

Patent Right	Date	January 28, 2020	Court	Intellectual Property High Court, First Division
	Case number	2019 (Gyo-Ke) 10064		
<p>- A case in which, when it is to be judged whether or not the Present Invention could have been easily made with the invention described in publication as the Cited Invention, not to mention that they are evaluated to be integral with each other in view of the contents and the purposes of preparation, the Cited Invention should be found from one publication in principle and then, such judgment was made that it cannot be considered that a person ordinarily skilled in the art could have easily conceived of the structure of the Present Invention related to a non-disputable difference on the basis of the Cited Invention and the well-known art.</p>				

Case type: Rescission of Trial Decision to Maintain

Result: Dismissed

References: Article 17-2, paragraph (3), Article 29, paragraph (2), Article 36, paragraph (4), item (i), paragraph (6) item (ii) of the Patent Act

Related rights, etc.: Invalidation Trial No. 2018-800043, Patent No. 4617275

Summary of the Judgment

1. This case is a suit against a trial decision made by the JPO in which, when Plaintiff made a request for a trial for invalidation on the patent of Defendant for the invention titled "CHAIR-TYPE MASSAGING MACHINE", the JPO decision dismissed the request and thus, Plaintiff sought rescission thereof. As reasons for rescission, Plaintiff alleged errors in each of judgments related to the requirement for amendment, the enablement requirement, the clarity requirement, and inventive step.

2. The judgment dismissed Plaintiff's claim by holding roughly as follows and the like.

(1) Features of the Present Invention

The Present Invention relates to a chair-type massaging machine in which an air-type massager is provided on an inner side surface of a pair of left and right projecting bodies provided on a seatback portion and thus, the body of a user is sandwiched left and right from outer sides of the respective arms and at the same time, a hitting operation can be performed alternately on left and right of the back of the user by left and right massaging members.

(2) Reason 1 for rescission (error in judgment related to requirement for amendment (addition of a new matter))

... The amendment of "at the same time" in Present Invention 1 ... and Present

Invention 2 ... cannot be considered to have introduced a new technical matter in the relation with the technical matter led from the statement in the original Description and the like.

(3) Reason 2 for rescission (error in judgment related to enablement requirement)

... Since the present Description has the statement on the specific form of working of the chair-type massaging machine according to the Present Invention, it can be considered that there is a statement to such a degree that use thereof is enabled, and on the basis of the common general technical knowledge at the filing, it cannot be found that a person ordinarily skilled in the art requires excessive trial and error for manufacture thereof.

(4) Reason 3 for rescission (error in judgment related to clarity requirement)

... It cannot be considered that the statement in the Scope of Claims of Present Invention 1 is unclear to such a degree that would give an unexpected disadvantage to a third party.

(5) Reasons 4 for rescission (error in judgment on inventive step based on cited invention)

A. Finding of Cited Invention

... When it is to be judged whether or not the Present Invention could have been made easily by using the invention described in publication as a Cited Invention, not to mention that they are evaluated to be integral with each other in view of the contents and the purposes of preparation, the Cited Invention should be found from one publication in principle and thus, it is not reasonable to find the Cited Invention in this case by combining Exhibit Ko 9-1 (application document of a design registration application filed on February 17, 1995) and Exhibit Ko 9-2 (Written opinion as of June 4, 1997) which are separate documents, and finding should be primarily made on the basis of Exhibit Ko 9-1.

According to the statement in Exhibit Ko 9-1, it is found that a "massaging chair" has a seat portion, a seatback portion provided on a rear part of the seat portion, and a pair of left and right arc-shaped frame members protruding forward from left and right side portions of the seatback portion, respectively ("front view", "perspective view", and "perspective view illustrating a use state"), and a mechanical massaging mechanism is incorporated inside the seatback portion ("A-A sectional view").

Thus, the Cited Invention should be found such that there are provided a massaging chair (hereinafter, referred to as the "Exhibit Ko 9' invention") / including a seat portion / a seatback portion provided on a rear part of the seat portion; and/ a mechanical massaging mechanism, in which / a pair of left and right arc-shaped frame

members protruding forward to both left and right sides of the seatback portion and having a left-and-right interval which can stably hold a user leaning on the seatback portion so that the user does not move between the both left and right arc-shaped frame members; and / the pair of left and right arc-shaped frame members include inner side surfaces, respectively.

B. Difference between Present Invention 1 and the Cited Invention

There is no dispute between the parties on the fact that Present Invention 1 and the invention described in the cited document are different in ... Different Feature 3 (...) found in the present JPO decision.

Note that even if the Cited Invention is found to be the Exhibit Ko 9' invention only from Exhibit Ko 9-1, ... there is no dispute between the parties on the fact that ... Different Feature 3 is present.

C. How easily it could have been conceived of in relation with Different Feature 3

With regard to the structure related to Different Feature 3, for a person ordinarily skilled in the art to be able to have conceived thereof easily on the basis of the Cited Invention and the well-known art, it is not enough that sandwiching of a part of the body of a user by expanding an airbag in a chair-type massaging machine has been well known, but the fact that use of such airbag as means for sandwiching both arms and the body between the arms has been well known needs to be verified.

However, ... the airbag of the well-known art which can be found from ... Exhibits Ko 13 to Ko 15 is not for sandwiching both arms of the user and the body between the arms from the sides thereof, and it cannot be considered from Exhibits Ko 13 to Ko 15 that use of the airbag as the means for sandwiching both arms and the body between the arms has been well known.

Thus, it cannot be considered that the structure related to Different Feature 3 could have been easily conceived of by a person ordinarily skilled in the art on the basis of the cited invention and the technical matters described in Exhibits Ko 13 to Ko 15.