

Patent Right	Date	January 21, 2020	Court	Intellectual Property High Court, First Division
	Case number	2018 (Gyo-Ke) 10163		
- A case in which it was judged that correction was legal, and the invention after the correction could not have been easily conceived of from the cited invention.				

Case type: Rescission of Trial Decision to Maintain

Result: Dismissed

References: Article 29, paragraph (1), item (iii), paragraph (2), Article 134-2 paragraph (1), paragraph (9), and Article 126, paragraph (5), paragraph (6) of the Patent Act,

Related rights, etc.: Patent No. 3909365

Decision of JPO: Invalidation Trial No. 2017-800139

### Summary of the Judgment

1. This case is a lawsuit in which Plaintiff who made a request for a trial for patent invalidation for the present patent right according to the invention titled "BEAM REINFORCING FIXTURE AND BEAM PENETRATING HOLE REINFORCEMENT STRUCTURE USING THE SAME" held by Defendant sought rescission of the present JPO decision dismissing the request after approval of the present correction.

As the reasons for rescission, Plaintiff alleged an error in judgment in determination of the correction requirement and an error in judgment of inventive step.

2. This judgment held roughly as follows and dismissed Plaintiff's claim.

(1) Reason 1 for rescission (error in judgment of correction requirement)

Correction Matter 1 corrected, in the "beam reinforcing fixture" in Claim 1 before the correction, formation of the "flange portion" being specified on "one surface side in an axial direction of an outer peripheral portion" to "formed on an end portion on one surface side in an axial direction of the outer peripheral portion, wherein a surface on the one surface side in the axial direction of the beam reinforcing fixture is a flat surface from an inner periphery of the beam reinforcing fixture to an outer periphery of the flange portion which is a part of the outer peripheral portion of the beam reinforcing fixture", but such correction is intended for restriction of the Scope of Claims and does not substantially enlarge or alter the Scope of Claims.

Moreover, according to the description in the present Description, Correction Matter 1 is correction within the scope of the matters disclosed in the Description and the Scope of Claims or Drawings attached to the application.

(2) Reason 2 for rescission (error in judgment of inventive step based on Cited Invention 1)

A. Finding of Cited Invention 1

By referring to the described matter and Figure 4 and Figure 5 of Cited Document 1, it is not found that Cited Document 1 discloses or suggests the technical idea that a backing body 3a is formed by shifting to one side in the axial direction of a thick steel pipe 2 and thus, the finding of Cited Invention 1 has no errors.

B. How easily Different Feature 2 could have been conceived of

Cited Invention 1 employs the structure in which, in a conventional art of inserting a thin steel pipe into a through hole provided in a web of a beam steel and fixing it by welding and of fixing a reinforcing plate on both surfaces of the web around the through hole by welding, when a center part of the outer peripheral portion of the thick steel pipe 2 penetrating the through hole is welded/fixing to the web 1a for the purpose of reducing a welding amount and the number of components and of facilitating working and quality control, the ring-shaped backing body 3a is integrally formed and brought into contact from one surface thereof. Therefore, the portion where the backing body 3a (flange portion) of Cited Invention 1 is integrally formed with the thick steel pipe 2 is substantially the center part of the thick steel pipe 2 which is a welded portion, and Cited Document 1 does not have description or suggestion on provision of this on the end portion. Then, it should be considered that Cited Invention 1 has no motivation to employ the structure in which the backing body 3a is provided on the end portion on the one surface side in the axial direction of the outer peripheral portion.

Even though the fact itself that the flange is used in various fields is a well-known art, there is no document describing or suggesting the structure related to Different Feature 2, and formation of the flange portion on the end portion is not found to be a well-known art in the technical field of Cited Invention 1.

Thus, the structure related to Different Feature 2 could not have been easily conceived of for Cited Invention 1.

(3) Reason 3 for rescission (error in judgment of inventive step based on Cited Invention 2)

Cited Invention 2 discloses the results and the like of experimental research on the shearing and shearing + flexural capacity by using a test body with a width/thickness of a sleeve pipe varied, and that is an art on the premise that there is no flange portion on the outer periphery of the beam reinforcing fixture in the first place, and there is no description or suggestion, either, on the fact that the flange portion is provided on the

sleeve pipe and thus, there is no motivation of providing a flange portion by applying the structure that the flange portion is provided on the outer periphery of the beam reinforcing fixture.

Even if the flange portion is provided by applying the matters described in Exhibits Ko 1 to 3, the one surface side on which the flange portion is provided is not formed in flush and thus, it does not lead to the structure related to Different Feature 3.

The fact itself that the flange is used in the various fields is a well-known art, but there is no document describing or suggesting the structure related to Different Feature 3, and it is not found that to have the structure in which the flange portion is formed on the end portion and the surface is made a flat surface from the inner periphery of the beam reinforcing fixture to the outer periphery of the flange portion which is a part of the outer peripheral portion in the technical field of Cited Invention 2 is a well-known art.