Patent Right	Date	December 26, 2019	Court	Intellectual Property High Court, Fourth Division
	Case number	2018 (Gyo-ke) 10174		

- A case in which it was judged that the correction of scope of claims of the invention of a product by a product-by-process claim does not substantially enlarge or alter the scope of claims and excluded Plaintiff's allegation of violation of the correction requirement.
- A case in which, regarding the invention titled "METHOD OF MANUFACTURING PAPER PACKAGING CONTAINER AND PAPER PACKAGING CONTAINER" (hereinafter referred to as the "present invention"), since more Common Features than those found by the JPO decision are disclosed in the primarily cited reference, the judgment on Common Features and Different Features between the present invention and the primarily cited reference in the JPO decision has an error, and the judgment on whether it could have been easily conceived of on the premise thereof also has an error, and the JPO decision was rescinded.

Case type: Rescission of Trial Decision to Maintain

Result: Granted

References: Article 134-2, paragraph (9), Article 126, paragraph (6) of the Patent Act, Article 29, paragraph (2) of the Patent Act

Summary of the Judgment

1. Defendant filed a patent application (Patent Application No. 2002-516167. Hereinafter, referred to as the "present application") with July 30, 2001 (priority date: July 31, 2000 (hereinafter, referred to as the "present priority date"), priority country: Japan) as the international application date for the invention titled "METHOD OF MANUFACTURING PAPER PACKAGING CONTAINER AND PAPER PACKAGING CONTAINER" and was granted registration of establishment of patent right (Patent No. 4831592, number of claims: 3, hereinafter, this patent is referred to as the "present patent"). Claim 2 at the registration of establishment (hereinafter, referred to as "Invention 2 before correction") specified the invention of a product by a so-called product-by-process claim.

Plaintiff requested a trial for patent invalidation (Invalidation Trial No. 2017-800020) for the present patent seeking invalidation of the patent on the invention according to Claims 2 and 3 of the scope of claims in the present patent on February 8, 2017. Defendant made a correction request for correcting Claims 2 and 3 as a claim set on May 30 of the same year and then, since Defendant received an advance notice of a trial decision as of November 2 of the same year, Defendant made a correction

request (hereinafter referred to as the "present correction".) for correcting Claims 2 and 3 as a claim set as of February 13, 2018 (hereinafter, the invention according to Claim 2 after the present correction is referred to as the "Present Invention 2", and the invention according to Claim 3 after the present correction as the "Present Invention 3".).

The Japan Patent Office approved the present correction on August 1 of the same year and made a trial decision that "the request for this trial is dismissed." (hereinafter, referred to as the "present JPO decision").

2. This case is a case in which Plaintiff alleged that [i] since a product other than the "product with the same structure, characteristics, and the like as the one manufactured by the method of manufacturing described in scope of claims of Invention 2 before correction (hereinafter, referred to as the "present manufacturing method") is included as a result of the present correction, the present correction substantially enlarges or alters the scope of claims, and the JPO decision different from that has an error (Issue 1); [ii] Present Invention 2 and Present Invention 3 violate the clarity requirement, and the JPO decision different from that has an error (Issue 2); and [iii] the JPO decision has an error in judgment on finding of Different Features between the invention described in the German Utility Model No. 29716230 Description (hereinafter, referred to as the "Exhibit Ko 5 invention") and Present Invention 2 or Present Invention 3 and on whether it could have been easily conceived of and thus, the JPO decision should be rescinded (Issue 3), and claimed for rescission of the JPO decision.

This judgment decided that, for Issue 1 and Issue 3, [i] the present correction does not substantially enlarge or alter the scope of claims of Invention 2 before correction, and the allegation by Plaintiff has no reason; and [ii] the Exhibit Ko 5 invention discloses more Common Features than those found by the JPO decision, the JPO decision has an error in judgment of Common Features and Different Features between the present invention and the primarily cited reference, and the judgment on whether it could have been easily conceived of on that premise also has an error and thus, the JPO decision was rescinded.

3. Issue 1

(1) When the patent is issued on an invention of a product, the effect of the patent right covers any product whose structure, characteristics, and the like are the same as those of the product regardless of the manufacturing method thereof and thus, even if the method of manufacturing the product is described in the scope of claims according to the patent on the invention of the product, it is reasonable to interpret that the gist

of the invention should be found to be a product whose structure, characteristics, and the like are the same as those of the product manufactured by the manufacturing method (see Judgment of the Supreme Court 2012 (Ju) 2658, Second Petty Bench on June 5, 2015/69-4, Minshu Page 904).

(2) The gist of Invention 2 before correction should not be found with limitation to the product manufactured by the present manufacturing method but should be found to be the product whose structure, characteristics, and the like are the same as those of the product manufactured by the present manufacturing method. According to the description in the scope of claims of the invention before correction, it is interpreted that the gist of Invention 2 before correction is the "paper packaging container made by the vertical line sealing and the lateral line sealing, the filled article is filled in the container, configured to have a top part, a side wall, and a bottom part by folding along the folding line, characterized in that the folded-in piece by top-part molding is folded onto the side wall surface, and the top part is molded having a single-flow roof shape".

(3) Corrected Matter 1-1 by the present correction is found to limit the one having "a top part, a side wall, and a bottom part by folding along a folding line" in Invention 2 before correction to the one having "a front surface panel, a rear surface panel, a side surface panel, a top part, and a bottom part formed by folding along a folding line" and moreover, further to limit positions of the "vertical line sealing" and the "lateral line sealing" of Invention 2 before correction and to specify the relation between the "height of the front surface panel" and the "height of the rear surface panel" and thus, the correction is not applicable to correction to substantially enlarge or alter the scope of claims.

Therefore, Corrected Matter 1-1 is found to conform to the requirement under Article 126, paragraph (6) of the Patent Act.

4. Issue 3

(1) Since it is found from Figs. 1 and 4 of Exhibit Ko 5 that two small triangles drawn on an upper side of the top point of right and left triangular folded-in pieces in Fig. 4 illustrate the "lateral sealing portion", and when it has a single-flow roof shape (the shape with a height of the "front surface" lower than the height of the "rear surface") as in the Exhibit Ko 5 invention, and the "lateral sealing portion" is formed transversely in the lateral direction, the seals facing on the folded-in piece (flap) formed at the lateral line sealing have the same length, and the "lateral sealing portion" is positioned closer to the rear (position closer to the "rear surface") without fail on design, it is found that Exhibit Ko 5 discloses that Exhibit Ko 5 includes the

configuration that "the lateral line sealing provided on the top part is located on the side closer to the rear surface panel than to the front surface panel and is inclined to the rear surface panel side" in the configuration of Present Invention 2 according to Different Feature A in the Exhibit Ko 5 invention.

Therefore, in Different Feature A found in the JPO decision, the aforementioned configuration is not a different feature but a common feature and thus, the finding of the Different Feature in the JPO decision has an error.

(2) As described above, Exhibit Ko 5 is found to disclose that the configuration that "the lateral line sealing provided on the top part is located on the side closer to the rear surface panel than to the front surface panel and is inclined to the rear surface panel side" in Different Feature A in the Exhibit Ko 5 invention is included and thus, the portion according to the aforementioned configuration is not a different feature but a common feature and therefore, the judgment in the JPO decision has an error in the premise thereof.

Judgment rendered on December 26, 2019
2018 (Gyo-Ke) 10174 A case of seeking rescission of the JPO decision
Date of conclusion of oral argument: November 26, 2019

Judgment

Plaintiff: SIG Technology AG

Defendant: Tetra Laval Holdings and Finance S.A.

Main text

1. The trial decision rendered by the Japan Patent Office for Invalidation Trial No. 2017-800020 on August 1, 2018 shall be rescinded.
2. Defendant shall bear the court costs.
3. The additional period for filing a final appeal and a petition for acceptance of final appeal against this judgment shall be 30 days.

Facts and reasons

No. 1 Claim

The same gist as clause 1, Main text.

No. 2 Outline of the case

1. Outline of procedures, etc. at the JPO

(1) Defendant filed a patent application (Patent Application No. 2002-516167. Hereinafter referred to as the "present application") with July 30, 2001 (priority date: July 31, 2000 (hereinafter referred to as the "present priority date"), priority country: Japan) as the international application date for the invention titled "METHOD OF MANUFACTURING PAPER PACKAGING CONTAINER AND PAPER PACKAGING CONTAINER" and was granted registration of establishment of patent right (Patent No. 4831592, Number of claims: 3, Hereinafter this patent is referred to as the "present patent") (Exhibits Ko 24, 50 on September 30, 2011).

(2) Plaintiff requested a trial for patent invalidation (Invalidation Trial No. 2017-800020) seeking invalidation of the patent on the inventions according to Claims

2 and 3 of the scope of claims in the present patent on February 8, 2017 (Exhibit Ko 37).

Defendant made a correction request (Exhibit Ko 39) for correcting Claims 2 and 3 as a claim set on May 30 of the same year and then, since Defendant received an advance notice of a trial decision as of November 2 of the same year, Defendant made a correction request (hereinafter referred to as the "present correction", Exhibit Ko 48) for correcting Claims 2 and 3 as a claim set as of February 13, 2018.

After that, the Japan Patent Office approved the present correction on August 1 of the same year and made a trial decision (hereinafter referred to as the "present JPO decision") that "The request for this trial is dismissed.", and a certified copy thereof was delivered to Plaintiff on the 9th day of the month.

(3) Plaintiff instituted this lawsuit seeking rescission of the present JPO decision on December 5, 2018.

2. Description of scope of claims

(1) At registration of establishment

The description in Claims 2 and 3 of the scope of claims at the registration of establishment of the present patent (before the present correction) is as follows (hereinafter, the invention according to Claim 2 before the present correction is referred to as "Invention 2 before correction", and the invention according to Claim 3 before the present correction as "Invention 3 before correction") (Exhibit Ko 24).

[Claim 2]

A paper packaging container obtained by tube-shaped molding by vertical line sealing of a web-like packaging material, filling of a filled article in the tube-shaped packaging material, lateral line sealing of the tube-shaped packaging material in a transverse direction, molding of a primary shaped container, cutting of each of the primary shaped containers, and molding into a final shape having a top part, a side wall, and a bottom part by folding along a folding line, characterized in that

a folded-in piece by the top-part molding is folded onto the side wall surface, and the top part is molded having a single-flow roof shape.

[Claim 3]

The paper packaging container according to Claim 2, characterized in that the paper packaging container has an outlet on the top part of the single-flow roof shape.

(2) After the present correction

The Descriptions of claims 2 and 3 of the scope of claims after the present correction are as follows (hereinafter, the invention according to Claim 2 after the present correction is referred to as "Present Invention 2", and the invention according to Claim 3 of the same after the present correction as "Present Invention 3", the underlined part indicates a part corrected by the present correction. Exhibit Ko 48).

[Claim 2]

A paper packaging container having a front surface panel, a rear surface panel, a side surface panel, a top part, and a bottom part formed by folding along a folding line with a filled article filled inside, characterized in that

vertical line sealing is provided on the rear surface panel;

lateral line sealing is provided on the top part and the bottom part;

a height of the front surface panel is lower than a height of the rear surface panel;

the lateral line sealing provided on the top part is located on a side closer to the rear surface panel than to the front surface panel and is inclined to the rear surface panel side; and

a folded-in piece by the top part molding is diagonally folded in on the side surface panel, and the top part is molded into a single-flow roof shape.

[Claim 3]

A paper packaging container obtained by tube-shaped molding by vertical line sealing of a web-like packaging material, filling of a filled article in the tube-shaped packaging material, lateral line sealing of the tube-shaped packaging material in a transverse direction, molding of a primary shaped container, cutting of each of the primary shaped containers, and molding into a final shape having a top part, a side wall, and a bottom part by folding along a folding line, characterized in that

the vertical line sealing is provided on a rear surface;

the lateral line sealing is provided on the top part located on a side closer to the rear surface than to the front surface and is inclined to the rear surface side;

the folded-in piece by the top-part molding is diagonally folded in on the side wall surface, and the top part is molded having a single-flow roof shape so that the rear surface side becomes higher; and

the paper packaging container has an outlet on the top part of the single-flow roof shape.

3. Summary of the present JPO decision

(1) The reasons of the present JPO decision are as in the written JPO decision

(copy) in the attachment.

The Summary is that [i] the corrected matter according to Claim 2 before the present correction has a purpose of clarification of the description which is not clear and of restriction of the scope of claims, and the corrected matter according to Claim 3 before the present correction has a purpose of restriction of the scope of claims and of rewriting a claim that cites another claim into a claim that does not cite that other claim, both of which are corrections within the range of matters described in the Description attached to the application of the present application (hereinafter referred to as the "present Description" including the drawings) and substantially do not enlarge or alter the scope of claims and thus, the present correction shall be approved; [ii] Present Inventions 2 and 3 are both clear and the scopes of claims thereof conform to the provisions in Article 36, paragraph (6), item (ii) of the Patent Act (hereinafter referred to as the "clarity requirement") and thus, Reason 1 for Invalidation of the violation of the item alleged by Plaintiff has no ground; [iii] Present Inventions 2 and 3 could not have been easily made by a person ordinarily skilled in the art on the basis of the invention described in Exhibit Ko 5 (German Utility Model No. 29716230 Description) which is publication distributed before the present priority date and the technical matters described in Exhibits Ko 6 to 13, 16, and 17 and thus, Reason 2 for Invalidation of violation of Article 29, Paragraph (2) of the same Act alleged by Plaintiff has no ground.

(2) Common Features and Different Features between the invention described in Exhibit Ko 5 found by the present JPO decision (hereinafter referred to as the "Exhibit Ko 5 invention" and the "Exhibit Ko 5' invention") as well as Common Features and Different Features between Present Invention 2 and the Exhibit Ko 5 invention and Common Features and Different Features between Present Invention 3 and the Exhibit Ko 5' invention are as follows.

A. Exhibit Ko 5 invention

"A cardboard folding packaging container having a front surface, a rear surface, a side surface, an upper surface, and a bottom surface, the upper surface being inclined toward the front surface, a vertical line sealing portion being provided on the front surface, a lateral line sealing portion being provided on the upper surface and inclined to the rear surface side, and a folded-in piece by molding of the cardboard being folded on the upper surface."

B. Exhibit Ko 5' invention

"A cardboard folding packaging container having a front surface, a rear surface, a

side surface, an upper surface, and a bottom surface, the upper surface being inclined toward the front surface, a vertical line sealing portion being provided on the front surface, a lateral line sealing portion being provided on the upper surface and inclined to the rear surface side, a folded-in piece by molding of the cardboard being folded on the upper surface, and having an outlet on the upper surface having a single-flow roof shape."

C. Common Features and Different Features between Present Invention 2 and the Exhibit Ko 5 invention

(Common Features)

"A paper packaging container having a front surface panel, a rear surface panel, a side surface panel, a top part, and a bottom part formed by folding along a folding line with a filled article filled inside, wherein

vertical line sealing is provided;

lateral line sealing is provided on the top part and the rear surface panel;

a height of the front surface panel is lower than a height of the rear surface panel; and

the top part is molded to have a single-flow roof shape."

(Different Feature A)

In Present Invention 2, "a vertical line sealing is provided on the front surface", "a lateral line sealing provided on the top part is located on a side closer to the rear surface panel than to the front surface panel and is inclined to the rear surface panel side, and the folded-in piece by the top-part molding is diagonally folded-in on the side surface panel", whereas

in the Exhibit Ko 5 invention, the "vertical line sealing portion is provided on the front surface", "the lateral line sealing is provided on the upper surface and inclined to the rear surface side, and the folded piece by cardboard molding is folded on the upper surface".

D. Common Features and Different Features between Present Invention 2 and the Exhibit Ko 5' invention

(Common Features)

"A paper packaging container having a top part, a side wall, a front surface, a rear surface, and a bottom part molded by folding along a folding line with a filled article filled inside, characterized in that

vertical line sealing is provided;

lateral line sealing is provided on the top part;

the top part is molded having a single-flow roof shape so that the rear surface side becomes higher; and

the paper packaging container has an outlet on the top part of the single-flow roof shape.

(Different Feature B)

In Present Invention 3, "a vertical line sealing is provided on the rear surface", "lateral line sealing provided on the top part is located on a side closer to the rear surface than to the front surface and is inclined to the rear surface side, and the folded-in piece by the top-part molding is diagonally folded onto the side wall surface", whereas

in the Exhibit Ko 5' invention, the "vertical sealing portion is provided on the front surface", "the lateral line sealing is provided on the upper surface and inclined to the rear surface side, and the folded-in piece by cardboard molding is folded onto the upper surface".

(omitted)

No. 4 Judgment of this court

1. Reason 1 for rescission (error in judgment of correction requirement related to Claim 2)

(1) Described matters and the like of the present Description

A. The "detailed description of the invention" in the present Description (Exhibit Ko 24) has the following description (for "Figure 1" (Fig. 1) to Figure 11" (Fig. 11) cited in the following description, see the drawings of the Description in the attachment).

(A) [Technical Field]

[0001]

The present invention relates to a method of manufacturing a paper packaging container, and to a paper packaging container.

[Background Art]

[0002]

A packaging laminated material which is rich in flexibility has been used for packaging a liquid food product for a long time. The packaging container for milk, juice, Japanese Sake, Shochu, mineral water, and other drinks is manufactured by molding a web-like packaging laminated material in which a folding line is made on a fibrous base material (paper, for example) / plastic laminated body, for example, as

illustrated in Figure 5 into a tube shape by vertical line sealing in a longitudinal direction thereof, by filling a filled article in the packaging material molded into the tube shape, by laterally sealing the tube-shaped packaging material in a transverse direction, by molding a cushion-shaped or pillow-shaped primary shaped container, by individually cutting it at a certain interval when the packaging material is web-like, by mountain-folding or valley-folding it along the folding line, and by molding a brick-shaped container made of a panel 3 forming a side wall, a vertical line sealing portion 5, a lateral line sealing portion 6, a panel 4a forming a top wall, a flap (a folded-in piece generated when the top part or the bottom part is formed) 8 welded to the side wall, and the like. The material of the fibrous base material is thick paper in many cases.

[0003]

A gable-top shaped (roof-shaped) paper packaging container is obtained by cutting the paper packaging material into a predetermined shape, by obtaining blanks sealed in a container vertical direction, and by sealing a bottom of the blanks in a filling machine and then, by filling the filled article such as milk, juice, or other drink through an upper-part opening and by sealing the upper part. An appearance design of the packaging container product is printed on a surface of these packaging material.

[0004]

On the web-like packaging material, a folding line for one container is applied repeatedly and continuously. See Figure 5 illustrating the packaging material for one container. The web-like packaging material with the folding line is made of a sealing region 5 for the vertical line sealing, a lateral line sealing region 6 in which lateral line sealing is applied in a transverse direction of the tube-shaped packaging material, a side panel 3 forming a container wall, a panel 4a forming a top part of the container, and panels 4b and 4c forming a flap 8 folded and welded to the side wall or the bottom part, and folding lines 7a to 7c and the like are formed on boundaries of those panels.

[0005]

However, in the brick-shaped container as illustrated in Figure 4, the lateral line sealing portion 6 and the vertical line sealing portion 5 occupy the center of the container top part, and a space (blank space) for installing an outlet or a tap, an opening device, a lid, and a plug and the like runs short and as a result, only a relatively small-sized tap can be applied to the container.

[0006]

Moreover, since four corners of this container top part are sharp at right angles, they are spots subjected to external physical and mechanical influences during a

distribution process and the container is most susceptible to damage.

[0007]

For the gable-top shaped (roof shaped) paper packaging container, there is proposed a paper container in which one of the roof portions is made wider, and a large-sized outlet is attached (Unexamined Patent Application Publication No. 1999-91792 and Unexamined Patent Application Publication No. 1999-2360327 and the like).

[0008]

However, when a top seal fin is further inclined from the gable top shape into a single-flow roof (shed roof) shape of one roof, the folded-in portion is folded further tightly into an inside, and tensile or pressing stress increases, and strength characteristics of the paper container are remarkably deteriorated.

[0009]

Furthermore, when the aforementioned asymmetrical gable top-shaped (roof shaped) paper packaging container is to be molded, since it is difficult to fold the container material easily along the folding line, a top reforming device for the paper container is proposed (Unexamined Utility Model Application Publication No. 1992-53602).

[0010]

However, in an existing high-speed packaging filling machine for manufacturing 6000 to 15000 containers per hour, for example, it is difficult to use the reforming device and to insert the reforming tool into the container and to perform folding along the folding line.

(B) [Technical Problem]

[0012]

An object of the present invention is to provide a container in which a wide space (blank space) is ensured on the top part of the paper container and a relatively large-sized outlet, an opening device, and the like can be installed, and a method of manufacturing the container.

[0013]

Another object of the present invention is to provide a container which has less container damage by making the four corners on the container top part hardly subjected to physical and mechanical external influence during the distribution process, and a method of manufacturing the container.

[0014]

Still another object of the present invention is to provide a container in which the folded-in portion of the packaging laminated material is not folded tightly when the container is molded and folded, tensile or pressing stress is small, and the strength characteristics of the paper packaging container can be maintained, and a method of manufacturing the container.

[0015]

One of the objects of the present invention is to provide a manufacturing method for molding a container by performing folding along the folding line in an existing packaging filling machine for manufacturing a container at a high speed without using a special or additional reforming device.

(C) [Solution to Problem]

[0016]

The method of manufacturing a paper packaging container according to this invention is a method of manufacturing a paper packaging container by molding a web-like packaging material with a folding line into a tube-shape by vertical line sealing, by filling a filled article in the packaging material molded having the tube shape, by applying lateral line sealing in a transverse direction of the tube-shaped packaging material so as to mold a pillow-shaped primary shaped container, cutting each of the primary shaped containers, and molding into a final shape having a top part, a side wall, and a bottom part by folding along a folding line, characterized in that

in the top-part molding step, a barrel part of the primary shaped container is pressed so as to cause a top-part corresponding portion to be swollen, and the primary shaped container is folded along the folding line; and

a folded-in piece generated by the top-part molding is folded onto the side wall surface around an inclined top-part ridge line so as to mold the top part having a single-flow roof shape.

[0017]

The paper packaging container according to this invention is a paper packaging container by tube-shaped molding by vertical line sealing of a web-like packaging material, filling of a filled article in the tube-shaped packaging material, lateral line sealing of the tube-shaped packaging material in a transverse direction, molding of a pillow-shaped primary shaped container, cutting of each of the pillow-shaped primary shaped containers, and molding into a final shape having a top part, a side wall, and a bottom part by folding along a folding line, characterized in that

a folded-in piece by the top-part molding is folded onto the side wall surface, and the top part is molded having a single-flow roof shape.

[0018]

In a preferred embodiment of this invention, the paper packaging container has an outlet on the top part of the single-flow roof shape.

(D) [Advantageous Effect of Invention]

[0019]

By means of the paper packaging container of this invention, a paper packaging container having folded-in and folded portions provided on an outer side and a single-flow roof shape can be obtained, and stress and cracks can be reduced.

[0020]

By means of the paper packaging container of this invention, an area of the top part is widened, and a relatively large-sized outlet, an opening device, and a pouring-out device (outlet) with a wide mouth can be attached. Moreover, the attached pouring out device can be higher than that with a brick shape.

[0021]

By means of the paper packaging container of this invention, a wider print surface can be obtained on the front surface, and the container can be made more attractive for consumers on article display racks at retail shops.

[0022]

Since two corners on the rear surface side or vicinities thereof in the four corners of the container top part susceptible to a physical and mechanical external influence in the distribution process are protected and covered from sides by the diagonally folded-in flap, container damage can be reduced. Moreover, the two corners on the front surface side move to a lower part of the top part and become hardly subjected to the external influence, the angle of the corner is widened, and stress to the container material is lowered.

[0023]

A container can be molded by performing folding along the folding line in the existing packaging filling machine for manufacturing a container at a high speed, without using a special or additional reforming device.

(E) [Description of Embodiment]

[0025]

Figure 1 is a perspective appearance schematic diagram illustrating an aspect of a paper packaging container according to this invention.

In the aspect illustrated in Figure 1, a container is a paper packaging container including a vertical line sealing 5 on the rear surface side, a lateral line sealing 6 is inclined to an upper side (rear surface side), and a folded-in piece (flap) 8 by top-part molding is folded and welded onto a side wall surface of a side surface panel 3b, and a top-part panel 4a1 and the inclined lateral line sealing 6 form a single-flow roof shape A. In this aspect, an upright front surface panel 3a and a top-part panel 4a1 are valley-folded on a folding line at an angle of 90 degrees or more.

[0026]

Figure 2 is a perspective appearance schematic diagram illustrating another aspect of a paper packaging container according to this invention.

[0027]

In the aspect illustrated in Figure 2, similarly to Figure 1, a container is a paper packaging container including the vertical line sealing 5, the lateral line sealing 6 is inclined to a lower side (front surface side), and the folded-in piece (flap) 8 by the top-part molding is folded and welded onto the side wall surface of the side surface panel 3b, and the top-part panel 4a1 and the inclined lateral line sealing 6 form the single-flow roof shape A. In this aspect, the upright front surface panel 3a and the single-flow roof shape A are valley-folded on the folding line at an angle of 90 degrees or more.

[0028]

Figure 3 is an expansion schematic diagram of one aspect of the paper packaging container according to this invention illustrated in Figures 1 and 2 and is also a plan view of a web-like packaging material example.

[0029]

In the web-like packaging material with the folding line as illustrated in Figure 3, a packaging material 1 (an adjacent one is 2) for one container is formed continuously in a band state. This packaging material is made of a sealing region 5 for vertical line sealing provided on an end of the packaging material in a longitudinal direction of the packaging material, a lateral line sealing region 6 for lateral line sealing provided on adjacent front and rear of the tube-shaped packaging material in the transverse direction, the side wall panel 3 (a front surface 3a, a side surface 3b, a rear surface 3c) forming a container wall, panels 4a1, 4a2 forming the top part of the container, and panels 4c and 4b forming the flap (folded-in piece) 8 folded and welded to the side wall or the bottom part, respectively, and folding lines 7a1, 2-c1, and a folding line 7a-c and the like are formed on the boundary of those panels.

[0030]

In this aspect of the invention, the front surface panel 3a, the side surface panel 3b, and the rear surface panel 3c are located substantially on the same line on the bottom part side, and the height of the front surface panel 3a is lower than the height of the rear surface panel 3c, and the upper folding line 7c1 of the side surface panel 3b is on a line connecting the corresponding folding lines 7a1 and 7a2 of the adjacent front surface panel 3a and the rear surface panel 3c.

Subsequently, a method of manufacturing the paper packaging container by this invention will be specifically described by reference to Figure 6 illustrating a perspective inside schematic diagram of a packaging filling system and Figure 11 for explaining a folding step along the folding line of the primary shaped container.

[0031]

In the method of manufacturing the paper packaging container according to this aspect, a web-like packaging material 12 is fed out of a roll 11 of the web-like packaging material with the folding line, a strip tape for vertical line sealing is attached by an applicator 13 on an end of the web-like packaging material and is sterilized by a sterilizing bath 17, the web-like packaging material is molded into a tube shape by a vertical line sealing device 15, a filled article is filled from a filling pipe 14 into the tube-shaped packaging material, lateral line sealing is applied to the tube-shaped packaging material in the transverse direction so as to mold the pillow-shaped primary shaped container 16, each of the primary shaped containers is cut and placed on a conveying device 18, and a paper packaging container 19 having a top part, a side wall, and a bottom part and molded into a final shape is manufactured by folding along the folding line by a folding device (not shown). In this working example illustrated in Figure 6, the container is conveyed with the bottom part up.

[0032]

At a top-part molding step in the aspect illustrated in Figure 11, a barrel portion of the primary shaped container 16 is pressed as indicated by an arrow so as to swell a top-part corresponding portion, and the primary shaped container is easily folded along the folding line. The pressing timing includes timing when the bottom part or the top part as illustrated in Figure 11 is not molded and timing after the bottom part is folded.

[0033]

The folded-in piece (flap) 8 generated by the top-part molding and made of three triangular panels 4c is folded on the side wall surface 3b around an inclined top-part ridge line B so as to mold the top part having the single-flow roof shape.

[0034]

In this aspect, the folded-in piece (flap) generated by the bottom-part molding and made of three triangular panels 4b is folded on the bottom surface 4a around the bottom part ridge line.

[0035]

An example of the paper packaging container in which a large-sized outlet is provided on the top part which is a preferable aspect of this invention will be described by reference to Figures 7 to 10.

[0036]

Figure 7 illustrates an example of a container in which a large-sized screw cap is attached to the paper packaging container example illustrated in Figure 1. In this aspect, the container includes the vertical line sealing 5, the lateral line sealing 6 is inclined to the upper side (rear surface side), the folded-in piece (flap) 8 by the top-part molding is folded onto the side wall surface of the side surface panel 3b, and the single-flow roof shape A is formed by the top-part panel 4a1 and the inclined lateral line sealing 6. The large-sized screw cap is attached with a sufficient space to the single-flow roof shape A.

[0037]

Figure 8 illustrates an example of a container to which a large-sized opening/closing cap is attached to the paper packaging container example illustrated in Figure 1. The opening/closing cap is attached to the single-flow roof shape A with a sufficient space instead of the large-sized screw cap in Figure 7.

[0038]

Figure 9 illustrates an example of a container to which a large-sized screw cap is attached to the paper packaging container example illustrated in Figure 2. In this aspect, the container includes the vertical line sealing 5, the lateral line sealing 6 is inclined to the lower side (front surface side), the folded-in piece (flap) 8 by the top-part molding is folded onto the side wall surface of the side surface panel 3b, and the single-flow roof shape A is formed by the top-part panel 4a1 and the inclined lateral line sealing 6. The large-sized screw cap is attached to the single-flow roof shape A with a space.

[0039]

A front view of the packaging material used in the aforementioned outlet aspect is illustrated in Figure 10. In this aspect, an opening structure, or a perforated line, or a half-cut line for forming the outlet can be formed in the top-part panel 4a1 of the single-flow roof shape A. This structure and the line are liquid-tight so that a liquid content does not leak before attachment of the outlet.

[0040]

In this invention, a method of forming the outlet can be changed/selected as appropriate other than the aforementioned examples.

(F) [Industrial Applicability]

[0041]

The paper packaging container of this invention is used for packaging a liquid food such as milk, juice, Japanese Sake, Shochu, mineral water, and other drinks.

B. According to the described matters in the aforementioned A, the "detailed description of the invention" in the present Description is found to have the following disclosure in relation with the present invention.

(A) In the conventional brick-shaped packaging container used for packaging a liquid food such as milk, juice, Japanese Sake, Shochu, mineral water, and other drinks, the lateral line sealing portion and the vertical line sealing portion occupy the center of the container top part, and a space (blank space) for installing an outlet or a tap, an opening device, a lid, a plug, and the like runs short and as a result, only a relatively small-sized tap can be applied to the container, which is a problem ([0002], [0005]).

In the conventional gable-top shaped (roof shaped) paper packaging container in which one of the roof portions is made wider and a large-sized outlet is attached, too, when the top seal fin is further inclined from the gable top shape into the single-flow roof (shed roof) shape of one roof, the folded-in portion is folded further tightly into an inside, tensile or pressing stress increases, and strength characteristics of the paper container are remarkably deteriorated, which is a problem, and when such asymmetrical gable top-shaped (roof shaped) paper packaging container is to be molded, since it is difficult to fold the container material easily along the folding line, a top reforming device for the paper container is proposed. However, in the existing high-speed packaging filling machine, it is difficult to use the reforming device and to insert the reforming tool into the container and to perform folding along the folding line, which is a problem ([0007] to [0010]).

(B) "This invention" has an object to provide a container in which a wide space (blank space) is ensured on the top part of the paper container so that a relatively large-sized outlet, opening device, and the like can be installed, a container in which the four corners of the container top part are hardly subjected to the physical and mechanical external influence during the distribution process, whereby container damage can be reduced, and a container in which the folded-in portion of the

packaging laminated material is not tightly folded when the container is molded and folded, tensile or pressing stress is small, and the strength characteristics of the paper packaging container can be maintained, and is a paper packaging container obtained by tube-shaped molding by vertical line sealing of the web-like packaging material, filling of a filled article in the tube-shaped packaging material, lateral line sealing of the tube-shaped packaging material in the transverse direction, molding of a pillow-shaped primary shaped container, cutting of each of the pillow-shaped primary shaped containers, and molding into a final shape having a top part, a side wall, and a bottom part by folding along the folding line, characterized in that a folded-in piece by the top-part molding is folded onto the side wall surface, and the top part is molded having a single-flow roof shape ([0012] to [0014]).

By means of the paper packaging container of "this invention", such effects are exerted that an area of the top part is widened, a relatively large-sized output, an opening device, and a wide pouring-out device (outlet) can be attached, a wider print surface can be obtained on the front surface, two corners on the rear surface side or vicinities thereof among the four corners of the container top part susceptible to a physical and mechanical external influence in the distribution process are protected and covered from sides by the diagonally folded-in flap and thus, container damage can be reduced, a container can be molded by performing folding along the folding line in the existing packaging filling machine for manufacturing a container at a high speed without using a special or additional reforming device and the like ([0019] to [0023]).

(2) Conformity of Corrected Matter 1-1 with the requirement under Article 126, paragraph (6) of the Patent Act

Plaintiff alleges that, as the result of deletion of matters specifying the invention according to the method of manufacturing paper packaging container (present manufacturing method) described in Claim 2 before the present correction by Corrected Matter 1-1, Present Invention 2 includes those other than the "product with the structure, characteristics, and the like equal to the one manufactured by the present manufacturing method of Invention 2 before correction" as a final form and thus, Corrected Matter 1-1 substantially enlarges or alters the scope of claims and does not conform to the requirement under Article 126, paragraph 6 of the Patent Act, which will be decided in the following.

A. When the patent is on an invention of a product, the effect of the patent right

covers any product whose structure, characteristics, and the like are the same as those of the product regardless of the manufacturing method thereof and thus, even if the method of manufacturing the product is described in the scope of claims according to the patent on the invention of the product, it is reasonable to interpret that the gist of the invention should be found to be a product whose structure, characteristics, and the like are the same as those of the product manufactured by the manufacturing method (see Judgment of the Supreme Court 2012 (Ju) 2658, Second Petty Bench on June 5, 2015/69-4, Minshu Page 904).

By considering this for Invention 2 before correction, the description in the scope of claim (Claim 2) of Invention 2 before correction is "a paper packaging container obtained by tube-shaped molding by vertical line sealing of a web-like packaging material, filling of a filled article in the tube-shaped packaging material, lateral line sealing of the tube-shaped packaging material in a transverse direction, molding of a primary shaped container, cutting of each of the primary shaped containers, and molding into a final shape having a top part, a side wall, and a bottom part by folding along a folding line, characterized in that a folded-in piece by the top-part molding is folded onto the side wall surface, and the top part is molded having a single-flow roof shape.", and Invention 2 before correction is the invention of a product (paper packaging container).

Then, the scope of claims of Invention 2 before correction has the description of the method of manufacturing paper packaging container (present manufacturing method) that is "obtained by tube-shaped molding by vertical line sealing of a web-like packaging material, filling of a filled article in the tube-shaped packaging material, lateral line sealing of the tube-shaped packaging material in a transverse direction, molding of a primary shaped container, cutting of each of the primary shaped containers, and molding into a final shape having a top part, a side wall, and a bottom part by folding along a folding line", but the gist of Invention 2 before correction should not be found with limitation to the product manufactured by the present manufacturing method but should be found as the product whose structure, characteristics, and the like are the same as those of the product manufactured by the present manufacturing method.

According to the description in the scope of claims of Invention 2 before correction, the "paper packaging container" made by the "vertical line sealing" and the "lateral line sealing", the "filled article is filled" in the container, configured "to have a top part, a side wall, and a bottom part by folding along the folding line", the "folded-in piece by top-part molding" is "folded onto the side wall surface", and "the

top part is molded having a single-flow roof shape" is found to be the same structure, characteristics, and the like of those manufactured by the configuration of the present manufacturing method.

Therefore, the gist of Invention 2 before correction is interpreted to be the "paper packaging container made by the vertical line sealing and the lateral line sealing, the filled article is filled in the container, configured to have a top part, a side wall, and a bottom part by folding along the folding line, characterized in that the folded-in piece by the top-part molding is folded onto the side wall surface, and the top part is molded having a single-flow roof shape".

As described above, Invention 2 before correction is the invention of the paper packaging container characterized by including the configuration (structure) that the "folded-in piece by top-part molding is folded onto the side wall surface, and the top part is molded having a single-flow roof shape" regarding the "top part".

On the other hand, the "bottom part" of Invention 2 before correction does not have description defining the one having a specific shaped structure in the scope of claims in Invention 2 before correction. Moreover, in the present Description, too, there is no description which limits the structure, characteristics, and the like of the "bottom part" to a specific one.

B. Corrected matter 1-1 is to correct the description in Invention 2 before correction that the "paper packaging container obtained by tube-shaped molding by vertical line sealing of a web-like packaging material, filling of a filled article in the tube-shaped packaging material, lateral line sealing of the tube-shaped packaging material in a transverse direction, molding of a primary shaped container, cutting of each of the primary shaped containers, and molding into a final shape having a top part, a side wall, and a bottom part by folding along a folding line" to the description in Present Invention 2 that the "paper packaging container having a front surface panel, a rear surface panel, a side surface panel, a top part, and a bottom part formed by folding along a folding line with a filled article filled inside, wherein vertical line sealing is provided on the rear surface panel; lateral line sealing is provided on the top part and the bottom part; and a height of the front surface panel is lower than a height of the rear surface panel".

Then, Corrected Matter 1-1 is to limit the one having "a top part, a side wall, and a bottom part by folding along a folding line" in Invention 2 before correction to the one having "a front surface panel, a rear surface panel, a side surface panel, a top part, and a bottom part formed by folding along a folding line" and moreover, to limit positions

of the "vertical line sealing" and the "lateral line sealing" of Invention 2 before correction and to specify the relation between the "height of the front surface panel" and the "height of the rear surface panel" and thus, it is found that the correction is not applicable to correction to substantially enlarge or alter the scope of claims.

Therefore, Corrected Matter 1-1 is found to conform to the requirement under Article 126, paragraph (6) of the Patent Act.

C. On the other hand, Plaintiff alleges that [i] the method of manufacturing the paper packaging container of Invention 2 before correction (present manufacturing method) is the same as the manufacturing process of the paper container described in the present Description ([0012] to [0019], [0028] to [0031], Figures 6, 7, and 11), and as in Figures A1 to A4 in Attachment 1, when the "pillow-shaped primary shaped container 16" (Figure 11 of the present Description, Figure A1 in Attachment 1) in a state "lateral line sealing is applied in a transverse direction" to the top part and the bottom part in order to seal the filled article which is filled is to be "placed on a conveying device 18 and molded into a final shape having a top part, a side wall, and a bottom part by folding along the folding line by a folding device (not shown)", not only on the top part but also on the bottom part, after the lateral line sealing, is similarly inclined (Figure A2), "[A] a triangular folded-in piece including the lateral line sealing (two triangles indicated by an arrow in Figure A2) is folded into a triangle (Figure A3) on the side wall surface (outer side)" or "[B] a triangular folded-in piece including the lateral line sealing (two triangles indicated by an arrow in Figure A2) is folded into a triangle (Figure A4) on the bottom part (inner side) ", along the folding line, and the structure of the product obtained by the present manufacturing method is limited only to the structure in which the sealed lateral line sealing is folded into a triangle in Figure A3 or Figure A4; [ii] since the matter specifying the invention according to the aforementioned process (the present manufacturing method) is deleted by Corrected Matter 1-1, in Present Invention 2, in addition to Figure A3 and Figure A4, a structure in which the lateral line sealing inclined onto the bottom surface after the opening portion is folded to an inner side is folded so as to become a rectangle in the inner side (Figure B4 in Attachment 1) is also included as the final shape, but the paper packaging container with such structure cannot be manufactured by the present manufacturing method of Invention 2 before correction, and a product other than the "product whose structure, characteristics and the like are the same as those of the product manufactured by the present manufacturing method of Invention 2 before correction" is included and thus, Corrected Matter 1-1 is to substantially enlarge or alter the scope of claims.

However, as found in the aforementioned A, with regard to the "bottom part" of Invention 2 before correction, there is no description which specifies it to the configuration (structure) of a specific shape, or the present Description does not have the description that the structure, characteristics, or the like of the "bottom part" is limited to a specific one, either, in the scope of claims (Claim 2) of Invention 2 before correction, and thus, it should be interpreted that the shape of the bottom part is not limited in Invention 2 before correction.

Moreover, the manufacturing process of the paper container described in the present Description cited by Plaintiff is only one embodiment of the manufacturing method of the paper packaging container of Invention 2 before correction, and the paper packaging container of Invention 2 before correction is not limited to the product manufactured by the manufacturing method concerned.

Then, it should be interpreted that the one with the structure having the shape of the bottom part in Figure B4 in Attachment 1 is also included in Invention 2 before correction.

Therefore, the aforementioned allegation by Plaintiff cannot be employed.

(3) Summary

As described above, Corrected Matter 1-1 is found to conform to the requirement under Article 126, paragraph (6) of the Patent Act and thus, the judgment of this JPO decision that the present correction including Corrected Matter 1-1 conforms to the requirement in the same clause does not have an error.

Therefore, Reason 1 for Rescission alleged by Plaintiff has no reason.

2. Reason 3-1 for Rescission (error in judgment in inventive step of Present Invention 2 with Exhibit Ko 5 as primarily cited reference)

(1) Described matter of Exhibit Ko 5

A. Exhibit Ko 5 has the following description (for Figures 1 to 5 cited in the following description, see Exhibit Ko 5 drawings in the attachment).

(A) "Packaging for fluid medium"

"This device relates to a packaging container which is a packaging container for a fluid medium, is made of least a single-layer covering material defining a capacity, includes an opening capable of being closed again by a lid element, and the opening is closed by a substantially flat sealing element connected at least to the covering material surrounding the opening before it is opened for the first time after first filling." (page 1, lines 1 to 6, translation page 2, lines 8 to 11)

(B) "In the prior art, the same type of packaging container is publicly known and is used in various ways. Particularly, this type of packaging container is used for liquids such as milk products, juice, and the like, for example." (page 1, lines 8 to 11, translation page 2, lines 12 to 13)

"Usually, such a packaging container is made of a formative and stable sheath; that is, cardboard or materials similar to that, for example. The sheath has a liquid-tight laminate, film or a material similar to that on an inner surface. Usually, such a packaging container has a cuboid shape. An opening formed capable of being closed again by the lid element is provided on a region of a surface." (page 1, lines 13 to 18, translation page 2, lines 14 to 18)

"Such a packaging container is sealed by the opening being closed by a sealing element or preferably by a film in the opening region. As a result, the liquid tightness of the packaging container is guaranteed, and contamination of a content is avoided." (page 1, lines 20 to 23, translation page 2, lines 19 to 21)

"Usually, such a packaging container is made open by removing the lid element and destroying the sealing element or separating them from the surrounding material at least partially. From that fact, it has a defect that it is additionally opened and moreover, a completely cut-off portion of the sealing element can fall into the packaging container. As a result, there is a possibility that the content is contaminated, or the separated portion is disadvantageously poured out together with the content. If the sealing element is separated only partially in the opening region, the content cannot be poured out while the contents are being adjusted. In that case, the liquid flows out vigorously." (page 2, lines 1 to 10, translation page 2, line 22 to page 3, line 4).

"Furthermore, in the prior art, it is publicly known that the sealing element includes a handle on an outer side such as an adhesive tape which is connected to the sealing element, can be grasped from the outer side, and can be removed together with the region of the sealing element closing the opening, for example, Subsequently, the lid element is used. This case also has the defect of the need for additional opening and moreover, an additional element needs to be used. This is extremely non-economical in terms of mass-production products of corresponding types in property." (page 2, lines 12 to 19, translation page 3, lines 5 to 10)

(C) "With such prior art as a starting point, this device is based on a problem to enable economic manufacture by expanding the packaging containers of corresponding types in property and to guarantee adjusted opening and removal of the

sealing element." (page 2, lines 21 to 24, translation page 3, lines 11 to 13)

"As technical solution of the aforementioned problem, the packaging container corresponding in property is expanded such that, when the packaging container is opened for the first time, the lid element is connected to the sealing element so that the sealing element is separated from the surrounding material in the region of the opening, and at least the lid element is removed for the first time." (page 2, lines 26 to 31, translation page 3, lines 14 to 17)

(D) "By means of an embodiment by this device, additional opening of the sealing element after the lid element is removed is excluded. Moreover, the separated portion of the sealing element is connected to the lid element at least until the lid element is removed for the first time, whereby it can be disposed of outside the packaging container. The sealing element may be permanently fixed to the lid element. The separation of the sealing element from the material surrounding in the opening region is performed by moving the lid element such as twisting, lifting high, or the like, for example. By moving as above, the sealing element is peeled off from the surrounding material in the opening region." (page 2, line 33 to page 3 line 7, translation page 3, lines 18 to 25)

"The solution by this device avoids use of an additional element, which makes mass production more economical. Moreover, the aforementioned defects of the possibility of uncontrolled pouring out of the liquid or contamination of the content of the packaging container are prevented." (page 3, lines 9 to 12, translation page 3, line 26 to page 4, line 2)

"It is advantageous that the lid element includes a handle, a connection region, and a closure region. The connection region is usually flat so as to be connected to the sealing element. In this case, connection which connects materials by welding, bonding, or arts equivalent to that, for example, is preferably formed. The handle is used for grasping the lid element from outside the packaging container. The closure region ensures reliable closure of the opening by the lid element. The closure region may be formed by a female screw or a male screw, for example, by being arranged on the opening region of the packaging container or by being combined with a pipe element formed as a single piece with the packaging container. By means of advantageous proposal of this device, the lid element may further have a separation element for separating the sealing element from the surrounding material. This may be realized by preferably providing a movable cam element, for example. The cam element cuts off sealing from the surrounding material and assists peeling-off." (page

3, lines 14 to 29, translation page 4, lines 3 to 13)

"The lid element may be formed as a cap, and in this case, according to a particularly advantageous proposal, this cap may have a pot-shaped region protruding to a flat surface of the sealing element in the opening of the packaging container. In that case, a bottom of the pot-shaped region is a substantially flat connection region, and an outer surface of this connection region is connected to the sealing element." (page 3, lines 31 to 36, translation page 4, lines 14 to 17)

"According to another advantageous proposal of this device, the lid element may be formed as a plug. This plug may be screwed with the pipe by a male screw, for example." (page 4, lines 1 to 3, translation page 4, lines 18 to 19)

"An area of the substantially flat connection region substantially corresponds to the area of the opening." (page 4, lines 5 to 6, translation page 4, line 20)

"The sealing element is preferably formed as a single piece with the covering material and preferably is a portion of an inner film of a multi-layered covering material, for example. However, the sealing element may be a film piece connected to the covering material surrounding the opening only in the opening region." (page 4, lines 8 to 12, translation page 4, lines 21 to 23)

"According to another advantageous proposal of this device, the lid element may be connected to the packaging container in collaboration with a tamperproof portion. As a result, whether or not the packaging container has been once opened can be distinguished from outside." (page 4, lines 14 to 17, translation page 4, lines 24 to 26)

(E) "By means of this device, there is provided the packaging container which can be manufactured easily and economically and guarantees reliable separation and removal of the sealing element region closing the opening in the case of the opening capable of being closed again." (page 4, lines 19 to 22, translation page 5, lines 1 to 3)

(F) "Other advantages and features of this device will be made apparent from the description below based on the drawings.

Figure 1 illustrates a perspective view of a working example of a packaging container;

Figure 2 illustrates a front view of the packaging container shown in Figure 1;

Figure 3 illustrates a side view of the packaging container shown in Figure 1;

Figure 4 illustrates a plan view of the packaging container shown in Figure 1; and

Figure 5 illustrates a detailed view of a section of an opening region of the packaging container." (page 4, line 24 to page 5, line 2, translation page 5, lines 4 to

9)

"The packaging container 1 illustrated in Figures 1 to 4 is made of covering 2 having a bottom, a side wall, and an upper wall region as publicly known. The packaging container is illustrated in a state of a publicly known folding type packaging container with an upper surface inclined. This packaging container has an opening region 3 on a region of the upper surface." (page 5, lines 4 to 8, translation page 5, lines 10 to 13).

"As shown in Figure 5, the lid 4 is fastened to a pipe by a screw 12 in the opening region. The two are fixed immovably to each other by a tamperproof portion 6. The tamperproof portion is connected to the lid 4 and is engaged with the pipe 5 from below. As a result, when the lid 4 is tightened, the tamperproof portion 6 is broken." (page 5, lines 10 to 14, translation page 5, lines 14 to 17)

"The packaging container covering 2 is formed in a multi-layered manner in the illustrated working example. An outermost layer is flat, and an opening is made in a substantially hard layer 8 located below it. This opening is closed by two inner layers 9 and 10 in an unopened state; that is, after first filling and before the packaging container is first opened. The layers 9 and 10 form a sealing film 11 in the opening region. The pipe 5 is connected to an outermost side covering layer 7 by a fixed ring in the connection region 16 by bonding, for example. Moreover, a projecting ring is connected to the sealing film 11 through the connection region 17." (page 5, lines 16 to 25, translation page 5, lines 18 to 24)

"The lid 4 has a pot element 13 protruding into an inside of the pipe 5. The pot element 13 is tapered to a conical shape and is matched with the pipe 5 tapered with a conical shape to an inner side. The pot element 13 has a flat bottom 14 on a lower region, and this bottom 14 forms the connection region 15 over the entire surface and is connected to the sealing film 11 by bonding, ultrasonic welding, heat-sealing or those similar to that. Connection of them during handling of the content in the packaging container is advantageous." (page 5, lines 27 to 34, translation page 5, line 25 to page 6, line 4)

"In order to open the packaging container 1 for the first time after the first filling, the lid 4 is twisted to be tightened; at that time, the tamperproof portion 6 is broken, and moreover, the sealing film 11 is separated from the region surrounding the opening; that is, the connection region 17 between the sealing film and the pipe lower edge portion. Since the sealing film 11 and the bottom 14 of the pot element 13 in the lid 4 are connected, a cut-off piece of the sealing film 11 in contact with the bottom 14 of the lid 4 remains adhering to this lid until the lid is removed. The

connection may be non-cancellable or cancellable, and the cut-off sealing film piece is pulled out of the bottom 14 after the lid 4 is removed from the packaging container 1, for example, and can be disposed of separately." (page 6, lines 1 to 12, translation page 6, lines 5 to 13)

"The aforementioned working example is only exemplification and is not limiting." (page 6, lines 14 to 15, translation page 6, line 14)

(G) "Scope of utility model registration"

"1. A packaging container for a fluid medium, comprising a covering material made of at least a single-layer defining a capacity, including an opening capable of being closed again by a lid element, and the opening being closed by a substantially flat sealing element connected at least to the covering material surrounding the opening before being opened for the first time after the first filling, in which

when the packaging container is opened for the first time, the sealing element is separated from the surrounding material in the opening region, and the lid element is connected to the sealing element so as to adhere to the lid element at least until the lid element is removed for the first time.

2. The packaging container described in claim 1, characterized in that the lid element includes a handle, a connection region, and a closure region.

3. The packaging container described in any one of the aforementioned claims, characterized in that the lid element has a separation element for separating the sealing element from the surrounding material.

4. The packaging container described in any one of the aforementioned claims, characterized in that the lid element is a cap.

5. The packaging container described in claim 4, characterized in that the lid element has a pot-shaped region protruding to a flat surface of the sealing element in an opening of the packaging container.

6. The packaging container according to any one of claims 1 to 3, characterized in that the lid element is a plug.

7. The packaging container described in any one of the aforementioned claims, characterized in that the connection region is formed substantially flat and substantially has an area of the opening.

8. The packaging container described in any one of the aforementioned claims, characterized in that the sealing element is formed as a single piece with the covering material.

9. The packaging container described in claim 8, characterized in that the sealing

element is an inner layer portion of the covering material.
10. The packaging container described in any one of the aforementioned claims, characterized in that connection between the lid element and the sealing element is formed in a material connection way.
11. The packaging container described in claim 10, characterized in that the connection is made by welding.
12. The packaging container described in any one of the aforementioned claims, characterized in that a pipe element is provided in the opening region.
13. The packaging container described in any one of the aforementioned claims, characterized in that the lid element can be closed by a screw.
14. The packaging container described in any one of the aforementioned claims, characterized in that a tamperproof portion is provided." (pages 8 to 9, translation pages 8 to 9)

B. According to the described matter in the aforementioned A, Exhibit Ko 5 is found to have the following disclosure.
(A) A conventional packaging container for fluid medium used for liquid such as milk products, juice, and the like, for example, usually has a cuboid shape and an opening formed capable of being closed again by the lid element is provided on the surface region, and the opening is sealed by closure by the sealing element or preferably a film in the opening region and is usually opened by removing the lid element and destroying the sealing element or at least partially separating it from the surrounding material, but there has been a problem that a completely cut-off portion of the sealing element falls into the packaging container, whereby the contents are contaminated, and the cut-off portion is poured out with the contents, or when the sealing element is partially unseparated, the contents cannot be poured out while being adjusted (aforementioned (B)).

(B) "This device" has a problem in terms of enabling economical manufacture by expanding the packaging containers of corresponding types in property and guaranteeing adjusted opening and removal of the sealing element, and as technical solution of the aforementioned problem, the packaging container corresponding in property is configured to be expanded such that, when the packaging container is opened for the first time, the lid element is connected to the sealing element so that the sealing element adheres to this lid element until the sealing element is separated from the surrounding material in the opening region, and at least the lid element is removed

for the first time (aforementioned (C)).

By means of "this device", such an effect is exerted that the packaging container which can be manufactured easily and economically and guarantees reliable separation and removal of the sealing element region closing the opening in the case of provision of the opening capable of being closed again (aforementioned (E)).

(2) General common technical knowledge at the time of the present priority date

A. Described matters in each document

(A) Exhibit Ko 32 (Patent Publication (National Publication of International Patent Application No. 2000-506821), date of international publication date: September 25, 1997) (for "Figure 1" and "Figure 7 in the following description, see the publicly-known document drawings in the attachment)

"Similarly to the conventionally known packaging containers and materials of similar types, the packaging container and the packaging container material according to this invention are usually used for packaging of liquid foods such as milk and juice. In this case, the packaging material used is usually made of a plurality of mutually laminated layers of paper, plastic, and aluminum foil, for example. A typical packaging laminated material is made of a relatively thick fibrous or paper layer at the center, and either one of surfaces of this layer is covered with a thermoplastic material; that is, a polyethylene layer, for example. In order to improve a gas-barrier property of a packaging material, a barrier type additional layer of aluminum foil is included, for example, and this additional layer is covered with liquid-tight coating of a thermoplastic material such as polyethylene, for example. This layer becomes an inner surface of the packaging container in contact with the content of the container later. Therefore, both the packaging laminated material and the inner surface thereof are covered with the thermoplastic material and are used so that heat sealing of the packaging laminated material is made possible while the material is formed secondarily on the completed and filled packaging container." (page 8, lines 6 to 17)

"End regions 9 and 10 end at transverse-direction cut edges 12 and 13 of the packaging container material by elongated lateral-direction seal panels 27 and 28 extending over the entire width of the packaging container material 1.

The secondary molding of the filled and sealed packaging container 4 of a flat packaging container material 1 which has been completed starts with an elongated packaging material web 2 forming the packaging container material as illustrated in Figure 1. A first process stage is re-folding of the material web into a tube shape or secondary forming and after that, two longitudinal direction edges 11 are connected to

each other using a longitudinal direction seal panel 18 and form liquid-tight seal joints or seal seams. The material tube formed as above is filled with an intended content, and then pressed flat in the lateral direction in the upper and lower lateral direction seal panels 27 and 28 and sealed, and the tube is separated into respective cushion-shaped continuous semi-products. In this case, there is a possibility that a certain kind of forming process of the tube with an intention to start folding is generated on perpendicular and inclined folding lines 14 and 15 substantially in the longitudinal direction." (page 10, lines 7 to 19)

"A second working example illustrating the packaging container (Figures 7 to 9) has a gable-top type upper end portion 22. In this working example, the material 3 is usually separated from the material web and then formed into a container, and secondary molding to each of the materials is performed individually. Similarly to type of the packaging container material described first, the forming work is started by the secondary molding of the packaging container material 3 into the tube shape by sealing longitudinal direction edges 11 thereof to each other in the seal region 18. (omitted) After the filling, the upper end portion 22 of the packaging container with a gable-top roof shape is closed and sealed. This is performed by a method corresponding to the method used for the bottom part forming process. That is, the two end panels 24 are pressed toward the other while corner panels 25 are folded inside at the same time, and the panel 26 is folded into the space below the end of the end panel 24. Subsequently, the panels 24, 25, and 26 are liquid-tightly sealed with each other by using the upper lateral direction seal panel 27 so as to form an upwardly protruding seal fin 29." (page 12, lines 7 to 26)

(B) Exhibit Ko 62 (Microfilm of Utility Model Application No. 1985-58458 (Unexamined Utility Model Application Publication No. 1986-175117), date of publication: October 31, 1986) (for "Figure 1" in the following description, see the publicly known document drawings in the attachment)

"This device relates to a liquid container and particularly to a liquid container having a parallelepiped shape assembled from a material having a thermoplastic synthetic resin coating at least on an inner surface of a cardboard." (page 1, lines 14 to 18)

"This device is made of a material as illustrated in Figure 1 and the like ... regarding this material, five pieces of side panels (1), (2), (3), (4), and (5) continuously provided through vertical folding (l), top panels (6), (7), and (8) for upper end wall and panels (9) and (10) for corner lug through a lateral folding line (m)

are separated by the vertical folding (l) and continuously provided, respectively, on upper ends of the side panels (1), (2), (3), (4), and (5), bottom panels (11), (12), and (13) for lower end wall through the lateral folding line (m) and panels (14) and (15) for corner lug are separated by the vertical folding (l) and continuously provided also on the upper end similarly, closing flaps (16), (17), (18), (19), and (20) are separated by the vertical folding (l) and continuously provided through lateral folding (n) on the upper ends of the top panels (6), (7), and (8) and the panels (9) and (10) for corner lug, and the closing flaps (21), (22), (23), (24), and (25) separated by the vertical folding (l) are continuously provided through lateral folding (o) also on the ends of the bottom panels (11), (12), and (13) and the panels (14), and (15) for corner lug similarly.

Here, diagonal folding (p) is provided for forming a triangular corner lug on the panels (9) and (10) as well as (14) and (15) for corner lug, and moreover, diagonal folding (q) in linear symmetry to the diagonal folding (p) is formed around the vertical folding (l) on the bottom panels (11), (12), and (13), respectively." (page 3, line 12 to page 4, line 15)

(C) Exhibit Ko 63 (Microfilm of Utility Model Application No. 1985-68508 (Unexamined Utility Model Application Publication No. 1986-183811), date of publication: November 17, 1986) ("Figure 1" in the following description, see the publicly known document drawings in the attachment)

"This device is a paper container for liquid and more particularly relates to a paper container capable of filling at a high temperature." (page 1, lines 13 to 14)

"This device is made of a material as illustrated in Figure 1 and the like ... regarding this material, five pieces of panels (1), (2), (3), (4), and (5) for side walls continuously provided through vertical folding (l), top panels (6), (7), and (8) for upper end wall and panels (9) and (10) for corner lug through lateral folding (m) are separated by the vertical folding (l) and continuously provided, respectively, on upper ends of the side panels (1) to (5), bottom panels (11), (12), and (13) for lower end wall through lateral folding (r) and panels (14) and (15) for corner lug are separated by the vertical folding (l) and continuously provided also on the lower end similarly, respectively, closing flaps (16) to (20) are separated by the vertical folding (l) and continuously provided through lateral folding (n) on the upper ends of the top panels (6), (7), and (8) and the panels (9) and (10) for corner lug, and the closing flaps (21) to (25) separated by the vertical folding (l) are continuously provided through lateral folding (o) also on the lower ends of the bottom panels (11), (12), and (13) and the panels (14), and (15) for corner lug similarly, respectively.

Here, diagonal folding (p) is provided for forming a triangular corner lug on the panels (9) and (10) as well as (14) and (15) for corner lug.

Moreover, in the aforementioned material, two pieces each of folding (q) for forming recess portion are provided around the vertical folding (l) separating each of the side panels (1) to (5). Upper and lower ends of a set of the folding (q) for forming recess portion are preferably curved toward the vertical folding (l) and are connected to each other." (page 3, line 1 to page 4, line 6)

(D) Exhibit Ko 65 (Patent Publication (Unexamined Patent Application Publication No. 1994-8930), date of publication: January 18, 1994). (for "Figure 1" in the following description, see the publicly known document drawings in the attachment)

[0001]

[Industrial Applicability] The present invention relates to a blank plate of a liquid paper container capable of storing a liquid and particularly to a liquid paper container blank plate which can prevent generation of rule splitting on a folded part of a triangular lug plate folded outward on a lid portion and a bottom portion.

[0008] In Figure 1, reference numeral 10a denotes a blank plate according to the present invention. This blank plate 10a is configured such that a rear plate 11, a side plate 12, a front plate 13, a side plate 14, and a rear plate 15 are continuously provided laterally in sequence through a folding rule line similarly to the blank plate of this type of a conventional liquid paper container, a lid plate 16 and a bottom plate 17 are continuously provided on upper and lower ends of the rear plates 11 and 15, respectively, a lug plate 19 having two diagonal folding rule lines 18 on upper and lower ends of the two side plates 12 and 14 are continuously provided, respectively, a lid plate 20 and a bottom plate 21 are continuously provided on upper and lower ends of the front plate 13, respectively, and moreover, band-shaped adhesion pieces 22 are continuously provided on outer sides of the lid plates 16 and 20, the bottom plates 17 and 21, and the lug plate 19, respectively.

[0009] Moreover, as is obvious from the figure, the inclined folding rule line 23 provided between the lid plate 16 and the lug plate 19 and the inclined folding rule line 23 provided between the bottom plate 17 and the lug plate 19 are provided with inclination to the side of the lug plate 19. The inclined folding rule lines 23 are extended and provided on the adhesion piece 22 as they are. An inclination angle of the inclined folding rule lines 23 is slightly different depending on a plate thickness and the like of the blank plate 10a, but it has been effective when an interval a on a distal end portion between a straight line and the inclined folding rule line 23 in

Figure 1 is approximately 1 mm.

[0010] The blank plate 10a in Figure 1 formed as described above is folded so as to assemble and configure the liquid paper container as illustrated in Figure 2, and when the lug plate 19 is folded into a triangular shape and then, folded to an outer side, and this is folded onto the side plates 12 and 14, since the inclined folding rule line 23 is provided between the lug plate 19 and the lid plate 16 or the bottom plate 17 as illustrated in the figure, this inclined folding rule line 23 is located at a position out of a folding center line at the root of the lug plate 19 and can sufficiently absorb a paper thickness folded into the lug plate 19, whereby generation of the rule splitting in the folded portion of the lug plate 19 can be prevented.

(E) Exhibit Ko 68 (Patent Publication (Patent Publication No. 1992-13217), date of publication: April 10, 1986) (for "Figure 4" in the following description, see the publicly known document drawings in the attachment)

"The present invention relates to a cardboard container for liquid or particularly to a blank for cardboard container for liquid formed by folding four side surface panels, a top end surface portion, and a bottom end surface portion each having a rectangular shape continuously provided through a folding line in a flat plate-shaped composite cardboard blank on the folding line." (page 2, lines 12 to 16)

"As illustrated in Figure 4, in the blank 1 of the cardboard container 5 for liquid formed (see Figure 5) by folding the four side surface panels 2, the top end surface portion 3, and the bottom end surface portion 4 each having a rectangular shape continuously provided through the folding line in a flat plate-shaped composite cardboard blank 1 on the folding line, on an end of the bottom end surface portion (hereinafter, described on the bottom end surface portion 4, the same applies to the top end surface portion for those in which the top end surface portion 3 is folded flat), a seal fin 6 is extended through a seal fin lateral folding line 7, vertical folding lines 8, 8 and the seal-fin lateral folding line 7 between each of the adjacent side surface panels 2, 2 are orthogonal to each other as illustrated in Figures 1 and 4, and a depth of the both orthogonal folding lines of the pressed vertical folding line 8 and seal-fin lateral folding line 7 of the blank 1 are made gradually shallow toward an intersection 9 only in the vicinity of the orthogonal intersection 9 as illustrated in Figures 2 and 3." (page 5, lines 23 to 39)

"When the flat bottom end surface 12 of the cardboard paper container 5 for liquid is to be formed by means of the bottom end surface portion 4 of the blank 1 with the aforementioned configuration, as illustrated in Figure 5, the bottom panels 13, 13 each

having a rectangular shape of the bottom end surface portion 4 face each other and form the flat bottom end surface 12, the triangular lugs 14 and 15 continuously provided through the vertical folding line 8 on both sides of the bottom panel 13 are folded out to the outside, the triangular lugs 14 and 15 are brought into contact with each other and heat-sealed, the seal fins 6 extended through the seal-fin lateral folding line 7 on the lower end of the bottom panel 13 and the lower ends of the triangular lugs 14 and 15 face each other in half on the seal-fin vertical folding lines 16, 16 and brought into contact with each other and surfaces of the seal fin 6 in contact with each other are heat-sealed, the heat-sealed seal fin 6 is folded down on one of the bottom panels 13 and heat-sealed to the bottom panel 13 as illustrated in Figure 5 and moreover, the triangular lugs 14 and 15 folded out to the outer side are folded in as illustrated in Figure 5, brought into contact with the bottom seal fin 6 and the bottom panel 13, and heat-sealed so that the flat bottom end surface portion 4 is formed." (page 6, lines 8 to 27)

B. Comprehensively considering the described matters in the aforementioned A, at the time of the priority date of this case (priority date of this case: July 31, 2000), it is found that, in the paper packaging container, to have the structure in which the lateral line sealing is provided in the lateral direction transversely so that the facing seal regions have the same length when lateral line sealing is performed was a general common technical knowledge.

C. In response to that, Defendant alleges that there are many such configurations in which the lateral line sealing is not provided transversely in an expansion view as illustrated in Exhibit Otsu 20 (U.S. Patent No. 3167232), Figure 1 in the microfilm of Exhibit Otsu 21 (Utility Model Application No. 1990-21355 (1991-11925), publication date: November 15, 1991), and Fig. 3 in Exhibit Otsu 22 (National Publication of International Patent Application No. 1993-505999, publication date: September 2, 1993) (for the drawings, see the publicly known document drawings in the attachment) before the priority date of this case and thus, the art described in the aforementioned B is not the general common technical knowledge at the time of the priority date of this case.

However, the allegation by Defendant cannot be employed, as follows.

(A) Figure 7 of Exhibit Otsu 20 illustrates an expanded diagram in which the bottom surfaces (6, 7, 8, 9) are not in a straight line in the transverse direction, but as described, "the bottom surface end flaps 6, 7, 8, and 9 are designed to be connected by

folding or connecting instead of bonding" (see the abstract in the fourth column, lines 11 to 29); it is in a form that the bottom surface is not sealed by the lateral line sealing and the expanded diagram is related to a technical idea different from the general common technical knowledge that the bottom portion is sealed by the lateral line sealing found in the aforementioned B and thus, it does not influence the finding in the aforementioned B.

(B) Exhibit Otsu 21 has description that "this device ... has an object to provide a paper container which is excellent in a design effect and has a great display effect" (page 4, lines 12 to 15), "the paper container of this device has a shape having laterally directed triangular prisms stacked on a cuboid; that is, a so-called single-flow roof shaped top portion and thus, it presents an appearance different from conventional columnar containers made by a paperboard but it is conspicuous when being displayed with the conventional ones and has an excellent display effect at a store and the like" (page 20, line 18 to page 21, line 4) and discloses that the paper container in Figure 4 is created as shown by the expanded diagram in Figure 1. As described above, the expanded diagram of Figure 1 in Exhibit Otsu 21 is related to a paper container having a distinctive single-flow roof shape excellent in the design effect and does not influence the finding in the aforementioned B even if such expanded diagram were publicly known.

(C) Exhibit Otsu 22 has description that "the present invention relates to a carton made of a cardboard or a similar sheet material which is lightweight and foldable, and to a blank for making such carton, or in more detail, relates to a liquid-tight favorable carton for storing, transporting, and dispensing a liquid such as a liquid detergent" (page 3, upper left column, lines 4 to 8), (in relation to Fig. 3), "a plan view illustrating a carton blank for making the carton in Fig. 1" (page 4, lower left column, lines 17 to 18), "the carton 1 storing a liquid detergent and the like is formed of one piece of blank made of a thermoplastic plastic coating cardboard and has an upper part 2 made of a substantially horizontal portion 3 on a rear and a portion 4 inclined to lower front." (page 4, lower left column, lines 24 to 27). According to this description, the carton in Fig. 1 has the upper part made of two surfaces; that is, the horizontal portion 3 and the portion 2 inclined to lower front, has many surfaces and has a characteristic shape particularly on the upper part, and it can be understood that, in order to realize such special shape of the upper part, in the expanded diagram in Fig. 3, a complicated notch is formed in the upper end portion. As described above, the

expanded diagram in Fig. 3 is related to the special shape of the upper part and thus, even if such expanded diagram were publicly known, it does not influence the finding in the aforementioned B.

(3) Error in judgment in finding of Different Feature A

Plaintiff alleges that the aforementioned finding in this JPO decision is an error since, in Different Feature A between Present Invention 2 and the Exhibit Ko 5 invention found in this JPO decision, Exhibit Ko 5 discloses the configuration in which "the lateral line sealing provided on the top part is located on the side closer to the rear surface panel than to the front surface panel and is inclined to the rear surface panel side" and the portion related to this configuration is not a different feature but a common feature and thus, it is decided as follows.

A. According to the described matter in Exhibit Ko 5 in the aforementioned (1), it is found that Exhibit Ko 5 describes the "folding-type packaging container of cardboard having a front surface, a rear surface, a side surface, an upper surface, and a bottom surface, the upper surface being inclined toward the front surface, a vertical sealing portion being provided on the front surface, a lateral sealing portion being provided on the upper surface and inclined to the rear surface side, and a folded-in piece formed by molding of the cardboard is folded on the upper surface" (Exhibit Ko 5 invention).

Moreover, from the description in Exhibit Ko 5 that "the packaging container 1 illustrated in Figs. 1 to 4 is made of a covering 2 having a bottom, a side wall, and an upper wall region as publicly known. The packaging container is illustrated in a state of a publicly known folding type packaging container with an upper surface inclined. This packaging container has an opening region 3 on a region of the upper surface." (page 5, lines 4 to 8, translation page 5, lines 10 to 13). It can be understood that the packaging container 1 described in Figs 1 and 4 in Exhibit Ko 5 is a "publicly known folding type packaging container with an upper surface inclined".

Moreover, it is found from Figs. 1 and 4 in Exhibit Ko 5 (see Exhibit Ko 5 drawings in the attachment) that two small triangles (see the enlarged view in Fig. 4 in Attachment 3-1) drawn on an upper side of the top point of right and left triangular folded-in pieces in Fig. 4 illustrate the "lateral sealing portion".

However, in Fig. 4 of Exhibit Ko 5, the "lateral sealing portion" is not illustrated between the two small triangles, but [i] the packaging container 1 described in Fig. 4 is the ‘"publicly known folding type packaging container with the upper surface inclined"; [ii] at the time of the priority date of this case (priority date of this case:

July 31, 2000), in the paper packaging container, to have the structure in which the lateral line sealing is provided in the lateral direction transversely so that the facing seal regions have the same length when lateral line sealing is performed was a general common technical knowledge (aforementioned (2)B), and [iii] according to the description in Exhibit Ko 5, the packaging container of Exhibit Ko 5 is a device related to the "packaging container including an opening capable of being closed again by a lid element, and the opening being closed by a substantially flat sealing element connected at least to the covering material surrounding the opening before being opened for the first time after the first filling" (Claims 1 to 14 of the scope of Utility Model Registration), and since the "lateral sealing portion" is not a matter specifying the device in Claims 1 to 14, in view that it is not unnatural even if the illustration of the "lateral sealing portion" is omitted in Fig. 4, the "lateral sealing portion" provided transversely in the lateral direction is present on the lower side between the two small triangles in Fig. 4 of Exhibit Ko 5, but it can be understood that the illustration is omitted.

In addition, when it has a single-flow roof shape (the shape with a height of the "front surface" lower than the height of the "rear surface") as in the Exhibit Ko 5 invention, and the "lateral sealing portion" is formed transversely in the lateral direction, the seals facing on the folded-in piece (flap) formed at the lateral line sealing have the same length (see the sealing portions ("30" and a portion corresponding to the description of "30") on both sides of a blue point immediately below the description of "lateral line sealing position" in the expanded diagram in the attachment 3-2, for example) and thus, in view that the "lateral sealing portion" is found to be positioned closer to the rear (position closer to the "rear surface") without fail on design, it is found that Exhibit Ko 5 discloses that the Exhibit Ko 5 invention includes the configuration that "the lateral line sealing provided on the top part is located on the side closer to the rear surface panel than to the front surface panel and is inclined to the rear surface panel side" in the configuration of Present Invention 2 according to Different Feature A.

Therefore, in Different Feature A, the aforementioned configuration is not a different feature but a common feature and thus, the finding of Different Feature A in this JPO decision has an error.

B. On the other hand, Defendant alleges that, since there are a large number of examples of the container of the "single-flow roof shape" in which the "lateral line sealing" is located closer to the front as in Attachment 4, it cannot be considered that

the lateral line sealing is located closer to the rear on design if it has the "single-flow roof shape" and thus, Exhibit Ko 5 does not have such a disclosure that the "lateral sealing portion" in the Exhibit Ko 5 invention is located on the side closer to the "rear surface" than to the "front surface".

Then, by examining that, in view that the packaging container 1 described in Fig. 4 of Exhibit Ko 5 is the "publicly known folding type packaging container with the upper surface inclined" as found in the aforementioned A, it is natural to understand that the shape of the upper surface ("top part") of the Exhibit Ko 5 invention was a common shape of the folding type packaging container at the time of the priority date of this case.

However, when the paper packaging container is to be manufactured by the expanded diagram of the explanatory material 1 in Attachment 4, a process of folding a pale blue portion inside is further needed when folding is made along the folding line, and even in view of the whole description of Exhibit Ko 5, necessity to deliberately select such expanded diagram in the packaging container 1 described in exhibit Ko 5 is not found. Moreover, there is not sufficient evidence to find that a form of the paper packaging container according to Explanatory Material 1 was publicly known at the time of the priority date of this case.

Similarly, when the paper packaging container is to be manufactured by the expanded diagram in Explanatory Material 2, when the folding is made along the folding line, a process of folding a purple portion outside is further needed, and even in view of the whole description of Exhibit Ko 5, necessity to deliberately select such expanded diagram in the packaging container 1 described in Exhibit Ko 5 is not found. Moreover, there is not sufficient evidence to find that a form of the paper packaging container according to Explanatory Material 2 was publicly known at the time of the priority date of this case.

Subsequently, the expanded diagrams in Explanatory Materials 3 to 5 are expanded diagrams of a complicated shape as compared with an expanded diagram of an ordinary rectangular shape and moreover, in order to manufacture the paper packaging container by the expanded diagrams of Explanatory Materials 3 to 5, a process of bonding the folded-in piece indicated by a triangle on the side surface panel so that the liquid filled article does not leak is further needed, and even in view of the whole description of Exhibit Ko 5, necessity to deliberately select such expanded diagram in the packaging container 1 described in Exhibit Ko 5 is not found. Moreover, there is not sufficient evidence to find that a form of the paper packaging

container according to the Explanatory Materials 3 to 5 was publicly known at the time of the priority date of this case.

Therefore, the aforementioned allegation by Defendant has no reason.

(4) Error in judgment on whether Different Feature A could have been easily conceived of

This JPO decision judged on Different Feature A that [i] although the lateral sealing portion on the upper surface of the Exhibit Ko 5 invention is inclined to the rear surface side, it is not located closer to the rear surface side than to the front surface, and the description in Exhibit Ko 5 does not have description suggesting that the lateral sealing portion on the upper surface is located on the side closer to the rear surface side on the expanded diagram or the like, either, and moreover, the "folded-in piece" is folded onto the upper surface, and there is no description that the two corners of the container on the rear surface side are reinforced; [ii] Present Invention 2 includes the configuration not only that "the folded-in piece by the top-part molding is diagonally folded onto the side surface panel" from the top part having the single-flow roof shape but also "the lateral line sealing provided on the top part is located on the side closer to the rear surface panel than to the front surface panel and is inclined to the rear surface panel side" and thus, the "lateral line sealing" inclined to the rear surface panel side is brought closer to the two corners on the rear surface side of the container top part or the vicinity thereof for reinforcement, and the configuration of Present Invention 2 could not have been achieved only by folding in the lateral line sealing to the side surface side in the Exhibit Ko 5 invention and thus, the configuration according to Different Feature A of Present Invention 2 could not have been easily conceived of by a person ordinarily skilled in the art.

However, as found in the aforementioned (3), Exhibit Ko 5 is found to disclose that the Exhibit Ko 5 invention includes the configuration that "the lateral line sealing provided on the top part is located on the side closer to the rear surface panel than to the front surface panel and is inclined to the rear surface panel side" in Different Feature A and thus, the portion according to the aforementioned configuration is not a Different Feature but a Common Feature, and the aforementioned judgment of this JPO decision has an error in the premise thereof.

(5) Summary

As described above, since the judgment on the finding of Different Feature A between Present Invention 2 and the Exhibit Ko 5 invention and on whether it could

have been easily conceived of in this JPO decision has an error, the Reason 3-1 for Rescission alleged by Plaintiff has a reason.

3. Reason 3-2 for Rescission (error in judgment on inventive step of Present Invention 3 with Exhibit Ko 5 as a primarily cited reference)

This JPO decision judges on Different Feature B between Present Invention 3 and the Exhibit Ko 5' invention that, despite the difference in the expression that the "front surface panel" and the "rear surface panel" in Present Invention 2 are described as the "front surface" and the "rear surface" in Present Invention 3, they are substantially the same Different Features and thus, the configuration of Present Invention 3 according to Different Feature B is not one that could have been easily conceived of by a person ordinarily skilled in the art, similarly to the reason described for Different Feature A.

However, as described in the aforementioned 2(5), since the judgment on finding of Different Feature A and on whether it could have been easily conceived of in this JPO decision has an error, the aforementioned judgment on Different Feature B also has a similar judgment error.

Therefore, the Reason 3-2 for Rescission alleged by Plaintiff has a reason.

4. Conclusion

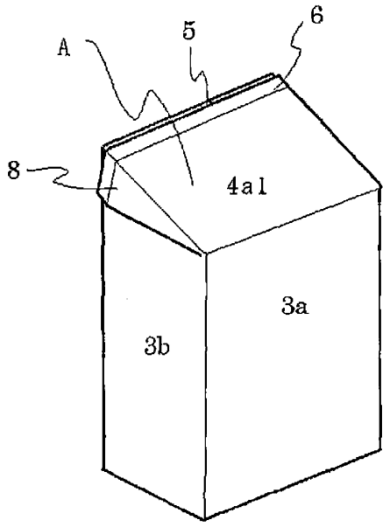
According to the above, since Reason 3-1 for Rescission and Reason 3-2 for Rescission alleged by Plaintiff have reasons, this JPO decision should be rescinded even without a need of judging on the other points.

Intellectual Property High Court, Fourth Division
Presiding Judge: OTAKA Ichiro
Judge: FURUKAWA Kenichi
Judge: OKAYAMA Tadahiro

(Attachment) Description drawings

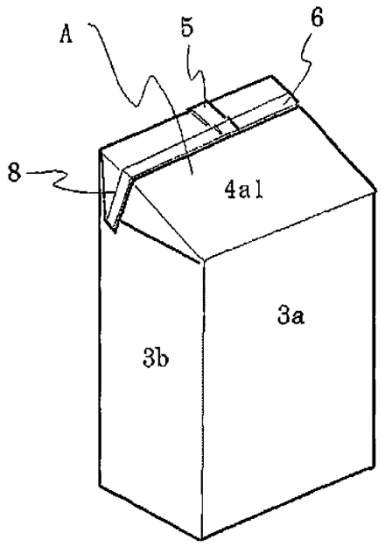
[Figure 1]

Figure 1



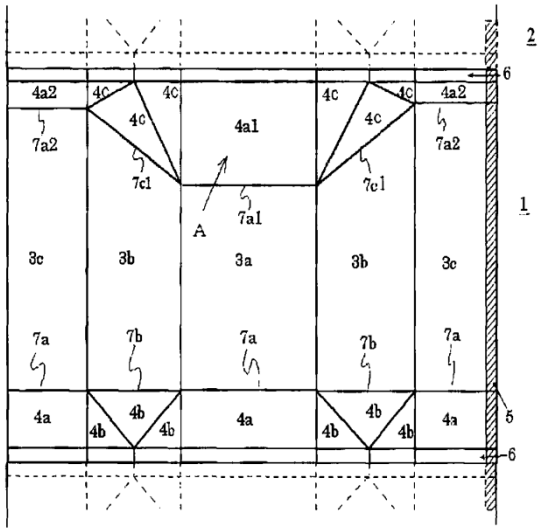
[Figure 2]

Figure 2



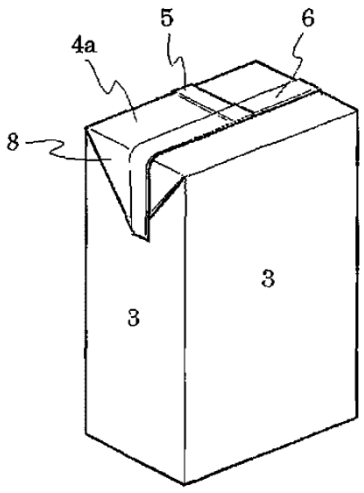
[Figure 3]

Figure 3



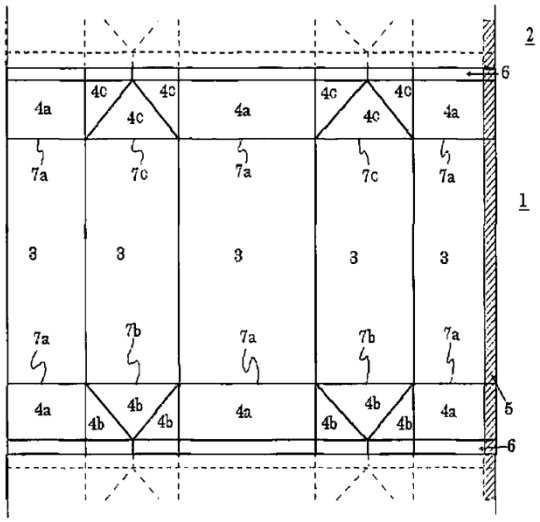
[Figure 4]

Figure 4



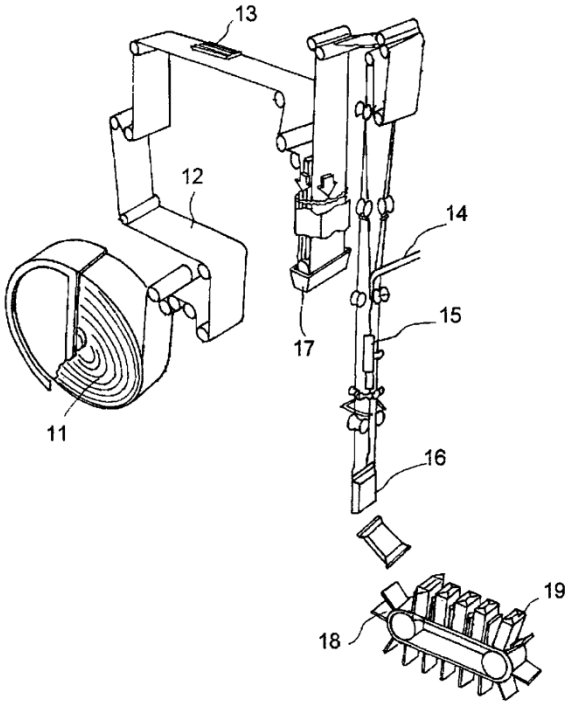
[Figure 5]

Figure 5



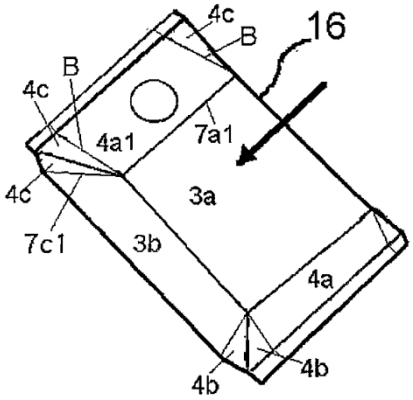
[Figure 6]

Figure 6



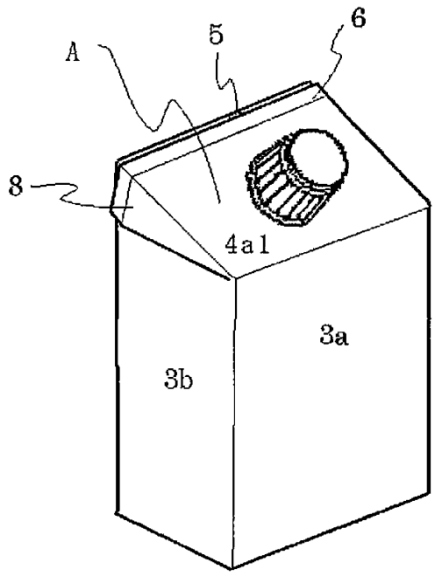
[Figure 11]

Figure 11



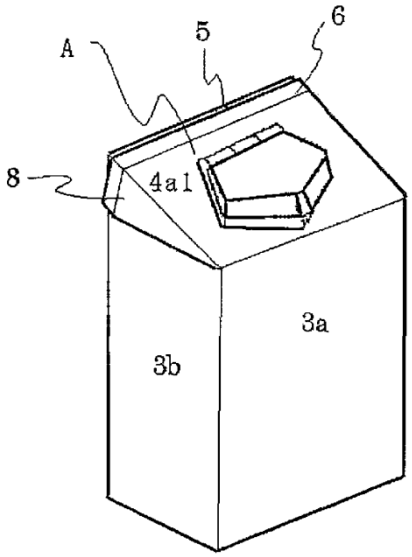
[Figure 7]

Figure 7



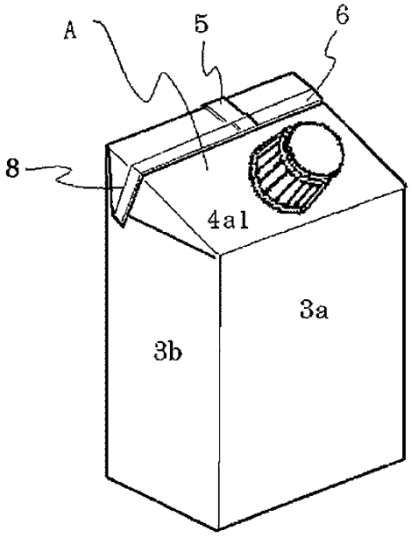
[Figure 8]

Figure 8



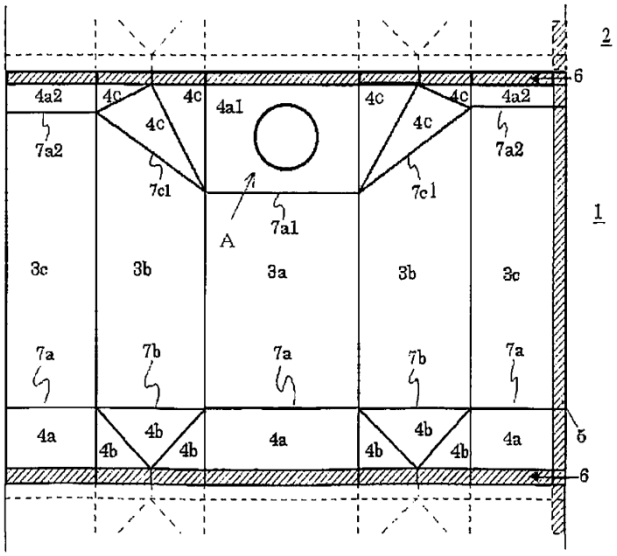
[Figure 9]

Figure 9



[Figure 10]

Figure 10



(Attachment) Exhibit Ko 5 drawings

10.09.97

Fig.1

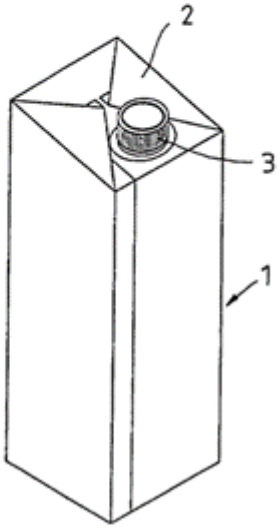


Fig.2

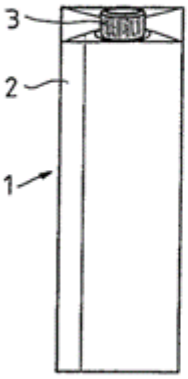
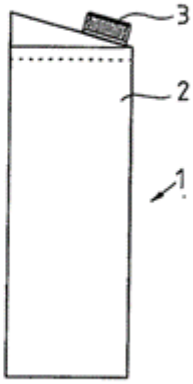


Fig.3



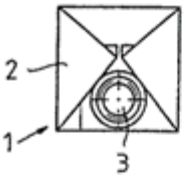
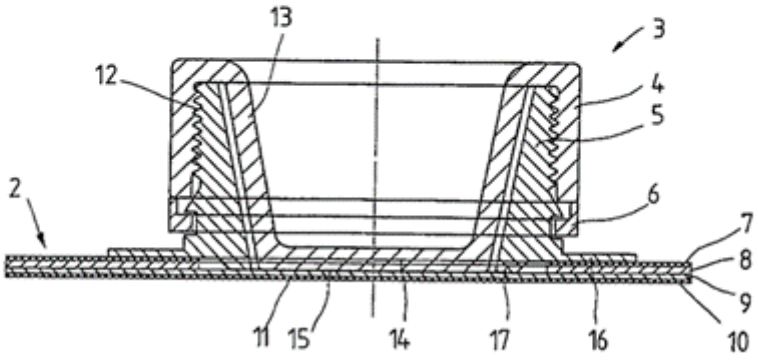


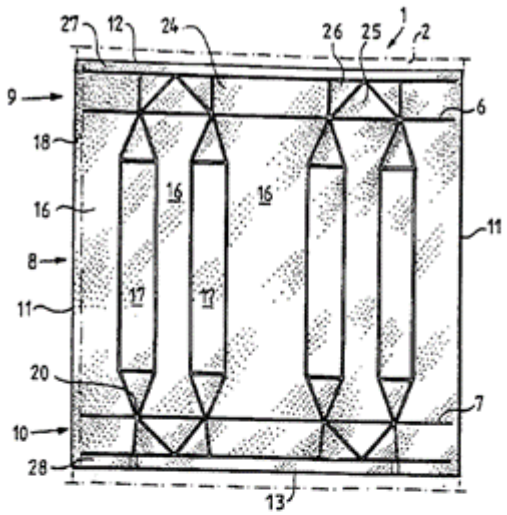
Fig.4

Fig.5

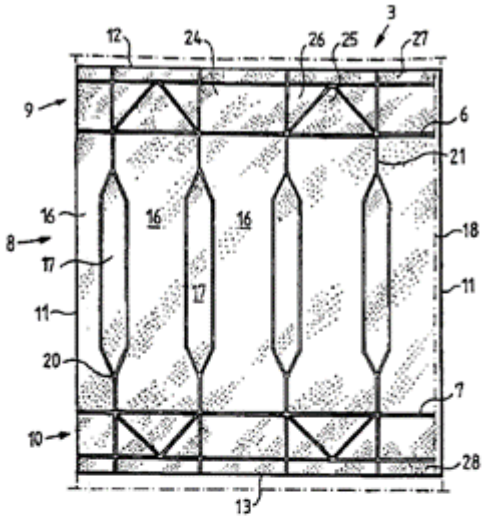


(Attachment) Publicly known document drawings

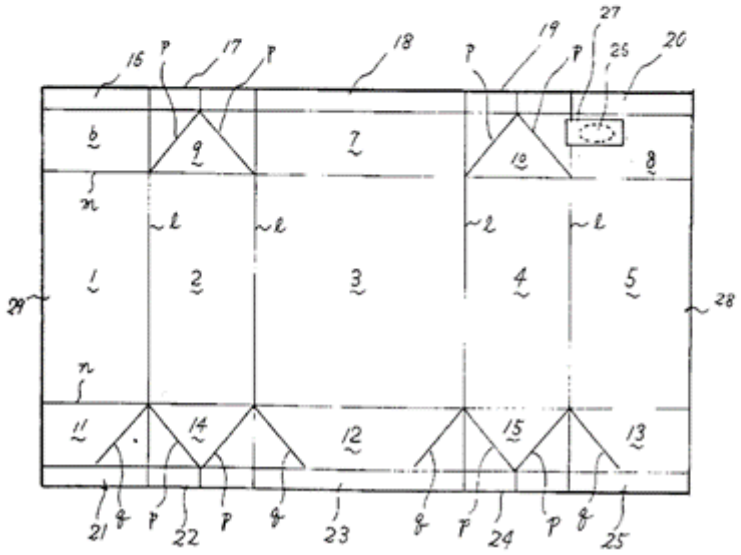
1 [Fig. 1 of Exhibit Ko 32]



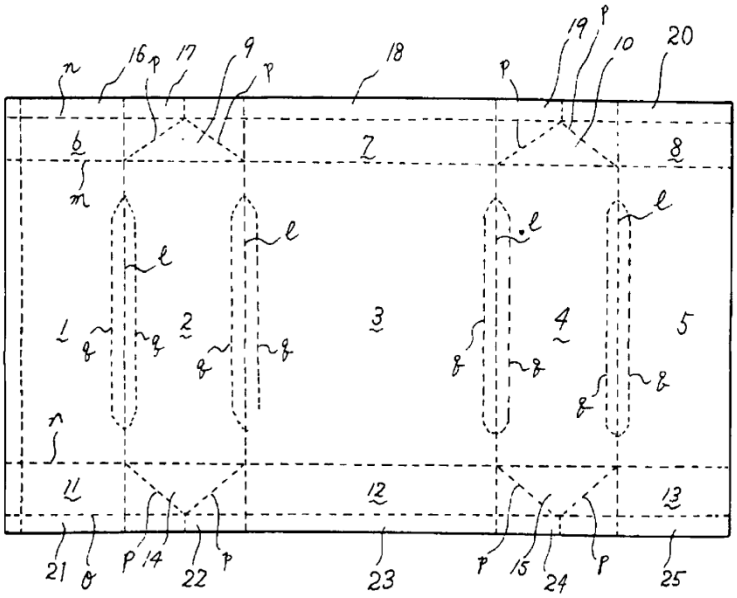
[Fig. 7 of Exhibit Ko 32]



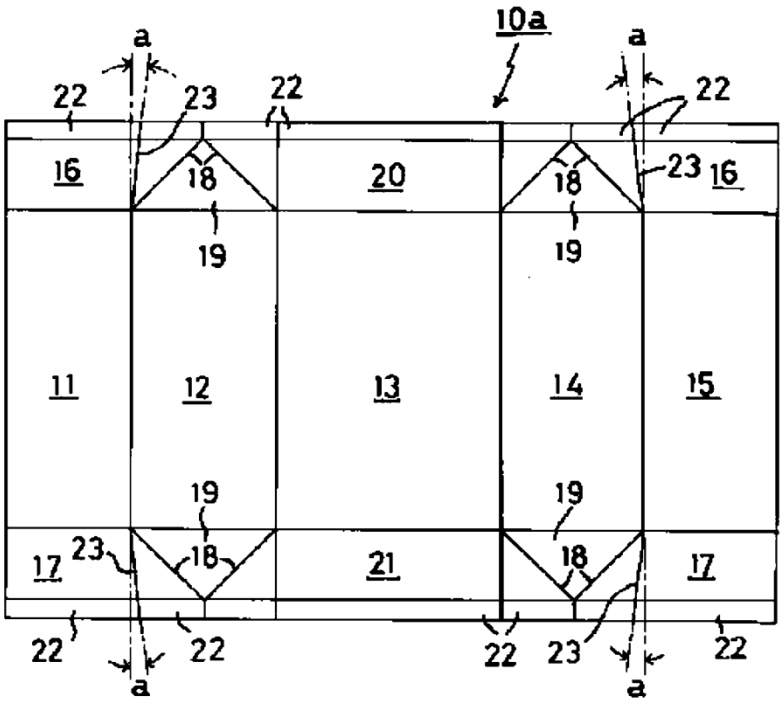
[Fig. 1 of Exhibit Ko 62]



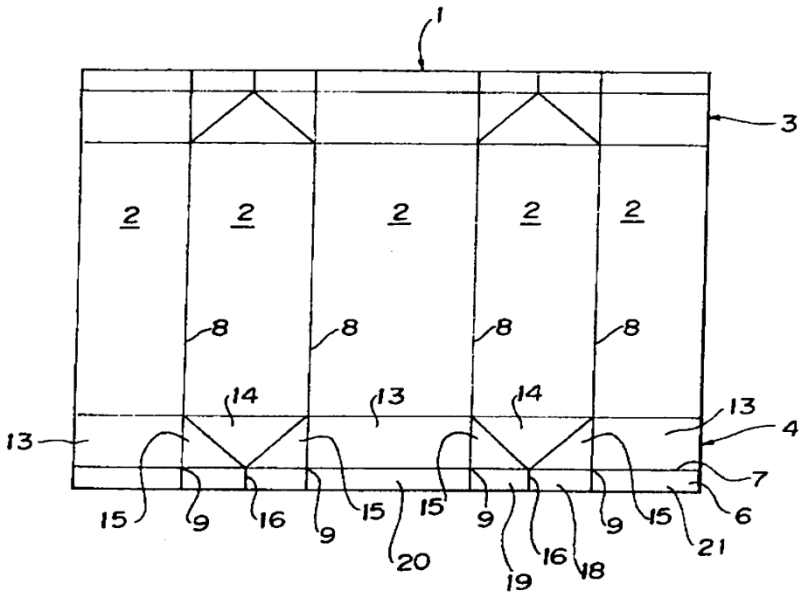
[Fig. 1 of Exhibit Ko 63]



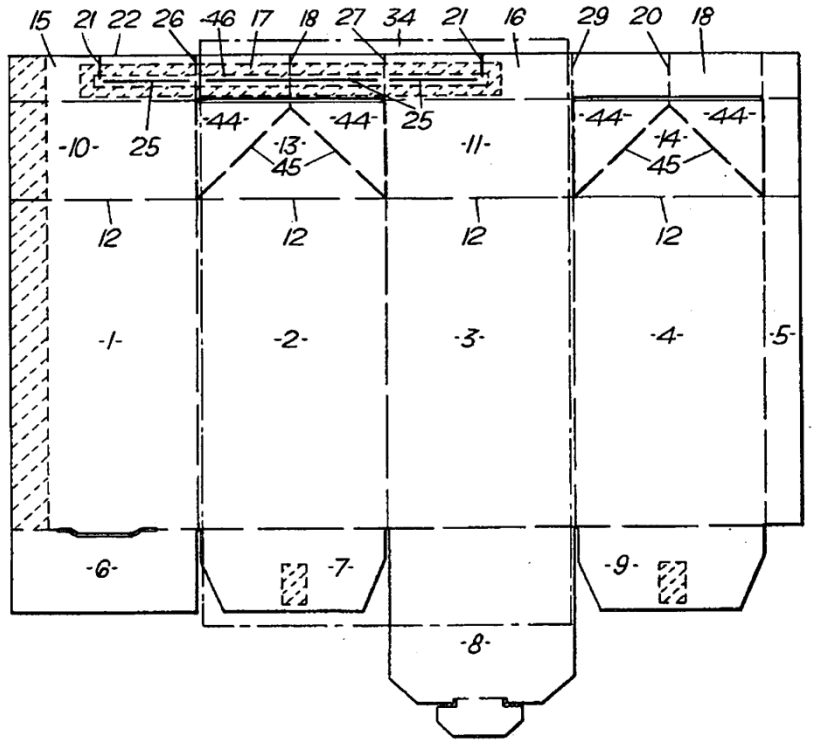
[Fig. 1 of Exhibit Ko 65]



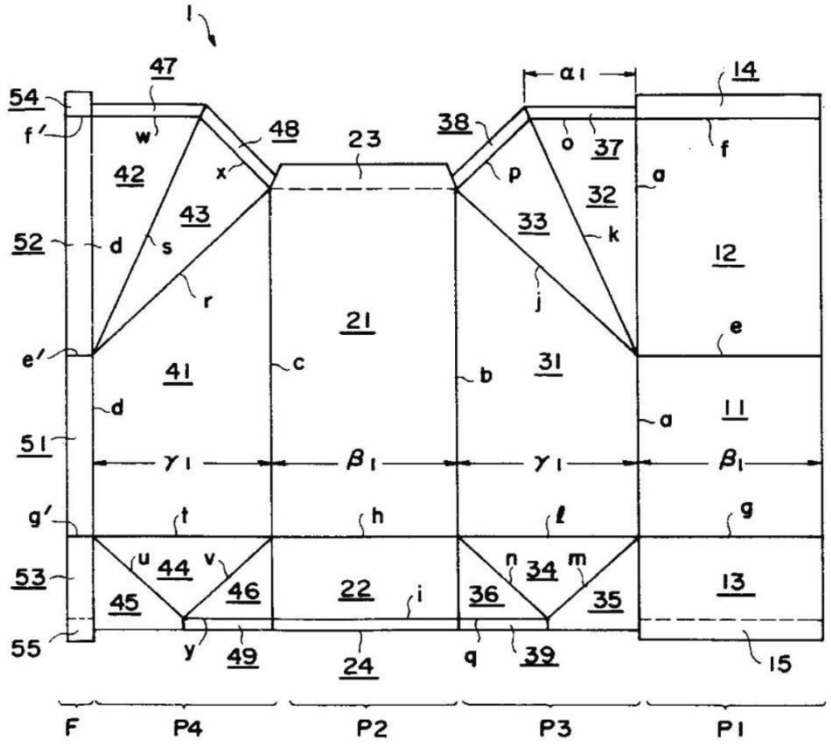
[Fig. 4 of Exhibit Ko 68]



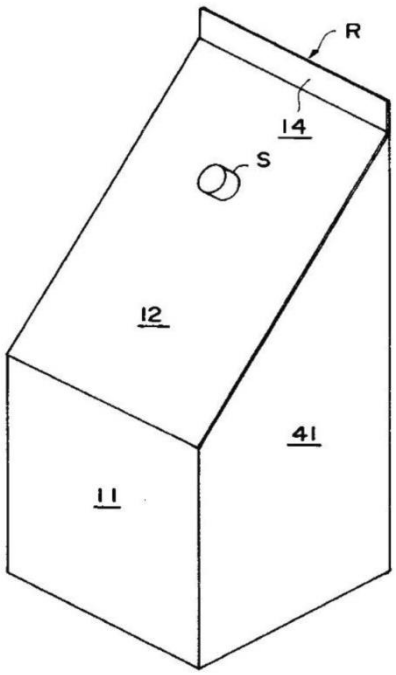
2 [Fig. 7 of Exhibit Otsu 20]



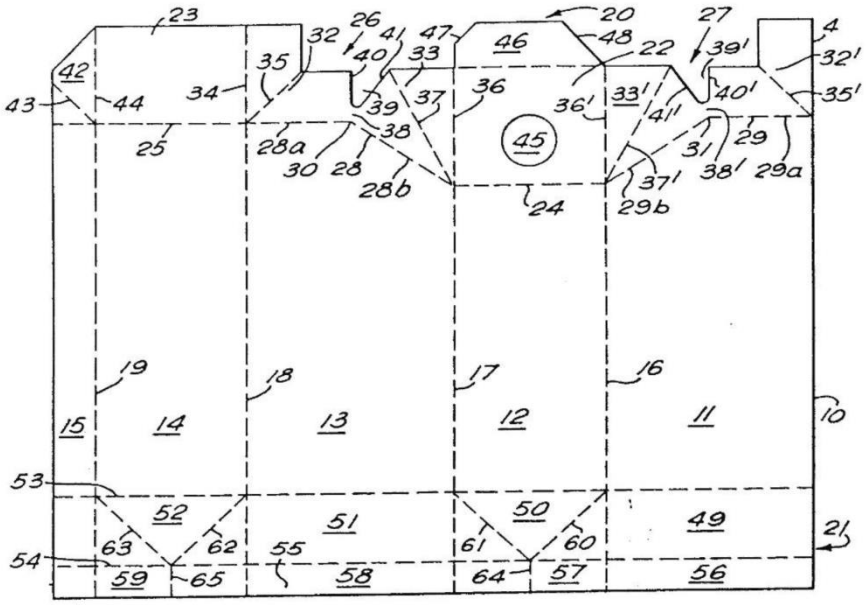
[Fig. 1 of Exhibit Otsu 21]



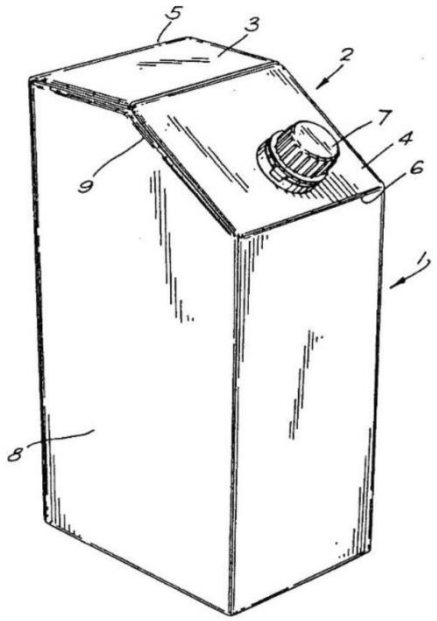
[Fig. 4 of Exhibit Otsu 21]



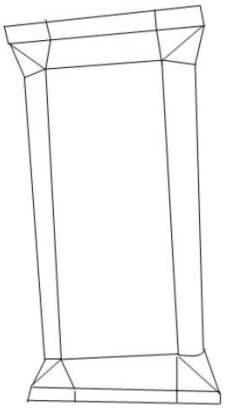
[Fig. 3 of Exhibit Otsu 22]



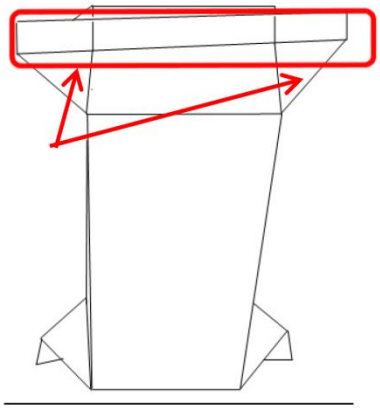
[Fig. 1 of Exhibit Otsu 22]



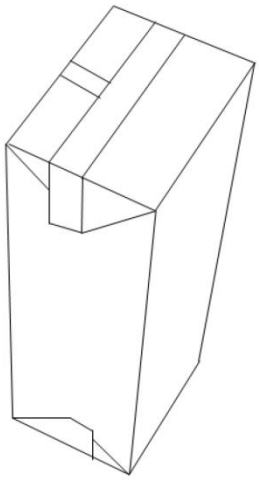
(Attachment 1)



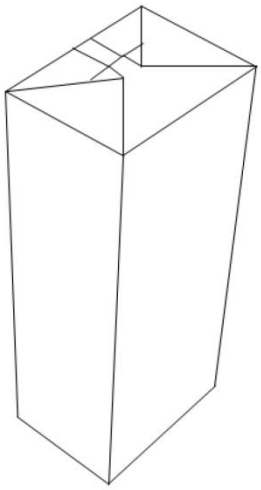
[Fig. A1]



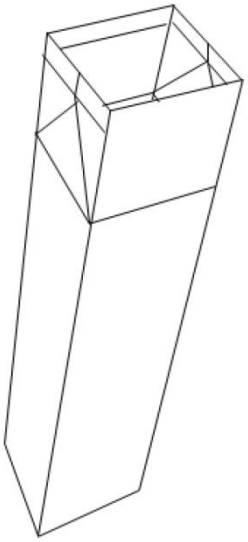
[Fig. A2]



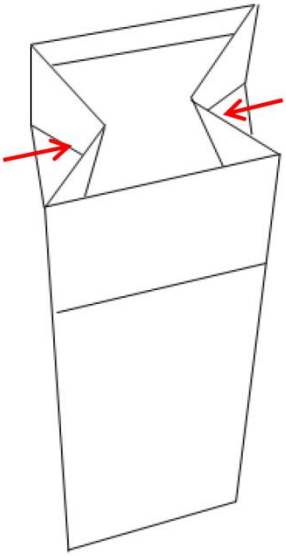
[Fig. A3 = [A]]



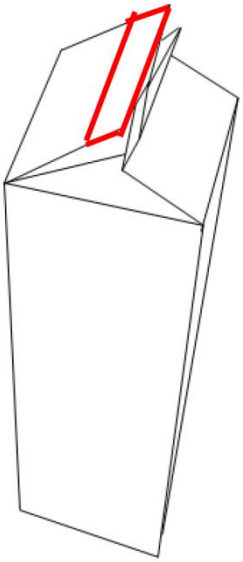
[Fig. A4 = [B]]



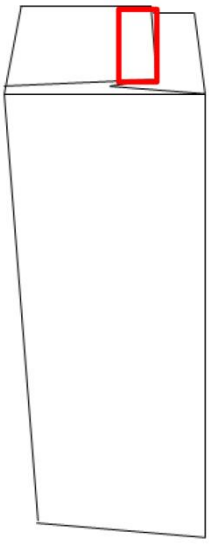
[Fig. B1]



[Fig. B2]



[Fig. B3]



[Fig. B4]

(Attachment 2)

Figure 1

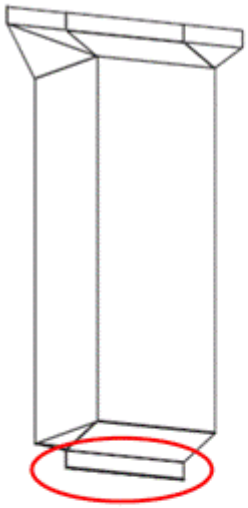
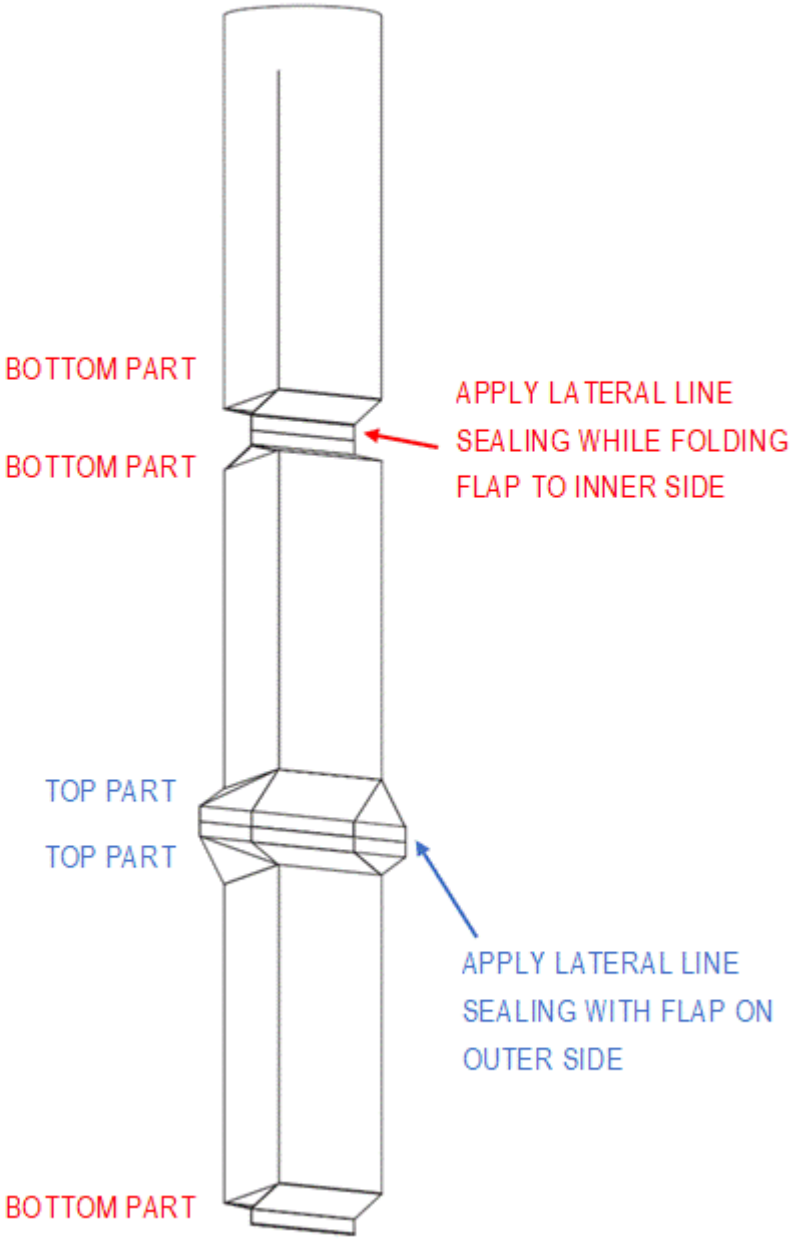


Figure 2



(Attachment 3-1)

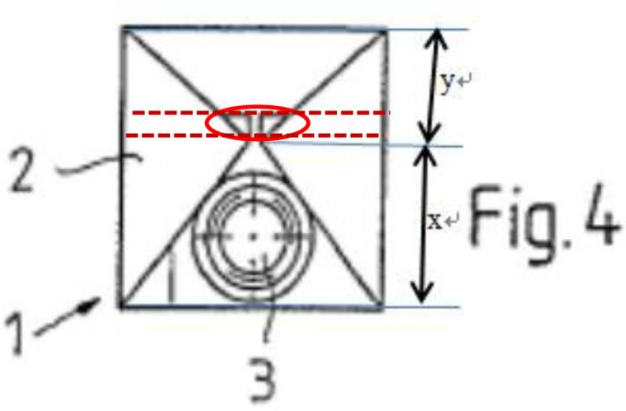
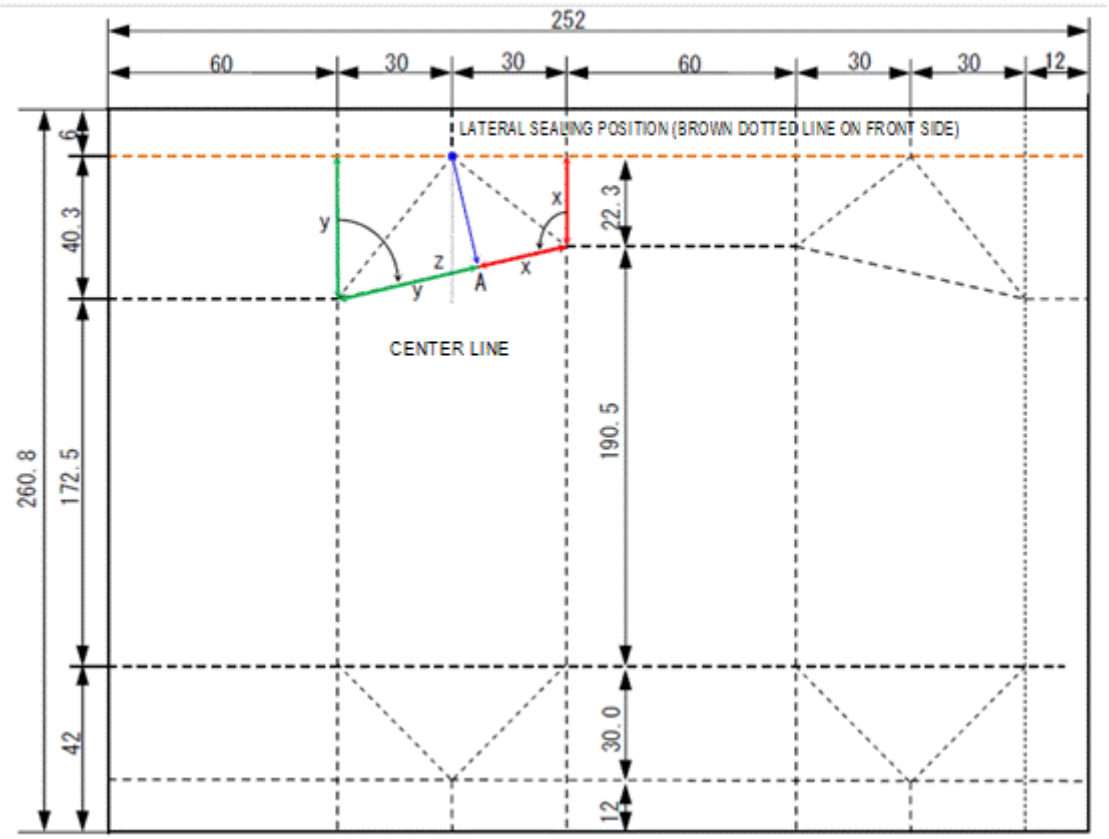


Fig. 4

ENLARGED VIEW OF [Exhibit Ko 5 Fig. 4]

(Attachment 3-2)

EXPANDED DIAGRAM OF Exhibit Ko 5 CARTON



P22 (2-2) Supplementary explanation on necessity from a viewpoint of container design on the position of "lateral line sealing" in Exhibit Ko 5 invention

• Design in the case of a flat shape in molding with a single-flow shape on a premise of a container design (Exhibit Ko 5)

→ Explanation using expanded diagram.

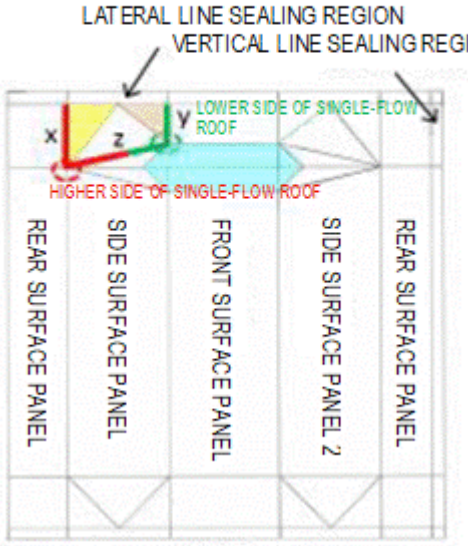
[i] Determine respective dimensions so that the single flow line (diagonal line = Z) has a relation of Z = x+y.

[ii] The lateral line sealing position when molded is point A in the drawing above.

[iii] In the case of the single-flow shape, the lateral line sealing position is determined to the higher height without fail.

(Attachment 4)

EXPLANATORY MATERIAL 1



EXPANDED DIAGRAM 1

PHOTO 1-1

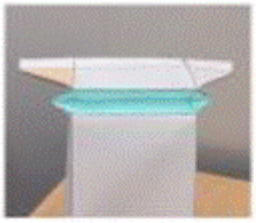


PHOTO 1-2a

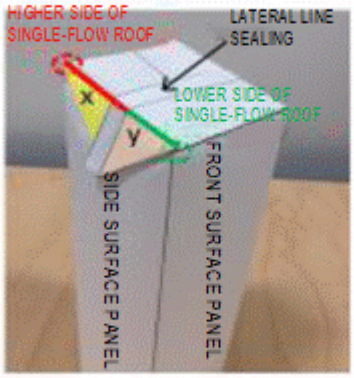


PHOTO 1-3

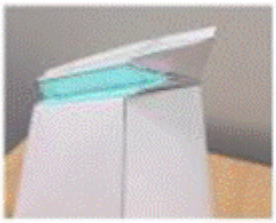
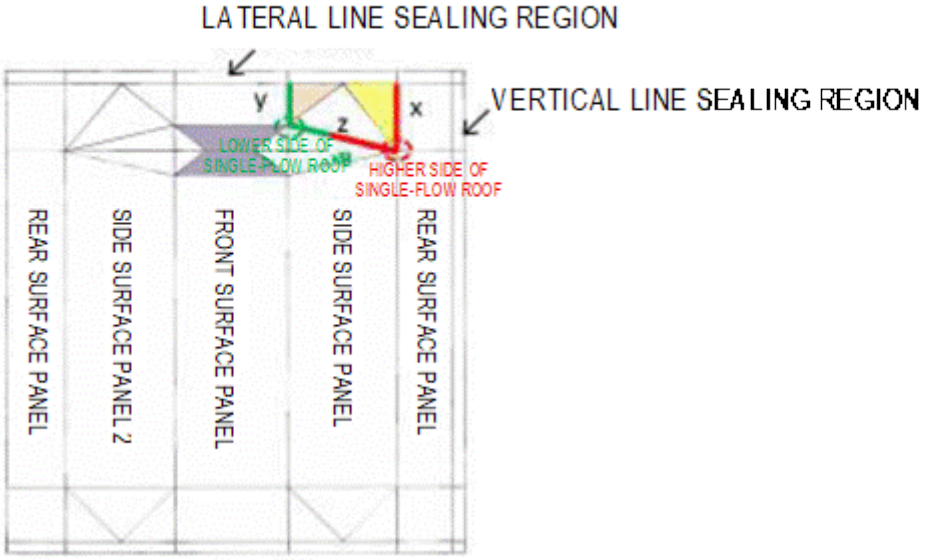


PHOTO 1-2b

EXPLANATORY MATERIAL 2



EXPANDED DIAGRAM 2

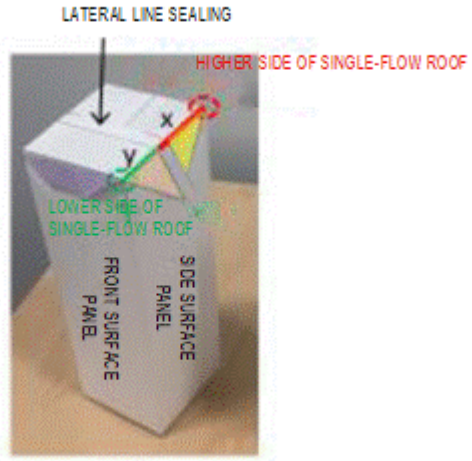
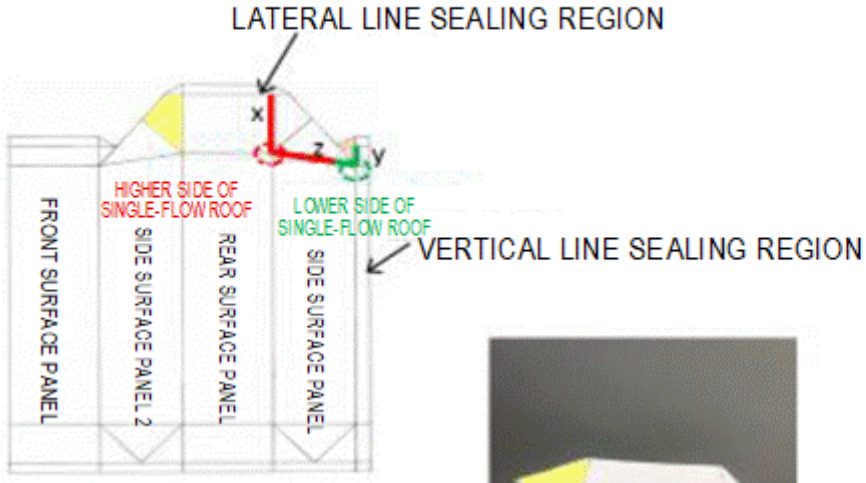


PHOTO 2

EXPLANATORY MATERIAL 3



EXPANDED DIAGRAM 3

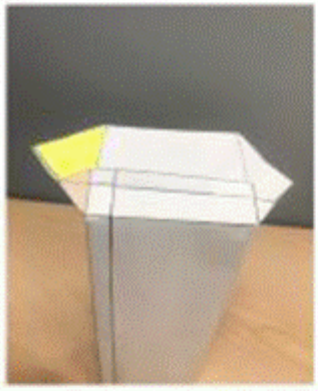


PHOTO 3-1

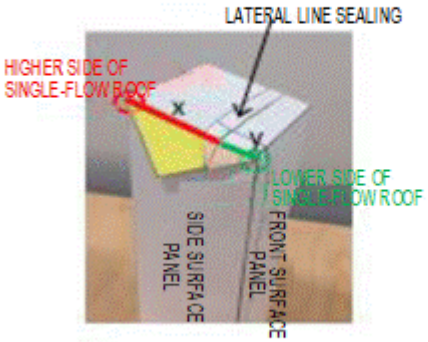
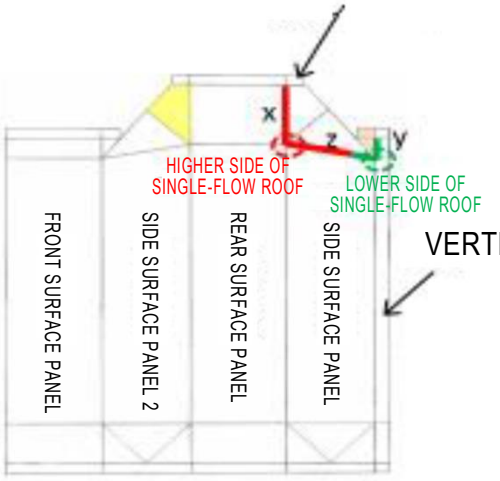


PHOTO 3-2

EXPLANATORY MATERIAL 4

LATERAL LINE SEALING REGION



VERTICAL LINE SEALING REGION

EXPANDED DIAGRAM 4

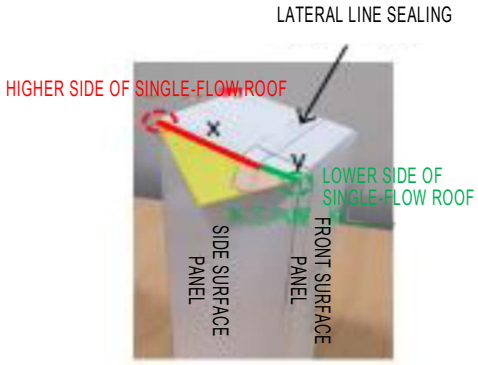
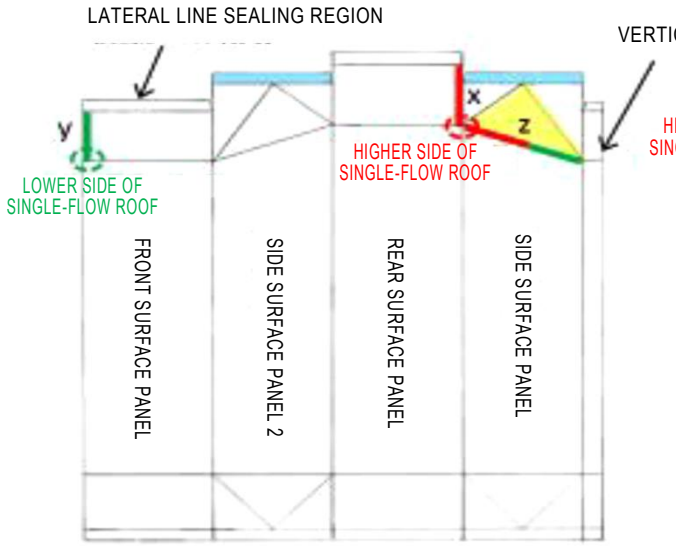


PHOTO 4



EXPANDED DIAGRAM 5

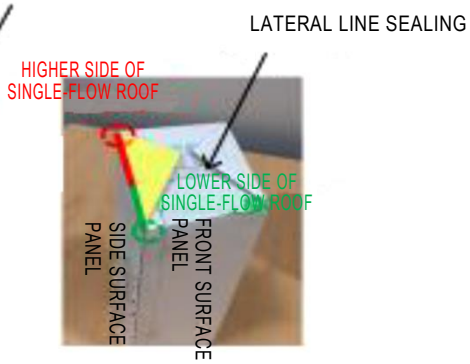


PHOTO 5

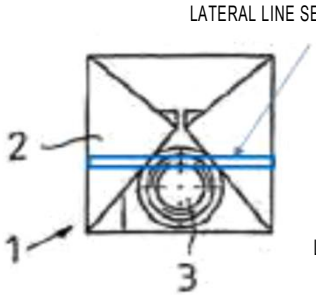


Fig. 5-1

Fig.4

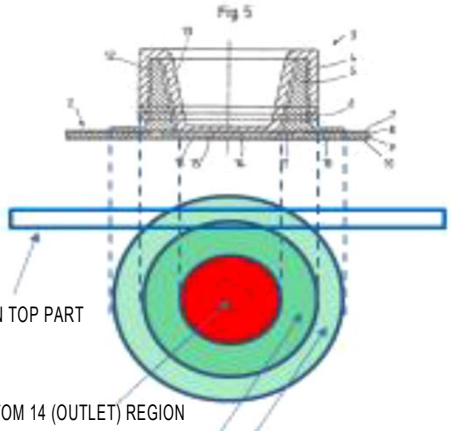


Fig. 5-2