

Patent Right	Date	October 21, 2020	Court	Intellectual Property High Court, Second Division
	Case number	2019 (Gyo-ke) 10161		
- A case in which it was held that the application of the patent according to the invention titled "ELASTOPLASTIC HYSTERESIS DAMPER" is not found to have been able to be easily made on the basis of the cited invention and the well-known art.				

Case type: Rescission of Appeal Decision of Refusal

Result: Granted

References: Article 17-2, paragraph (6), Article 126, paragraph (7), Article 29, paragraph (2) of the Patent Act

Related rights, etc.: Patent Application No. 2017-157285, Appeal against Examiner's Decision of Refusal No. 2019-5669

Summary of the Judgment

1. This case is a lawsuit seeking rescission of the JPO decision that the request for a trial against the examiner's decision of refusal of the invention of the present application titled "ELASTOPLASTIC HYSTERESIS DAMPER" is not established, and the issue is presence/absence of violation of the independent patentability requirement (lack of inventive step).

2. The judgment was held as follows and rescinded the JPO decision which denied the inventive step of the Present Amended Invention.

(1) Reason 1 for rescission (errors in determination on presence/absence of inventive step of the Present Amended Invention on the ground of Cited Invention 1-2)

A. There is a difference (difference 4') between the Present Amended Invention and Cited Invention 1-2 that "in the Present Amended Invention, in the elastoplastic hysteresis damper 'installed in a direction functioning to an assumed input direction', 'two shearing portions are' connected 'by a connecting portion forming an end portion of the damper', 'a space surrounding the damper is in series in a space between the two shearing portions', and the shearing portion 'is installed so that in-plane directions of the two shearing portions are inclined to the assumed input direction', while in Cited Invention 1-2, an extremely-low yield-point steel panel portion 52 made of four extremely-low yield-point steel panels 54 provided between upper and lower end plates 32 is formed having a square prism shape with a hollow rectangular section when seen in a plan view, a space between the two extremely-low yield-point steel panels 54 constituting two adjacent side surfaces of the square prism is closed by the other two

extremely-low yield-point steel panels 54 constituting the remaining two side surfaces of the square prism, not 'in series' with the 'space surrounding the damper', the extremely-low yield-point steel panel 54 is plastically deformed by sharing the vibrancy in an X component and a Y component, whereby seismic energy in all the directions on a horizontal plane is absorbed".

B. How easily Difference 4' could have been conceived of

(A) Cited Invention 1 is a damper for absorbing the seismic energy from all the directions in the horizontal direction, while the Present Amended Invention is a damper for assuming an input direction of vibration energy and absorbing the vibration energy from the assumed direction and a direction in a certain range close to the direction, and the technical ideas of the two inventions are very different.

And the structure of the Present Amended Invention according to Difference 4' is based on the technical idea as above and thus, it is a substantial difference from Cited Invention 1-2 and it cannot be considered to be only a design matter.

(B)a. It is found that each of the panel portions of two shearing panel-type dampers 90 disposed forming a substantially L-shape in Cited Invention 2 is not connected on the end portion.

In Cited Invention 1-2, all the panels of each side surface are connected to the adjacent panel on the end portions, but instead of this structure of Cited Invention 1-2, no motivation is found to have the structure in which the two panels are connected on the end portions by having the L-shaped sectional shape of the damper by applying the aforementioned structure of Cited Invention 2 in which the panel portions of the two shearing panel-type dampers 90 are disposed by forming the substantially L-shape without connecting the end portions to Cited Invention 1-2.

b. According to the recitation in Cited References 3 and 4, in the damper member for absorbing the vibrancy by using a plastically deformation member, to provide a hole or a slit for the purpose of adjustment of yield strength of the plastically deformation member is found to be a well-known art. However, even if this well-known art is applied to Cited Invention 1-2, it makes a series with the space surrounding the damper, but the structure in which the two panels are connected on the end portions so as to have the L-shaped sectional shape of the damper cannot be obtained.

c. As described above, without even making determination on the remaining points, it cannot be found that the Present Amended Invention could have been easily made on the basis of Cited Invention 1-2.

(2) Reason 2 for rescission (errors in determination on presence/absence of inventive step of the Present Amended Invention on the basis of the Cited Invention 1-

1)

A. There is a difference (Difference 1') between the Present Amended Invention and Cited Invention 1-1 that "in the Present Amended Invention, in the elastoplastic hysteresis damper 'installed in a direction functioning to an assumed input direction', 'two shearing portions are' connected 'by a connecting portion forming an end portion of the damper', and the shearing portion is such that 'the shearing portion is installed so that the in-plane directions of the two shearing portions are inclined to the assumed input direction', while in Cited Invention 1-1, two extremely-low yield-point steel panels 34 provided between upper and lower end plates 32 have a cross shape in which sections are orthogonal to each other on a plan view, the 'connecting portion' does not form the 'end portion of the damper', and the extremely-low yield-point steel panels 34 disposed so as to be orthogonal to each other are plastically deformed by sharing the vibrancy from all the directions in the horizontal direction by an X component and a Y component, whereby the seismic energy in all the directions on a horizontal plane is absorbed".

B. How easily Difference 1' could have been conceived of

(A) As held in the aforementioned (1)B(A), the technical ideas of the Present Amended Invention and Cited Invention 1 are very different, and since the structure of the Present Amended Invention according to Difference 1' is based on the technical idea of the Present Amended Invention, it is a substantial difference from Cited Invention 1-1, and it cannot be considered to be only a design matter.

(B) Each of the panel portions of two shearing panel-type dampers 90 disposed by forming a substantially L-shape in Cited Invention 2 is not connected on the end portion.

In Cited Invention 1-1, the two panels are connected on a center portion, but instead of the structure of Cited Invention 1-1 in which the panels are connected on the center portion, no motivation is found to have the structure in which the two panels are connected on the end portions by having the L-shaped sectional shape of the damper by applying the aforementioned structure of Cited Invention 2 in which each of the panel portions of the two shearing panel-type dampers 90 is disposed by forming the substantially L-shape without connecting the end portions to Cited Invention 1-1.

(C) As described above, without even determining the remaining point, it cannot be found that the Present Amended Invention could have been easily made on the basis of Cited Invention 1-1.