

Patent Right	Date	March 19, 2020	Court	Intellectual Property High Court, Third Division
	Case number	2019 (Gyo-Ke) 10097		
<p>- A case in which, with regard to the JPO decision dismissing the request for an appeal against the examiner's decision of refusal of the invention titled "SIMPLIFIED BOW TIE OR SIMPLIFIED TIE", the JPO decision was rescinded, since the judgment has an error in how easily the difference could have been conceived of.</p>				

Case type: Rescission of Appeal Decision of Refusal

Result: Granted

References: Article 17-2, paragraph (6), Article 126, paragraph (7) of the Patent Act  
 Related rights, etc.: Patent Application No. 2017-47926, Utility Model Application No. 1990-127641

Decision of JPO: Appeal against Examiner's Decision of Refusal No. 2017-16280

### Summary of the Judgment

1. This case is a case in which Plaintiff who made a request for an appeal against the examiner's decision of refusal received a notice of reasons of refusal and amended the Scope of Claims, but the Japan Patent Office dismissed the present amendment and made a decision dismissing the request for an appeal and thus, Plaintiff sought rescission thereof.
2. On the judgment of the JPO decision that since the invention after the present amendment (the present amended invention) could have been easily made on the basis of Exhibit Ko 1 (Utility Model Application No. 1990-127641), the present amendment violates the requirement for independent patentability, the judgment rescinded the JPO decision, since the judgment of how easily the difference could have been conceived of had an error, and it cannot be considered that a person ordinarily skilled in the art could have easily made the present amended invention on the basis of Exhibit Ko 1. The gist of the reasons is as follows.
  - (1) There are following differences between the present amended invention and the invention described in Exhibit Ko 1 (Cited Invention).

"With regard to a portion having a cutout shape in which a button is fitted, in the present amended invention, the portion is a button hole which is a vertical hole with all the side edges closed, while in Cited Invention, the portion is a button engagement portion 19 with a recess shaped notch on the lower edge."

- (2) The JPO decision judged that the ornaments of Cited Invention and the

invention (Exhibit Ko 4 invention) described in the secondarily cited reference (Exhibit Ko 4) both have a common problem such that the ornament is made easily attachable to a first button of a shirt and they have a common function that, when they are to be put on, they are attached by the button fitted in the notched portion and thus, to have the structure of the present amended invention related to the difference by employing the aspect of a circular button insertion hole having a lock introduction hole of the Exhibit Ko 4 Invention as a specific shape of the notched portion in the button engagement portion 19 of Cited Invention could have been easily conceived of by a person ordinarily skilled in the art.

However, Cited Invention has a problem to provide a tie with simplified wearing tool which does not easily generate shifting or inclination in a wearing state and can be produced at low cost and whose wearing operation is also easy by improving the wearing tool for attaching the simplified tie body. On the other hand, the device described in Exhibit Ko 4 has a problem to provide a wearing-tool attachment base which facilitates attachment/detachment and hardly damages clothes for a wearing tool for fixing various ornaments such as collar ornaments, a living flower, and the like or particularly ornaments fixed in front of the collar, but does not exemplify a bow tie or a tie as such wearing tools or does not point out a problem specific to wearing of a bow tie or a tie. Therefore, Cited Invention and Exhibit Ko 4 Invention are largely different in their specific problems.

Moreover, in view of the operation/function of the invention, Cited invention includes a simplified wearing tool made of a base plate portion, a tie attaching portion, and a pair of projecting pieces and realizes a favorable wearing state and a simplified wearing operation of a simplified bow tie by providing the button engagement portion with a recess shaped notch on the lower edge on the base plate portion located on the back side of the tie attaching portion and by engaging the first button of the shirt in the notch and by inserting the pair of projecting pieces below the collar, and to have the arrangement position and the shape of the button engagement portion 19 in the base plate portion 2 of the simplified wearing tool 1 as in the structure of Cited Invention has an important technical meaning for solving the problem of Cited Invention.

On the other hand, Exhibit Ko 4 Invention realizes reliable fixation of the button and simple attachment/detachment of various small wearing ornaments to clothes by drilling a button insertion hole in which the lock introduction holes are continuously formed on an upper part with respect to a mounting base main plate, projecting a pin projecting to a back surface direction on another part, and by capping a pin insertion

cap having a pin sandwiching mechanism on a pin distal end, and it is largely different from Cited Invention in the engagement method with the first button and means for realizing reliable fixation to the clothes and simple attachment/detachment and thus, the specific operation/function of the invention is also largely different from that of Cited Invention.

Moreover, if the aspect of the "circular button insertion hole (2) having a lock introduction hole (3) with a small width" of Exhibit Ko 4 Invention is employed for the specific shape of the notched shaped portion in the button engagement portion 19 in Cited Invention, since there is the tie mounting portion 3 located on the front side of the button engagement portion 19 and to which the tie is attached on the front side thereof, when the simplified bow tie is to be put on, the first button and the button hole cannot be visually recognized, as they are hidden by the simplified bow tie and the tie mounting portion. Thus, it is obvious that engagement of the button with the wearing tool becomes more difficult than forming the button engagement portion having a notch shape.

According to the above, Cited Invention and Exhibit Ko 4 Invention are largely different in the problem of the invention and the operation/function and thus, even if a person ordinarily skilled in the art who contacted Exhibit Ko 1 recognized presence of Exhibit Ko 4, it cannot be found that a person ordinarily skilled in the art could have easily conceived of taking out only the shape of the "circular button insertion hole (2) having a lock introduction hole (3) with a small width" from the structure of the wearing tool mounting base described in Exhibit Ko 4 and of employing it as the specific shape of the notch shaped portion in the button engagement portion 19 of Cited Invention 1 or rather, it constitutes a teaching away.