke character encoding method and the keyboard therefor" (the third



The Wangma's patent

the five-stroke character technology), and the patent was granted on February 26, 1992.

In 1992, the Southeast Hanzi (meaning “the Chinese characters”) card made and marketed by Southeast used the fourth generation of the five-stroke character technology. The fourth generation of the five-stroke character technology was developed by some technicians on the basis of the third generation of the five-stroke character technology in March 1986, which was after the filing date of the third generation technology.

The two technologies were identical in the following aspects:

They both used the five-stroke character encoding method, in which some most frequently used Chinese characters, strokes and character components were used as the character roots, which were distributed into five areas according to the five starting strokes, i.e. horizontal stroke, vertical stroke, left falling stroke, right falling stroke, and turning stroke, and the character roots in each area were divided into five groups according to the similarity thereof, thus forming 25 groups of the character roots altogether, which corresponded to 25 keys on the computer keyboard for the 26 English letters. When a user inputs a Chinese character, the codes of the keys for the first character root and the second character root of said Chinese character were input according to the conventional order of strokes observed in calligraphy, and thereby the user could input the Chinese character by combination of the character roots. Each single Chinese character could be input with at most four key codes. With respect to a Chinese character that consists of less than four character roots, the key for the last stroke thereof should be determined according to the positional relationship like up-and-down, left-to-right, inside-outside, between the character roots, i.e. according to the type of the character and the area where the last stroke is in.

The differences between the two technologies were as follows:

(1) Compared with the third-generation technology, the fourth generation of the five-stroke character technology had reduced 21 character roots. In particular, the fourth generation consisted of 199 character roots, while the third generation of 220 character roots.

(2) There was a change in the keys on the keyboard corresponding to the character roots of the five areas in the fourth-generation technology. The character roots corresponding to the lower five keys in the fifth area in the third-generation technology were moved to the third area in the fourth-generation technology, and the coding for the fourth generation was significantly different from the third generation. Such a change in the arrangement of keys together with other changes, brought about certain technical effects, i.e., making the fourth generation much faster than the third generation.

(3) The character types representing the positional relationship between the character roots were reduced in the fourth-generation technology (those being used to determine the key for the last stroke), namely, the four character types of left-to-right, up-and-down, outside-in, and single-font used in the third-generation technology were reduced to the three character types of left-to-right, up-and-down, and heterozygote.

The first-instance court held that the fourth-generation technology had 21 character roots fewer than the third generation, which made it less burdensome for a user to memorize and less difficult to determine the category of the character type when he inputs the identification codes. In this way it represented progress in the rate of inputting Chinese characters and in the extent of learnability. However, such progress was achieved by improving the third-generation technology. In general, it could not be concluded that the fourth generation technology made a breakthrough over the third. Therefore, the main technical features of the fourth-generation technology still fell within the extent of protection for the third-generation technology, and there existed a relationship of dependency between the two technologies in substance.

Southeast argued in its appeal that in the first-instance decision the claims of the patent right for the third-generation technology was not correctly, clearly and completely construed and a significant error was made in the determination of the inventiveness of the fourth-generation.

Rule of Law

Art. 59 (1) of the Patent Law as of 1992 *The extent of protection of the patent right for invention or utility model shall be determined by the terms used in the claims, and the description and the*

appended drawings may be used to interpret the claims.

Reasoning

Both the fourth-generation and the third-generation technologies are technical solutions for inputting the Chinese characters that were developed on the basis of the national cultural heritage and the prior art. The fourth generation is substantially identical with the third generation in the conventional components and foundations. However, the two were also obviously different. The third-generation technology was an encoding system consisting of 220 character roots while the fourth generation of 199 character roots, and the reduced number of the character roots, as a result of optimizing the selection of the character roots for the purpose of easy learning and easy memorizing, involved creative efforts on the part of the inventor. In the encoding system consisting of 199 character roots as adopted in the fourth-generation technology, the distribution of the character roots to the 25 keys and the position of the areas was different from that in the encoding system consisting of 220 character roots as adopted in the third generation, and it achieved the object of easy and quick characters input. The fourth-generation technology reduced the four character types to three to facilitate memorization. These differences between the two technologies were substantive. Besides, the fourth generation was also different from the third generation in the object of invention, and it achieved a better technical effect than the third generation. Hence, the distinctive technical features between the two technologies did not represent a substitution of the equivalent means, and the doctrine of equivalents should not apply.

The first-instance decision had deviated from the fundamental principle for patent infringement determination for failure to determine the extent of protection of the patent by the terms of the claims and to specify the extent of protection for the patented technology of the third generation. It merely compared the distinctive features in the independent claims as the “main technical features” with the accused product, without making comparison of the known technology in the preamble portion. This was a comparison of wrong subject matters, and had enlarged the extent of protection for the patent. The finding that the fourth generation had chosen 199 character roots and used the third generation 220 character roots was based on facts; and the decision that the technology of the fourth generation and the technology of the third generation were dependent on each other was made without factual or legal support. The third-generation technology was not a

basic patent, and it was quite possible for the fourth-generation technology to be independently carried out. Accordingly, the two were not dependent on each other.

Holding

Compared with the third generation of five-stroke character technology, the fourth-generation technology had a different technical object, used different technical means, and produced a different technical effect, so the technologies of the two generations were two different solutions for inputting the Chinese characters to a computer, and were not dependent on each other. Accordingly, the use of the fourth generation did not constitute an infringement of the patent for the third-generation technology.