

Patent Right	Date	March 12, 2020	Court	Intellectual Property High Court, First Division
	Case number	2019 (Gyo-Ke) 10095		
<p>- A case in which the court held, concerning an invention titled "METHOD FOR CRUSHING POLYCRYSTALLINE SILICON FRAGMENTS AND POLYCRYSTALLINE SILICON RODS", that since it cannot be said that Claim 1 clearly states the meaning of the median particle size which is "measured by the mass" of the tungsten carbide particle "contained" in the "tool surface" of a crushing tool, and since the meaning cannot be understood even when referring to the description, the invention fails to fulfill the clarity requirements.</p>				

Case type: Rescission of Patent Revocation Decision

Result: Dismissed

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

Related rights, etc.: Patent No. 6154074

Patent Revocation Decision: Opposition No. 2017-701223

Summary of the Judgment

1. The present case is a lawsuit filed by Plaintiff seeking rescission of a patent revocation decision, which was rendered in regards to an opposition against the Plaintiff's patent for an invention titled "METHOD FOR CRUSHING POLYCRYSTALLINE SILICON FRAGMENTS AND POLYCRYSTALLINE SILICON RODS" (Patent) to the effect of revoking the parts of the Patent pertaining to Claims 1 through 4, 8, and 11.

As the reasons for rescission, Plaintiff asserted error in judgment on clarity requirements and support requirements.

2. In the judgment of the present case, the court dismissed the Plaintiff's claims by holding, as outlined below, concerning error in judgment on clarity requirements.

(1) Evaluation criteria for determination on clarity requirements

Article 36, paragraph (6), item (ii) of the Patent Act stipulates that an invention for which a patent is sought must be clear in the statement of the Scope of Claims. The intent of the provision of this item is to prevent the occurrence of unfavorable results arising out of a case where a third party's interests can be unjustly harmed due to the technical scope of an invention, for which a patent was granted, being unclear because the invention was not clearly stated in the Scope of Claims. Whether or not the invention for which a patent is sought is clear should be determined by taking into consideration not only the statements of the Scope of Claims but also the statements in the

Description and drawings attached to the written application, and also on the basis of the common general technical knowledge of a person ordinarily skilled in the art at the time of the application, from the perspective of whether or not the aforementioned statements are unclear to the extent of unjustly harming a third party's interests as a result.

(2) Clarity of the Invention

A. Statements of the Scope of Claims and common general technical knowledge

Claim 1 states the "median particle size which is measured by the mass of the tungsten carbide particle". It can be understood from the statements of Claim 1, per se, that this tungsten carbide particle is "contained" in the "tool surface" of "two or more crushing tools". It can also be understood that the tungsten carbide particle is "measured by the mass" to find out that the content of the aforementioned tungsten carbide particle in the surface of the First Crushing Tool is 95% or less by weight, with the particle size of 1.3 μm or more, and that the content of said particle in the surface of the Second Crushing Tool is 80% or more by weight, with the particle size of 0.5 μm or less, and that the particle size is a median particle size, and that the median particle size of the tungsten carbide particle is 1.3 μm or more or 0.5 μm or less.

However, it cannot be said that Claim 1 clearly states the meaning of the median particle size which is "measured by the mass" of the tungsten carbide particle that is "contained" in the "tool surface" of a crushing tool.

Furthermore, there is no evidence to sufficiently acknowledge that, at the time when an application for the Patent was filed, there was common general technical knowledge that enables a person ordinarily skilled in the art to obtain the median particle size which is measured by the mass of the tungsten carbide particle contained in the surface of a crushing tool, whose surface contains tungsten carbide.

B. Statements of the Description

The Description discloses that the tungsten carbide particle contained in the "tool surface" of a "crushing tool" "having the surface that contains tungsten carbide " is integrated with a cobalt binder by sintering. The Description does not include the definition of, or the measuring method for, the median particle size which is "measured by the mass" of the tungsten carbide particle that is "contained" in the "tool surface" of a "crushing tool"

which is integrated with a cobalt binder by sintering.

- C. From what is described above, even when the statements of the Description are taken into consideration, and even based on the common general technical knowledge of the time when an application for the Patent was filed, it is impossible to understand the meaning of the median particle size which is "measured by the mass" of the tungsten carbide particle "contained" in the "tool surface" of a "crushing tool" "having the surface that contains tungsten carbide" of the Invention, and it must be said that the technical scope of the Invention is unclear. Accordingly, it must be said that the statements of the Scope of Claims for the Invention do not fulfill clarity requirements.