

Patent Right	Date	February 18, 2020	Court	Intellectual Property High Court, First Division
	Case number	2019 (Gyo-Ke) 10083		
- A case in which, with regard to a patent concerning an invention titled "VISCOUS COMPOSITIONS CONTAINING CARBON DIOXIDE", it was determined that the invention would not have been easily conceivable from the Cited Invention.				

Case type: Rescission of Trial Decision to Maintain

Result: Dismissed

References: Article 29, paragraph (1), item (iii), and paragraph (2) of the Patent Act

Related rights, etc.: Patent No. 4912492

Decision of JPO: Invalidation Trial No. 2018-800054

### Summary of the Judgment

1. The present case is a lawsuit in which Plaintiff, who filed a request for a trial for patent invalidation with regard to the Defendant's patent right concerning an invention titled "VISCOUS COMPOSITIONS CONTAINING CARBON DIOXIDE", sought rescission of a trial decision to maintain.

As reasons for rescission, Plaintiff asserted that the determination of an inventive step is erroneous.

2. The present judgment, in summary, held as follows and dismissed the Plaintiff's claim.

#### (1) Motivation to replace with sodium alginate

Present Invention 1 relates to a carbon dioxide-containing viscous composition which is used as a pharmaceutical composition or a cosmetic. On the other hand, the Cited Invention relates to a pack agent which is a skin cosmetic in which a water-based viscous liquid is used as a main agent. The pack agent of the Cited Invention promotes blood circulation by stimulating skin in the process of forming a film, and cleanses the skin by adsorbing stain on a surface of the skin. Thus, the two inventions have a common technical field.

However, in the Cited Invention, polyvinyl alcohol and carboxymethylcellulose sodium are components for constituting a film-forming viscous liquid which is a main agent of the pack agent, and those components contribute to film formation. In contrast, even if sodium alginate is well known as a thickening agent which constitutes a viscous water-based liquid, there is no sufficient evidence to find that sodium alginate was well known as a thickening agent having a film forming ability.

Further, Cited Document 1 exemplifies components which can be appropriately incorporated into the pack agent. However, in Cited Document 1, there is no disclosure with regard to the use of sodium alginate.

According to the above, in the Cited Invention based on the premise that the viscous liquid is a film-forming viscous liquid, it cannot be deemed that a person ordinarily skilled in the art would have easily conceived of an idea of replacing polyvinyl alcohol and carboxymethylcellulose sodium with sodium alginate.

(2) Including an acid in "granule (fine granule, powder) agent"

In the Cited Invention, there is no motivation to delay generation of carbon dioxide and to impart persistence. Thus, as sustained-release technology for generating carbon dioxide appropriately, a person ordinarily skilled in the art, who has read Cited Document 1, cannot conceive an idea of including carbonate and acid in one solid.

(3) Therefore, since the configuration according to Difference 1 would not have been easily conceivable, there is no ground for the reason for rescission.