

Patent Right	Date	May 31, 2022	Court	Intellectual Property High Court, Third Division
	Case number	2021 (Gyo-Ke) 10082		
<p>- A case in which the court determined that there was an error in the determination concerning an inventive step in the JPO Decision wherein an appeal against the examiner's decision of refusal related to a patent application for an invention titled "Insulated electrical cable" was determined to be groundless, and the court rescinded the JPO Decision.</p>				

Case type: Rescission of Appeal Decision of Refusal

Results: Granted

References: Article 29, paragraph (2) of the Patent Act

Related rights, etc.: Patent Application No. 2019-166439

Decision of the JPO: Appeal against Examiner's Decision of Refusal No. 2020-6043

Summary of the Judgment

1. In this case, as the Japan Patent Office (the "JPO") determined that an appeal against the examiner's decision of refusal concerning the Plaintiff's patent application for an invention titled "Insulated electrical cable" (hereinafter this decision is referred to as the "JPO Decision") is groundless, the Plaintiff claimed rescission of the JPO Decision.

The summary of the JPO Decision is that the invention stated in Claim 1 after amendment (hereinafter referred to as the "Invention in the Application") could have been easily conceived of by a person skilled in the art based on the invention stated in Exhibit Ko 1, the unexamined patent application publication (Unexamined Patent Application Publication No. 1987-122012; hereinafter referred to as the "Exhibit Ko 1 Publication") (hereinafter this invention is referred to as the "Cited Invention") and well-known arts as stated in the publications of Exhibits Ko 2 through Ko 6, and, therefore, it lacks an inventive step.

2. In this judgment, the court determined as follows: there were no errors in the JPO Decision related to the findings of the Cited Invention, common features and differences, and the involvement of inventive steps related to Differences 1, 2, and 5; however, there were errors in the JPO Decision related to the findings of the involvement of inventive steps related to Differences 3, 4, and 6, as stated below. The court then rescinded the JPO Decision.

(1) Whether Difference 3 could have been easily conceived of by a person skilled in the art

A. Difference 3 is that "the Invention in the Application has 'tape materials wrapping only the core wires'; on the other hand, it was not specified in the Cited Invention."

B. In the technology field of industrial insulated electrical cables as of May 1, 2013, when the original application for the Invention in the Application was filed (hereinafter referred to as the "Original Application Filing Date"), it was a well-known art to apply tape materials to core wires for the purpose of holding twisted core wires and to generate heat-resistance. As a result, to place tape materials between the core wires and the sheath is also found to have been a well-known art.

The Cited Invention is an invention related to industrial insulated electrical cables and its technology field is identical to that of the aforementioned well-known arts. Therefore, a person skilled in the art who comes across Exhibit Ko 1 Publication is found to be motivated to apply the aforementioned well-known arts to the Cited Invention, which has the structure to cover multiple cores with a sheath, and to wrap multiple twisted cores with tape materials, and, as a result, form a structure in which tape materials are placed between the core wires and the sheath.

C. However, relating to the workability of exposing core wires by stripping the covering layer, there was the problem that the powder applied to the outer peripheral surface of the core material of conventional cables may scatter when removing the core material and, therefore, workability decreases. The Invention in the Application has the technical meaning of solving this problem by forming a structure in which tape materials, which are wrapped around core wires, are placed between the core wires and the covering layer so that the core wires and the covering layer can be separated easily by removing the tape materials.

On the other hand, the Cited Invention intends to make it easy to remove the core and it shares the problem to be solved with the Invention in the Application in this regard. However, it attempts to solve the problem by forming a structure in which the outer periphery of the core of the power line and the core of the signal line are only covered by a sheath. The Cited Invention differs from the Invention in the Application in its means to solve the problem.

As mentioned above, in the Cited Invention, the problem identical to that of the Invention in the Application has been solved by a means different from that adopted by the Invention in the Application. Therefore, it is not necessary to form a structure in which both cores are wrapped with tape materials, in addition to adopting the relevant means to solve the problem, and, as a result, tape materials are placed between both cores and the sheath. If the aforementioned structure is added to the Cited Invention, in order to remove the core, the removal of tape materials is required in addition to the

removal of the sheath. This decreases the workability and results in impairing the effects of the Cited Invention. In addition, looking at Exhibit Ko 1 Publication, there is no statement to suggest that there is a technical meaning to wrapping both cores with tape materials by sacrificing the effect of the Cited Invention.

D. Based on the above, it should be said that applying the aforementioned well-known arts to the Cited Invention is a disincentive. Therefore, without the need to examine the meaning of the structure of "tape materials wrapping only the core wires" related to Difference 3, it cannot be said that a person skilled in the art at the time of the Original Application Filing Date could have easily conceived of the structure of the Invention in the Application related to Difference 3 based on the Cited Invention and the aforementioned well-known arts.

(2) Whether Differences 4 and 6 could have been easily conceived of by a person skilled in the art

Both the structure of the Invention in the Application related to Difference 4 and the structure of the Invention in the Application related to Difference 6 include "tape materials," which constitutes a structure of the Invention in the Application related to Difference 3. Therefore, without the need to examine the remaining points, it cannot be said that a person skilled in the art at the time of the Original Application Filing Date could have easily conceived of the structure of the Invention in the Application related to Differences 4 and 6.