

Patent Right	Date	January 21, 2020	Court	Intellectual Property High Court, First Division
	Case number	2019 (Gyo-ke) 10054		
- A case in which the meaning of the description in the scope of claims of the patent of the invention titled "MASSAGING MACHINE" (having "a side wall integrally forming" right and left first side walls forming a pair provided on the seatback portion and right and left second side walls forming a pair provided on the seat portion and facing an outer side surface from the buttock part to the femoral part of a user) was interpreted by considering the description in the Description, and it was decided that there was no lack of clarity requirement.				

Case type: Rescission of Trial Decision to Maintain

Result: Dismissed

References: Article 29, paragraph (1), item (iii), Article 36, paragraph (6), item (ii) of the Patent Act

Number of related rights, etc.: Invalidation Trial No. 2018-800086, Patent No. 6253829

Summary of the Judgment

1. This case is a suit against a trial decision made by the JPO in which, when Plaintiff made a request for an invalidation trial for the patent by Defendant of the invention titled "MASSAGING MACHINE", the trial decision dismissing the request was made and thus, Plaintiff claimed the rescission thereof. Plaintiff alleged errors in each of the judgments related to clarity requirement and novelty as reasons for rescission.

2. This judgment held substantially as follows and dismissed the claim by Plaintiff.

(1) Features of each invention of this case

Each invention of this case is characterized by having, in a massaging machine having a seatback portion on which a user leans and a seat portion on which the user is seated, a side wall integrally forming right and left first side walls forming a pair provided on the seatback portion and right and left second side walls forming a pair provided on the seat portion and facing an outer side surface from the buttock part to the femoral part of the user. Moreover, it is characterized in that a pair of first massage portions capable of pressing the waist part of the user in a right-and-left direction and a pair of second massage portions capable of pressing from the buttock part to the femoral part of the user in the right-and-left direction are provided on the side wall, and a control portion for controlling an operation of the two massage portions is provided.

According to each invention of this case, the body can be held, and favorable and various massaging actions can be given to the waist, buttock part, or femoral part of the user.

(2) Reason 1 for Rescission (error in judgment related to clarity requirement)

A. Clarity requirement

With regard to the clarity requirement, by considering not only the description in the scope of claims but also the description in Description and drawings, judgment should be made from a viewpoint on whether the description in the scope of claims is unclear to such a degree that gives an unexpected disadvantage to a third party on the basis of the general common technical knowledge of a person ordinarily skilled in the art at the time of filing.

B. Clarity of description in scope of claims of this case

Plaintiff alleges that the description in Constituent Feature D is not clear, but the description in scope of claims according to each invention of this case has description that "having a side wall integrally forming" (D-3) "right and left first side walls forming a pair provided on the seatback portion" (D-1), and "right and left second side walls forming a pair provided on the seat portion and facing an outer side surface from the buttock part to the femoral part of the user" (D-2).

In the description in present Description of this case ..., the seat portion 3 and the seatback portion 4 are integrally formed, while a footrest 5 located on a front part of the seat portion 3 is provided "capable of vertical rotational movement", and a base 7 installed on a floor surface by supporting a chair body 2 is provided so as to support the chair body 2 "capable of swinging to front and rear". By considering each of the aforementioned descriptions in the present Description, the meaning of "integrally forming" referring to the side wall in the scope of claims is reasonably interpreted to imply that the first side wall and the second side wall are formed by one member or even if the members are separate, they are formed so as not to move by bonding or the like.

Moreover, such interpretation on the meaning of the "integrally forming" also accords with each description (..) in Kojien dictionary on "integral" as "one body" or "one and not separable" and the suffix "ly" given to the adjective as "having characteristics of".

Since the meaning of the "integrally formed side wall" in the scope of claims can be interpreted as above, it cannot be considered that the description in the scope of claims is unclear to such a degree that can give an unexpected disadvantage to a third party.

C. Plaintiff's allegation

Plaintiff alleges that, with the description of "integrally formed side wall", consistent understanding cannot be had on which of the following is applicable, [i] when the first side wall and the second side wall are formed by one member; [ii] even if the first side wall and the second side wall are made of separate members, when one is not relatively moved with respect to the other by bonding or the like; and [iii] when the first side wall and the second side wall made of separate members are simply connected such that one is relatively movable with respect to the other, but since the aforementioned interpretation can be made, Plaintiff's allegation has no reason.

(3) Reason 2 for Rescission (error in judgment on novelty on the basis of Cited Invention 1)

Different Features 1 and 2 between Present Invention 1 and Cited Invention 1 found in this JPO decision are both substantial different features and thus, Present Invention 1 cannot be considered ... to be identical to Cited Invention 1.

Present Inventions 2 to 7 including all the configurations of Present Invention 1 cannot be considered to be identical to Cited Invention 1.

(4) Reason 3 for Rescission (error in judgment on novelty on the basis of Cited Invention 2)

Different Features 3 and 4 between Present Invention 1 and Cited Invention 2 found in this JPO decision are both substantial different features and thus, Present Invention 1 cannot be considered ... to be identical to Cited Invention 2.

Present Inventions 2 to 7 including all the configurations of Present Invention 1 cannot be considered to be identical to Cited Invention 2.