

Patent Right	Date	March 24, 2020	Court	Intellectual Property High Court, First Division
	Case number	2019 (Gyo-Ke) 10102		
- A case in which it is found that the patent invention titled "PIT CONSTRUCTING MACHINE" could not have been easily made by a person ordinarily skilled in the art due to a factor teaching away from combining a secondary cited invention with a primary cited invention.				

Case type: Rescission of Trial Decision to Maintain

Result: Dismissed

References: Article 29, paragraph (2) of the Patent Act

Related rights, etc.: Invalidation Trial No. 2018-800120, Patent No. 3694724

Summary of the Judgment

1. This case is a suit against a trial decision made by the JPO in which Plaintiffs made a request for a trial for invalidation for Defendant's patent of the invention titled "PIT CONSTRUCTING MACHINE", but the JPO decision dismissed the request and thus, Plaintiffs sought rescission thereof. As the reasons for rescission, Plaintiffs alleged an error in judgment of inventive step.
2. The judgment held roughly as below and dismissed the claim by Plaintiffs.
 - (1) Reason 1 for rescission (error in judgment of inventive step based on Cited Invention 1 and Cited Invention 2)

A. Differences between the present invention and Cited Invention 1

In the Present Invention, "the grip mechanism includes an arc-shaped bearing piece split into a plurality of parts constituting an annular geared bearing by being connected to each other on the respective end portions" (... constituent feature E), while in Cited Invention 1, the "swing bearing 6" has the "external gear 6c", and the "elevation frame 4" is "split" so as to divide the "mounting seat 4a" fixing the "swing bearing 6", but the "swing bearing 6" itself is not split and does not include an "arc-shaped bearing piece split into a plurality of parts constituting an annular geared bearing by being connected to each other on the respective end portions".

B. How easily it could have been conceived of in relation with difference (application of Cited Invention 2' to Cited Invention 1)

Cited Invention 1 relates to a rotary casing driver for press fitting and drawing of a steel pipe pile (casing) with a large diameter, while Cited Invention 2' relates to a rotary boring machine which can handle casings with various diameters that are used

for site piling and thus, the technical fields of the two inventions are in common.

However, Cited Invention 1 has an object to provide an elevation frame with a structure which facilitates transport by division to smaller parts, while a size of the casing driver can be increased, while Cited Invention 2' has an object to provide a rotary boring machine which can perform both operations of excavation/earth removal and rotation of the casing tube at the same time by applying it to various casing tubes and thus, the objects of the two inventions are different.

Moreover, no description or suggestion is found in Cited Document 1 on employment of the grip mechanism (clamp portion 2) of Cited Invention 2' instead of the grip mechanism (the swing bearing 6, the rotary ring 7, and the band device 14) of Cited Invention 1.

Then, it cannot be evaluated that there is immediate motivation to apply Cited Invention 2' to Cited Invention 1.

Thus, by further examining the structures of the two inventions, the "swing bearing 6, the rotary ring 7, and the band device 14" in Cited Invention 1 and the "clamp portion 2" in Cited Invention 2' are in common in a point that both have the function of rotating and gripping the casing.

However, correspondingly to the aforementioned difference in the objects, the "elevation frame 4" in Cited Invention 1 has the structure in which the "mounting seat 4a" for mounting the swing bearing 6 is split so as to divide it, and the size of the "mounting seat 4a" is constant and is not capable of expansion or reduction so that the swing bearing 6 with various diameters can be fixed, while the split liner 4 and the split clamp 3 of Cited Invention 2' are capable of fastening/expansion for clamping the casing tube with various diameters, and both the split liner 4 to be driven to rotate and the split clamp 3 on the side for rotatably supporting the split liner 4 can change the diameters by the operation of the fastening jack 5. Since such split liner 4 and split clamp 3 of Cited Invention 2' cannot be mounted as they are on the "mounting seat 4a" on the "elevation frame 4" of Cited Invention 1 not having the structure for handling the change in the diameter of the swing bearing 6, the structure itself of Cited Invention 1 of the "elevation frame 4" and the "mounting seat 4a" which can be split needs to be changed in order to combine Cited Invention 2' with Cited Invention 1.

Then, it should be considered that there is a factor teaching away from combining Cited Invention 2' with Cited Invention 1.

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

Invention 1 and Cited Invention 3)

The constituent feature E of the present invention specifies the structure of the "grip mechanism" of the pit constructing machine as "including the arc-shaped bearing piece split into a plurality of parts constituting the annular geared bearing by being connected to each other on the respective end portions".

Cited Invention 3 should be considered not to have the constituent feature E related to the difference and thus, even if Cited Invention 3 is applied to Cited Invention 1, it does not reach the structure related to the difference.

(3) Reason 3 for rescission (error in judgment of inventive step based on Cited Invention 1 and well-known art)

Since it should be considered that the aforementioned well-known art does not have the constituent feature E related to the difference, even if the aforementioned well-known art is applied to Cited Invention 1, the structure related to the difference is not reached.