Patent Right	Date	February 20, 2020	Court	Intellectual Property High Court, Third Division
	Case number	2019 (Gyo-Ke) 10093		
- A case in which the decision which revoked the patent for the invention titled "STRETCHABLE WARP KNITTED FABRIC" was rescinded since there are errors in finding of Cited Invention, finding of the common features and different feature between Present Invention and Cited Invention, and judgment on how easily the different feature could have been conceived of.				

Case type: Rescission of Patent Revocation Decision

Result: Granted

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

Related rights, etc.: Patent Application No. 2016-22453, Unexamined Patent Application Publication No. 2000-8203

Decision of JPO: Opposition No. 2017-701098

Summary of the Judgment

1. This case is a case in which an opposition to a granted patent was made for Plaintiff's patent, and the Japan Patent Office made a decision to revoke the patent by stating that the present patent has an invalidation reason of lack of inventive step and thus, Plaintiff sought rescission thereof.
2. This judgment rescinded the decision by stating that the judgment of this decision that there is an invalidation reason of lack of inventive step with the Exhibit Ko 1 (Unexamined Patent Application Publication No. 2000-8203) as a primarily cited reference had errors in finding of Cited Invention, finding of the common feature and the different feature between Present Invention and Cited Invention, and judgment in how easily the different feature could have been conceived of, and it cannot be considered that Present Invention could have been easily invented by a person ordinarily skilled in the art on the basis of Exhibit Ko 1. Summary of the reasons is as follows.

(1) The finding of Cited Invention in the present decision has an error, and it is reasonable to find the following Cited Invention' as the invention described in Exhibit Ko 1.

"A warp knitted fabric comprising:

a structure appearing on a front side of a satin type tricot structure as a ground stitch, made of an inelastic yarn 10 forming a loop in all the stitch positions, and having stitches by a jacquard motion;

a structure appearing on a back side of a satin type tricot structure as a ground stitch, made of an inelastic yarn 11 forming a loop in all the stitch positions, and knitted by jacquard knitting; and

a structure made of an elastic yarn 12 knitted in the ground stitch structure at all the stitch positions (looped)."

(2) The common feature and the different feature between Present Invention and Cited Invention' are found to be as follows.

(Common feature')

"A stretchable warp knitted fabric comprising:

a jacquard knitting structure; and

a structure constituted by an elastic yarn and having loop formed at all the stitch positions."

(Different feature')

"In Present Invention, at the 'stitch position where the loop in the jacquard knitting structure is not formed', 'only the elastic yarn of the support structure constituted only by the elastic yarn and having the loop formed at all the stitch positions forms a loop, and the structure in which the inelastic yarn forms the loop at all the stitch positions is not included', while in Cited Invention', 'the stitch position where no loop is formed at all does not exist' in 'the jacquard knitting structure', and the 'structure in which the elastic yarn forms the loop at all the stitch positions' and the 'structure in which the inelastic yarn forms the loop at all the stitch positions' are included other than the 'jacquard knitting structure'."

(3) As in the aforementioned (1) and (2), Present Invention "does not include the structure in which the inelastic yarn forms the loop at all the stitch positions", while Cited Invention' includes the "structure knitted by warp knitting by the jacquard knitting constituted by the inelastic yarn 11 forming the loop at all the stitch positions."

In this point, the present decision judged that the structure chart in Figure 10 in Exhibit Ko 1 can be read to be the ground knitting in which the "stitch position where no loop is formed at all" exists by making both the structure on the front side and the structure on the back side of the tricot structure a mesh style, and it is easy to replace such structure with the structure of Cited Invention on the premise of the finding that the structure of Present Invention related to the aforementioned different feature is disclosed.

However, according to the described matter of the present description, it can be understood that Figure 10 in Exhibit Ko 1 illustrates only the structure on the front side of the mesh-style tricot structure in which the stitch position where no loop is formed exists and does not illustrate the structures of both the front side and back side.

Then, even if the structure disclosed in Figure 10 in Exhibit Ko 1 is applied to Cited Invention', the "structure made of the inelastic yarn 10" in Cited Invention' is only replaced with the "mesh-style tricot structure in which the stitch position where no loop is formed exists" in Figure 10, and the "structure made of the inelastic yarn 11 forming a loop at all the stitch positions" of Cited Invention' remains and thus, it does not reach the structure of Present Invention related to the aforementioned different feature (structure that "does not include the structure in which the inelastic yarn forms the loop at all the stitch positions")

Other than the above, Exhibit Ko 1 has no description indicating or suggesting non-inclusion of the "inelastic yarn 11 forming a loop at all the stitch positions".

Therefore, it cannot be found that a person ordinarily skilled in the art could have easily conceived of the structure of Present Invention 1 related to the different feature' on the basis of the invention described in Exhibit Ko 1.