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| Patent Right | Date | November 5, 2020 | Court | Intellectual Property High Court, Third Division |
| | Case number | 2019 (Gyo-Ke) 10165 | | |
| - A case in which, with regard to an invention titled "HEAT-RETAINING SHEET", the JPO decision was rescinded on the grounds that it was erroneous for the JPO decision to determine that the Applicant's amendment to the scope of claims adds a new matter. | | | | |

Case type: Rescission of Appeal Decision of Refusal

Result: Granted

References: Article 17-2, paragraph (3) of the Patent Act

Related rights, etc.: Appeal against Examiner's Decision of Refusal No. 2018-14256, Patent Application No. 2014-252662

Summary of the Judgment

1. The present case is one in which, with regard to the Plaintiff's patent application concerning an invention titled "HEAT-RETAINING SHEET" (hereinafter referred to as "the Present Application"), the JPO made an appeal decision that the Present Application shall be refused (hereinafter referred to as "the Present Decision"), and thus, the Plaintiff sought rescission of the Present Decision.

A summary of the Present Decision is as follows. Claim 1 was amended to recite "comprising ... a cover body composed of a non-woven fabric or a woven fabric which ensures air permeability and water permeability and which has translucency", etc. (hereinafter referred to as "the Present Amendment"). With regard to the Present Amendment, the description, the scope of claims, or the drawings originally attached to the written application with regard to the Present Application (hereinafter, referred to as "the present original description, etc.") does not explicitly state that this cover body (hereinafter referred to as "the present cover body") has "translucency." In addition, it cannot be deemed that the matter of the present cover body having translucency is a matter which is obvious from the statement of the present original description, etc. Thus, the Present Amendment introduces a new technical matter in relation to technical matters which can be derived by integrating all the statements in the present original description, etc. Therefore, the Present Amendment does not comply with the requirement under Article 17-2, paragraph (3) of the Patent Act.

2. This judgment, in summary, held as follows and rescinded the Present Decision on the grounds that the determination of the Present Decision was erroneous.

(1) At the time of filing the Present Application, the scope of claims of the

invention according to Claim 1 mentioned above (hereinafter referred to as "the Present Invention") stated "a cover body composed of a non-woven fabric or a woven fabric which ensures air permeability." However, after the Present Amendment, the statement of the scope of claims of the Present Invention was changed to "a cover body composed of a non-woven fabric or a woven fabric which ensures air permeability and water permeability and which has translucency," i.e., it can be deemed that the statement that the present cover body has "water permeability" and "translucency" was added. In this regard, in the present original description, etc., there is the statement that the present cover body has water permeability. However, there is no explicit statement corresponding to the matter of "having translucency."

Then, it will be discussed whether or not it can be deemed that the matter of the present cover body "having translucency" is a matter which is obvious from the statement of the present original description, etc.

(2) According to the term in the general industrial field, it can be deemed that the matter of the present cover body "having translucency" means that the present cover body has a property of transmitting light and allowing the light to exit from another surface.

In addition, in view that it can be found that methods such as using special production methods or special materials and applying special processing were adopted in order to impart light-blocking capability to a woven fabric or a non-woven fabric at the time prior to filing the Present Application, it can be deemed that it was the common general technical knowledge at the time of filing the Present Application that it is necessary to adopt such special methods in order to impart light-blocking capability to a woven fabric or a non-woven fabric. Then, it is reasonable to consider that it was also common general technical knowledge that a woven fabric or a non-woven fabric for which such special methods are not adopted does not have light-blocking capability.

Further, in the field of fibers, light-blocking capability means capability to block incoming light. Therefore, not having light-blocking capability means transmitting incoming light without blocking; i.e., having "translucency" in the meaning mentioned above.

According to the discussion above, it is reasonable to consider that it was common general technical knowledge on translucency of a woven fabric or a non-woven fabric at the time of filing the Present Application that a woven fabric or a non-woven fabric has translucency unless any special method to impart light-blocking capability to the woven fabric or the non-woven fabric is adopted.

(3) Based on the premise mentioned above, it can be deemed that a person ordinarily skilled in the art at the time of filing the Present Application would naturally understand that a woven fabric or a non-woven fabric has translucency unless any special method to impart light-blocking capability to the woven fabric or the non-woven fabric is adopted.

In addition, in the present original description, etc., there is no explicit statement that the present cover body, which is constituted by a woven fabric or a non-woven fabric, has light-blocking capability, or that any special method to impart light-blocking capability to the present cover body is adopted. On the contrary, there is the statement that the present cover body has air permeability and water permeability and the statement that at least part of the surface of the present cover body is such that the materials which constitute the present cover body are exposed as is, and that a pigment layer and other layers which inhibit air permeability and water permeability are not formed.

In view of these statements in the present original description, etc., it should be deemed that it is normal for a person ordinarily skilled in the art to understand that with regard to a woven fabric or a non-woven fabric which constitutes the present cover body, no special methods to impart light-blocking capability, such as using special production methods or special materials and applying special processing, are adopted.

Thus, it can be deemed that a person ordinarily skilled in the art who had read the present original description, etc. would naturally understand that the present cover body has translucency. Therefore, it should be deemed that the matter of the present cover body "having translucency" is a matter which is obvious from the statement of the present original description, etc.

(4) For the foregoing reasons, it can be deemed that the Present Amendment was made within the scope of the matters stated in the present original description, etc. Therefore, it can be acknowledged that the Present Amendment complies with the requirement under Article 17-2, paragraph (3) of the Patent Act.

Judgment rendered on November 5, 2020
2019 (Gyo-Ke) 10165 A case of seeking rescission of the JPO decision
Date of conclusion of oral argument: September 8, 2020

Judgment

Plaintiff: Gimuteī Co., Ltd.

Defendant: Commissioner of the Japan Patent Office

Main text

1. The decision rendered by the Japan Patent Office (JPO) on October 23, 2019 for the case of Appeal against Examiner's Decision of Refusal No. 2018-14256 shall be rescinded.

2. The Defendant shall bear the court costs.

Facts and reasons

No. 1 Claim

The same as the main text.

No. 2 Outline of the case

1. History, etc. of procedures at the JPO

(1) The Plaintiff filed a patent application (Patent Application No. 2014-252662, Number of claims: 8, hereinafter referred to as "the Present Application") concerning an invention titled "HEAT-RETAINING SHEET, AND HEAT-RETAINING FUTON USING THE SAME" (this title of the invention was changed to "HEAT-RETAINING SHEET" by the second amendment mentioned below) on December 15, 2014 (Internal priority claim: December 4, 2014). (Exhibits Ko 1 and Ko 2)

(2) The Plaintiff received a notice of reasons for refusal dated May 18, 2017. In response, the Plaintiff filed a written amendment to amend the scope of claims and the description, and also filed a written opinion (hereinafter referred to as "the present written opinion") on July 21, 2017. (Exhibits Ko 3 to Ko 5)

In addition, the Plaintiff received a notice of reasons for refusal dated October 30, 2017. In response, the Plaintiff filed a written amendment to amend the scope of claims and the description, and also filed a written opinion on March 7, 2018. However, because the period for the amendment had already expired, the procedure relating to the written amendment was dismissed on May 16, 2018. (Exhibits Ko 6 to Ko 11)

Thereafter, the Plaintiff received the examiner's decision of refusal dated July 25, 2018. (Exhibit Ko 12)

(3) The Plaintiff filed a request for an appeal against the examiner's decision of refusal (the case of Appeal against Examiner's Decision of Refusal No. 2018-14256) on October 26, 2018. At the same time, the Plaintiff filed a written amendment to amend the scope of claims and the description (hereinafter referred to as "the second amendment"). (Exhibits Ko 13 and Ko 14)

Further, the Plaintiff received a notice of reasons for refusal dated June 27, 2019. Thus, the Plaintiff filed a written amendment to amend the scope of claims and the description (hereinafter referred to as "the Present Amendment"), and also filed a written opinion on August 29, 2019. (Exhibits Ko 15 to Ko 17)

As a result, on October 23, 2019, the JPO made a decision that "the request for the appeal is dismissed" (hereinafter referred to as "the Present Decision"). The certified copy of the Present Decision was served on the Plaintiff on November 5, 2019.

(4) The Plaintiff instituted this action for seeking a rescission of the Present Decision on December 5, 2019.

2. Statement of the scope of claims

(1) At the time of filing the Present Application

The statement of the scope of claims originally attached to the written application with regard to the Present Application is as follows. (Exhibit Ko 1)

[Claim 1]

A heat-retaining sheet for retaining heat on the surface of a living body which is a human or another animal, comprising:

a flexibly changeable sheet-shaped base material; and

a cover body composed of a non-woven fabric or a woven fabric which ensures air permeability,

wherein a heat-insulating surface is formed by impregnating a surface on the living body side of the base material with a heat-insulating material or by applying a

heat-insulating material to a surface on the living body side of the base material,

wherein the heat-insulating surface of the base material is covered by the cover body.

[Claim 2]

The heat-retaining sheet according to Claim 1,

wherein the base material is constituted by a woven fabric, a non-woven fabric, felt, or Japanese paper, and

the cover body is constituted by a woven fabric or a non-woven fabric.

[Claim 3]

The heat-retaining sheet according to Claim 1 or 2,

wherein the heat-insulating material comprises: sodium aluminosilicate glass having a hollow bead structure and a particle size of 10 to 50 μm; a pigment; a resin emulsion; a dispersant; and an adhesive,

wherein the sodium aluminosilicate glass content is 10 to 20% by weight relative to the total weight of the heat-insulating material.

[Claim 4]

The heat-retaining sheet according to any one of Claims 1 to 3,

wherein the cover body is sewn or bonded to the base material in close contact with the heat-insulating surface of the base material.

[Claim 5]

The heat-retaining sheet according to any one of Claims 1 to 4,

wherein a whole of the base material is impregnated with the heat-insulating material, to thereby form heat-insulating surfaces on both sides of the base material, and

both the sides of the base material are covered by the cover body.

[Claim 6]

The heat-retaining sheet according to any one of Claims 1 to 4,

wherein the heat-insulating material is applied to only one side of the base material, or only one side of the base material is impregnated with the heat-insulating material, to thereby form a heat-insulating surface on the one side of the base material and a non-heat-insulating surface on the other side of the base material.

[Claim 7]

A heat-retaining futon,

wherein the heat-retaining sheet according to any one of Claims 1 to 6 is accommodated in an accommodating section formed in a futon cover.

[Claim 8]

The heat-retaining futon according to Claim 7,

wherein a plurality of the accommodating sections are formed in the futon cover so that the accommodating sections are aligned in the height direction of a sleeper, and

the heat-retaining sheet is accommodated in each of the accommodating sections.

(2) After the Present Amendment

The statement of the scope of claims after the Present Amendment is as follows (hereinafter, the invention according to Claim 1 after the Present Amendment will be referred to as "the Present Invention"). Incidentally, Claim 2 and subsequent claims were canceled in the second amendment. (Exhibits Ko 14 and Ko 16)

[Claim 1]

A heat-retaining sheet for retaining heat on the surface of a living body which is a human or another animal, comprising:

a flexibly changeable sheet-shaped base material; and

a cover body composed of a non-woven fabric or a woven fabric which ensures air permeability and water permeability and which has translucency,

wherein a heat-insulating surface is formed by impregnating a surface on the living body side of the base material with a heat-insulating material or by applying a heat-insulating material to a surface on the living body side of the base material,

wherein the heat-insulating material comprises: sodium aluminosilicate glass having a hollow bead structure and a particle size of 10 to 50 μm; and titanium dioxide as a pigment,

wherein the sodium aluminosilicate glass content is 10 to 20% by weight relative to the total weight of the insulation material, and

the heat-insulating surface of the base material is covered by the cover body,

wherein the cover body is bonded to the heat-insulating surface in close surface contact, and

the cover body is constituted so as to heat the sodium aluminosilicate glass up to a temperature at which the sodium aluminosilicate glass emits far-infrared rays by passing radiant heat from the living body side, and to allow the far-infrared rays emitted from the sodium aluminosilicate glass to reach the living body side.

3. Summary of reasons of the Present Decision

Reasons of the Present Decision is as stated in the written decision (copy) as shown in the Attachment and, in summary, is as follows. Claim 1 which was

amended by the Present Amendment includes the matter of "comprising ... a cover body composed of a non-woven fabric or a woven fabric which ensures air permeability and water permeability and which has translucency." However, the description, the scope of claims, or the drawings originally attached to the written application with regard to the Present Application (hereinafter, these will be collectively referred to as "the present original description, etc.") does not explicitly state that this cover body (hereinafter referred to as "the present cover body") has "translucency." In addition, it cannot be deemed that it is a matter which is obvious from the statement of the present original description, etc. Thus, the Present Amendment introduces a new technical matter in relation to technical matters which can be derived by integrating all the statements in the present original description, etc. Therefore, the Present Amendment does not comply with the requirement under Article 17-2, paragraph (3) of the Patent Act.

(omitted)

No. 5 Judgment of the court

1. Matters stated in the present original description, etc.

(1) The present original description, etc. states as follows. Incidentally, Figures 1, 4, and 5 are as shown in the Attachment. (Exhibit Ko 1)

A. Technical Field and Background Art

[0001] This invention relates to a heat-retaining sheet, and a heat-retaining futon using the same.

[0002] It is known that there is a heat-retaining sheet for retaining heat on the surface of a living body which is a human or another animal, comprising a sheet-shaped base material, in which a heat-insulating surface is formed by impregnating a surface on the living body side of the base material with a heat-insulating material, and the heat-insulating surface is covered with a coating layer (for example, see Patent Document 1).

B. Problem to be Solved by the Invention

[0004] In the heat-retaining sheet in the document mentioned above, a heat-insulating surface is formed by impregnating a surface on the living body side of a base material with a heat-insulating material, and the heat-insulating surface is covered with a coating layer. Thus, the heat-retaining sheet can insulate without depending on the material of the base material. In addition, the heat-insulating surface protected by the coating layer becomes better able to maintain heat-insulating

capability.

However, the coating layer is constituted by a plastic film, etc. Thus, it is difficult for body heat from the living body side to reach the heat-insulating surface and the body heat diffuses along the surface of the coating layer, which makes it difficult to efficiently utilize the heat from the living body side.

[0005] The problem of the present invention is to provide a heat-retaining sheet and a heat-retaining futon using the same, in which a heat-insulating surface is formed by impregnating a surface on the living body side of a base material with a heat-insulating material, and the heat-insulating surface is covered to be protected, so that body heat from the living body side can also be easily utilized.

C. Means for Solving the Problem

[0006] A heat-retaining sheet of the present invention is characterized in that the heat-retaining sheet retains heat on the surface of a living body which is a human or another animal, and comprises a flexibly changeable sheet-shaped base material and a cover body composed of a non-woven fabric or a woven fabric which ensures air permeability, in which a heat-insulating surface is formed by impregnating a surface on the living body side of the base material with a heat-insulating material or applying a heat-insulating material to a surface on the living body side of the base material, and the heat-insulating surface of the base material is covered by the cover body.

D. Advantageous Effect of the Invention

[0014] Since the heat-insulating surface of the base material is covered by the cover body composed of a non-woven fabric or a woven fabric which ensures air permeability, body heat from the living body side passes through the cover body and reaches the heat-insulating surface to remain there or be easily reflected back to the living body side, whereby the heat from the living body side can be efficiently utilized when retaining heat.

E. Brief Description of Drawings

[0015]

[Figure 1] Figure 1 is a plan view of a mattress to which the present invention is applied.

[Figure 4] Figure 4(A) is an explanatory drawing of one side of a heat-retaining sheet to which the present invention is applied, and Figure 4(B) is an explanatory drawing of the other side of the same sheet.

[Figure 5] Figure 5 is a cross-sectional view taken along C-C in Figure 4(A).

F. Mode for Carrying Out the Invention

[0026] Figure 4(A) is an explanatory drawing of one side of a heat-retaining sheet to which the present invention is applied, and Figure 4(B) is an explanatory drawing of the other side of the same sheet. Figure 5 is a cross-sectional view taken along C-C in Figure 4(A). A heat-retaining sheet 4 comprises a flexibly deformable square sheet-shaped base material 12, and a cover (cover body) 13 which closely covers at least one side of the base material 12.

[0027] The materials used to constitute the base material 12 include: a woven fabric made by twisting fibers into yarn and weaving the yarn; a non-woven fabric made by tangling fibers without weaving the fibers and forming a sheet shape; a sheet-shaped felt made by compressing animal hairs or chemical fibers into a thin plate shape; Japanese paper made by tangling long fibers of plants, etc. and forming a thin sheet shape; and the like. The base material 12 which is constituted by these materials can be bent freely, is not easily broken, and has sufficient air permeability and water permeability. Thus, the base material 12 can vaporize perspiration from skin in a short time and can also be easily washed.

[0028] A heat-insulating layer 14 is formed by applying a heat-insulating material to one side of this base material 12 or by impregnating one side of this base material 12 with a heat-insulating material, whereby the side of the base material 12 on which the heat-insulating layer 14 is formed becomes a heat-insulating surface 14a.

[0029] The heat-insulating material is a white solution obtained by blending sodium aluminosilicate glass, a pigment, a resin emulsion, a dispersant, an adhesive, etc., then adding water and stirring to mix them.

[0030] The sodium aluminosilicate glass has a hollow bead structure and a particle size of 10 to 50 μm. The sodium aluminosilicate glass content is 10 to 20% by weight relative to the total weight of the heat-insulating material. Incidentally, if the sodium aluminosilicate glass content is less than 10% by weight, the heat-insulating ability is reduced. If the sodium aluminosilicate glass content exceeds 20% by weight, the adhesion to the base material is reduced. Thus, the content is set as mentioned above.

[0031] The pigment is titanium dioxide which reflects light and is white in color. The resin emulsion is a water-soluble acrylic emulsion resin. The above dispersant is used to homogenize the mixture of the ingredient materials composed of the sodium aluminosilicate glass, the pigment, and the resin emulsion. The adhesive is used to inhibit the separation and precipitation of the homogeneously mixed ingredient materials mentioned above.

[0035] The cover 13 is constituted by a woven fabric or a non-woven fabric

which ensures air permeability and water permeability. The cover 13 covers the area from the heat-insulating surface 14a of the base material 12 to the four edge portions of the non-heat-insulating surface 12a which is opposite to the heat-insulating surface 14a at the side ends of the base material 12.

[0036] Further, the concrete configuration of the cover 13 will be explained. At least part of the surface of the cover 13 (the whole of the surface in this example) is such that the materials which constitute the cover 13 are exposed as is, and a pigment layer and other layers which inhibit air permeability and water permeability are not formed.

[0037] When the heat-retaining sheet 4 is brought close to a sleeper's body with the heat-insulating surface 14a facing the sleeper's side, the sleeper's body heat reaches the heat-insulating surface 14a through the mattress cover 2 and the cover 13 to remain there or be reflected back to the living body side. Thus, the space between the heat-insulating surface 14a and the sleeper is maintained at a comfortable temperature.

[0040] The heat-retaining sheet 4 of this configuration is basically accommodated in the accommodating section 3 of the mattress cover 2 with the heat-insulating surface 14a facing the sleeper's side (concretely, with the heat-insulating surface 14a being the upper surface).

[0043] According to the mattress 1 of this configuration, since the heat-retaining sheet 4 with the heat-insulating surface 14a facing a sleeper becomes close to the sleeper, the sleeper's body heat passes through the mattress cover 2 and the cover 13 by air flow and reaches the heat-insulating surface 14a to remain there or to be reflected back to the sleeper's side. Thus, the space between the heat-retaining sheet 4 and the sleeper is heated or retained at an appropriate temperature.

[0045] In addition, the heat-retaining sheet 4 forms the heat-insulating layer 14 by application of a heat-insulating paint to the flexibly changeable base material 12 and impregnation of the base material 12 with the heat-insulating paint, and the heat-insulating layer 14 is covered and protected by the cover 13. Thus, even if the sheet is twisted, bent, or washed, the risk of breakage or peeling is small, and high durability can be expected.

[0046] Further, because the fine sodium aluminosilicate glass is laminated in numerous layers and is also chained together in a planar manner along the heat-insulating surface 14a, the heat which has reached the heat-insulating layer 14 is reflected by the surface of the sodium aluminosilicate glass, which suppresses permeation, and the hollow space of the sodium aluminosilicate glass also suppresses

planar convective and conduction heat along the heat-insulating surface 14.

[0047] Incidentally, the reason why the sodium aluminosilicate glass is chained together in a planar manner along the heat-insulating surface 14a will be discussed. The sodium aluminosilicate glass has a hollow bead structure and the heat-insulating paint (heat-insulating material) is a liquid with fluidity. Thus, the sodium aluminosilicate glass in the heat-insulating paint applied to the base material 12 is subject to buoyancy force until the paint dries. Due to this buoyancy force, the above sodium aluminosilicate glass accumulates in the upper surface layer of the heat-insulating paint (i.e., the side of the heat-insulating surface 14a).

[0048] This is considered to be one of the reasons why the sodium aluminosilicate glass is chained together in a planar manner along the heat-insulating surface 14a. In addition to this, the heat-insulating paint is impregnated into the base material 12 during the process of drying, as mentioned above, and thus adheres to each and every fiber of the base material 12.

[0049] In such a state, the heat from the living body side reaches the sodium aluminosilicate glass in the state of radiation heat through the cover 13, and increases the temperature of the sodium aluminosilicate glass to the same level as the body temperature of the living body. As the temperature increases, the sodium aluminosilicate glass begins to emit a small amount of far-infrared rays to the living body side, which becomes a phenomenon of heat reflection to heat the living body comfortably.

G. Reference Signs List

[0056]

1 Mattress (Heat-retaining futon)
2 Mattress cover (Futon cover)
2a Partition section
3 Accommodating section
4 Heat-retaining sheet
12 Base material
12a Non-heat-insulating surface
13 Cover (Cover body)
14a Heat-insulating surface

(2) According to the matters stated in (1) above, it can be found that the following technical matters are stated in the present original description, etc.

A. The Present Invention is an invention relating to a heat-retaining sheet for retaining heat on the surface of a living body which is a human or another animal.

([0001])

B. Prior to filing the Present Application, it was known that there was a heat-retaining sheet, comprising a sheet-shaped base material, in which a heat-insulating surface is formed by impregnating a surface on the living body side of the base material with a heat-insulating material, and the heat-insulating surface is covered with a coating layer. However, in this conventional heat-retaining sheet, a coating layer was constituted by a plastic film, etc. Thus, it was difficult for body heat from the living body side to reach the heat-insulating surface, and the body heat diffuses along the surface of the coating layer, which made it difficult to efficiently utilize the heat from the living body side. ([0002], [0004])

C. The problem of the Present Invention is to provide a heat-retaining sheet so that body heat from the living body side can also be easily utilized. As a means for solving this problem, it has been found that a heat-insulating surface of a base material is covered by a cover body (the present cover body) composed of a non-woven fabric or a woven fabric which ensures air permeability and water permeability. By using this means, body heat from the living body side passes through the present cover body and reaches the heat-insulating surface to remain there or to be easily reflected back to the living body side, which produces the effect of being able to efficiently utilize the heat from the living body side when retaining heat. ([0005], [0006], [0014], [0035])

2. Whether or not the Present Amendment is appropriate

(1) As mentioned in No. 2, 2 above, at the time of filing the Present Application, the scope of claims of the Present Invention stated that "a cover body composed of a non-woven fabric or a woven fabric which ensures air permeability." However, after the Present Amendment, the statement of the scope of claims of the Present Invention was changed to "a cover body composed of a non-woven fabric or a woven fabric which ensures air permeability and water permeability and which has translucency," i.e., it can be deemed that the statement that the present cover body has "water permeability" and "translucency" was added.

As mentioned in 1 above, in the present original description, etc., there is the statement that the present cover body has water permeability ([0035]). However, there is no explicit statement corresponding to the matter of "having translucency."

Then, it will be discussed below whether or not it can be deemed that the matter of the present cover body "having translucency" is a matter which is obvious from the statement of the present original description, etc.

(2) In the general industrial field, translucency means that light is transmitted

through a material and exits from another surface (Glossary of Technical Terms in Japanese Industrial Standards, 5th edition (Exhibit Otsu 1)). In this regard, there is no circumstance to consider that the term "translucency" in the technical field of the Present Invention has a different meaning from this.

Thus, it can be deemed that the matter of the present cover body "having translucency" means that the present cover body has a property of transmitting light and allowing the light to exit from another surface.

(3) Next, as mentioned in 1 above, the present cover body is constituted by a woven fabric or a non-woven fabric. In this regard, the common general technical knowledge on translucency of a woven fabric or a non-woven fabric at the time of filing the Present Application will be discussed.

According to the evidences (Exhibits Ko 23 and Ko 24) and the entire import of the oral argument, it can be found that, at the time prior to filing the Present Application, in order to impart light-blocking capability to a fabric for light-blocking curtains, methods such as: overlapping a black fabric with a colored fabric to form a double layer; producing a fabric using black yarn together with colored yarn; applying and laminating a paint containing a black pigment to a fabric; and bonding a plastic film containing a black pigment to a fabric were adopted. In addition, according to the evidences (Exhibits Otsu 4 and Otsu 10) and the entire import of the oral argument, it can be found that, at the time prior to filing the Present Application, in order to enhance light-blocking capability of a tree bud-suppressing sheet which is a woven fabric, a method of using black yarn in which carbon powder is kneaded into a yarn material was adopted, and that in order to enhance a light-blocking rate of a wildlife intrusion-preventing material which is a woven fabric or a non-woven fabric, a method of reducing a distance between fibers or yarns to make it difficult for light to pass through was adopted.

Thus, in view of the fact that methods such as using special production methods or special materials and applying special processing were adopted in order to impart light-blocking capability to a woven fabric or a non-woven fabric at the time prior to filing the Present Application, it can be deemed that it was common general technical knowledge at the time of filing the Present Application that it is necessary to adopt such special methods in order to impart light-blocking capability to a woven fabric or a non-woven fabric. Then, it is reasonable to consider that it was also common general technical knowledge that a woven fabric or a non-woven fabric for which such special methods are not adopted does not have light-blocking capability.

Further, in the field of fibers, light-blocking capability means capability to

block incoming light ("Japanese Industrial Standards Handbook 31 Fibers" (Exhibit Otsu 8)). Therefore, not having light-blocking capability means transmitting incoming light without blocking; i.e., having "translucency" in the meaning of (2) above.

According to the discussion above, it is reasonable to consider that it was common general technical knowledge on translucency of a woven fabric or a non-woven fabric at the time of filing the Present Application that a woven fabric or a non-woven fabric has translucency unless any special method to impart light-blocking capability to the woven fabric or the non-woven fabric is adopted.

(4) Based on the premise above, it will be discussed whether or not it can be deemed that the matter of the present cover body "having translucency" is a matter which is obvious from the present original description, etc.

According to (3) above, it can be deemed that a person ordinarily skilled in the art at the time of filing the Present Application would naturally understand that a woven fabric or a non-woven fabric has translucency unless any special method to impart light-blocking capability to the woven fabric or the non-woven fabric is adopted.

As mentioned in 1 above, in the present original description, etc., there is no explicit statement that the present cover body, which is constituted by a woven fabric or a non-woven fabric, has light-blocking capability or that any special method to impart light-blocking capability to the present cover body is adopted. On the contrary, in the present original description, etc., there is a statement that the present cover body has air permeability and water permeability ([0035]) and the statement that at least part of the surface of the present cover body is such that the materials which constitute the present cover body are exposed as is, and that a pigment layer and other layers which inhibit air permeability and water permeability are not formed ([0036]).

In view of these statements in the present original description, etc., it should be deemed that it is normal for a person ordinarily skilled in the art to understand that with regard to a woven fabric or a non-woven fabric which constitutes the present cover body, no special methods to impart light-blocking capability, such as using special production methods or special materials and applying special processing, are adopted.

Thus, it can be deemed that a person ordinarily skilled in the art who had read the present original description, etc. would naturally understand that the present cover body has translucency. Therefore, it should be deemed that the matter of the present

cover body "having translucency" is a matter which is obvious from the statement of the present original description, etc.

(5) According to the above, it can be deemed that the Present Amendment does not introduce a new technical matter in relation to technical matters which can be derived by integrating all the statements in the present original description, etc., and that the Present Amendment was made within the scope of the matters stated in the present original description, etc. Therefore, it can be acknowledged that the Present Amendment complies with the requirement under Article 17-2, paragraph (3) of the Patent Act.

3. Defendant's assertions

The Defendant makes various assertions that it cannot be deemed that the matter of the present cover body "having translucency" is a technical matter which can be derived by integrating all the statements in the present original description, etc. However, none of the Defendant's assertions can be accepted, for the following reasons.

(1) The Defendant asserts that in view of the technical significance of the Present Invention, a person ordinarily skilled in the art would not recognize "translucency" which is a technical matter concerning light having no relation to the technical significance of the Present Invention.

However, even if a technical matter concerning light is not included in the technical significance of the Present Invention, as discussed in 2(3) and 2(4) above, in view of the statements in the present original description, etc. and the common general technical knowledge at the time of filing the Present Application, it can be deemed that a person ordinarily skilled in the art who had read the present original description, etc. would naturally understand that the present cover body has translucency. Therefore, it cannot be deemed that a person ordinarily skilled in the art would not recognize "translucency."

(2) The Defendant asserts that it cannot be deemed that it is common general technical knowledge that fabrics which are not treated with various special methods have translucency, because whether or not a woven fabric or a non-woven fabric "has translucency" is not determined only by whether or not the fabric is treated with any special method, in view of the fact that it is possible to impart light-blocking capability by changing the structure of a woven fabric or the weight per unit area of a non-woven fabric, or by changing the material of a woven fabric.

However, as discussed in 2(3) above, it can be deemed that it was common general technical knowledge at the time of filing the Present Application that it is

necessary to adopt any special method in order to impart light-blocking capability to a woven fabric or a non-woven fabric and that a woven fabric or a non-woven fabric for which such any special method is not adopted does not have light-blocking capability. In addition, the special methods mentioned above include all methods to impart light-blocking capability and do not exclude various methods as pointed out by the Defendant, and since there is no statement in the present original description, etc. including those various methods, it can be deemed that a person ordinarily skilled in the art who had read the present original description, etc. would naturally understand that the present cover body has translucency. Therefore, it cannot be deemed that the Defendant's point is proper.

(3) With regard to the Plaintiff's assertion that a fabric which is not treated with various special methods has translucency, the Defendant asserts that the Plaintiff's assertion is based on the premise that as long as light simply passes through a fabric, the fabric is considered to "have translucency."

However, in view of the meaning of the term "translucency" as mentioned in 2(2) above, if a fabric has a property of transmitting even a little light and allowing the light to exit from another surface, it can be deemed that the fabric "has translucency." Therefore, it must be deemed that the Defendant's assertion is not proper.

(4) The Defendant asserts that since it can be normally understood that specifying the present cover body as "having translucency" is a limitation corresponding to any technical feature concerning translucency, the addition of such a specification is an addition of a new technical matter which is not stated in the present original description, etc. Further, the Defendant asserts that this addition substantially adds the configuration in which light reaches the heat-insulating surface of the base material, and that the Present Invention has obtained a new technical significance or a new working-effect corresponding to this configuration.

Certainly, according to the evidence (Exhibit Ko 5), it can be found that there is the statement in the present written opinion that, as the statement of a unique working-effect of the Present Invention, since the present cover body has translucency, light which is transmitted through the present cover body and irradiated to the heat-insulating surface causes titanium dioxide contained in the heat-insulating material to act as a photocatalyst, which produces a sufficient deodorizing effect and an effect of efficiently preventing the generation of odors.

However, in the present original description, etc., there is only the statement that "The pigment is titanium dioxide which reflects light and is white in color"

([0031]), and there is no statement on a photocatalytic action, a deodorizing effect, etc. of titanium dioxide (Exhibit Ko 1). Even in the description, the scope of claims, or the drawings after the subsequent several amendments, no statement was added concerning a photocatalytic action of titanium dioxide and its deodorizing effect due to this action (Exhibits Ko 4, Ko 14, and Ko 16).

Thus, each of the above-mentioned matters stated in the present written opinion are not stated at all in the description, etc. of the Present Invention. Therefore, it should be deemed that the Present Invention does not include any technical significance or any working-effect concerning these matters, and that even a person ordinarily skilled in the art who had read the description, etc. of the Present Invention would not understand that such technical significance or such working-effect exist in the Present Invention. It should be noted that there is no sufficient evidence to find that titanium dioxide in the Present Invention is not only utilized as a pigment, but also exhibits a photocatalytic action to produce a deodorizing effect and an effect of efficiently preventing the generation of odors.

According to the above, simply because the matter of "having translucency" was added to the present cover body, it should be deemed that the Present Amendment does not newly introduce the above-mentioned technical significance or the above-mentioned working-effect to the Present Invention.

(5) In addition to the above, the Defendant makes various assertions. However, it should be deemed that none of those Defendant's assertions affect the conclusion mentioned above.

4. Conclusion

According to the above, it was erroneous for the Present Decision to determine that the Present Amendment adds a new technical matter and thus violates Article 17-2, paragraph (3) of the Patent Act. Therefore, the reasons for rescission asserted by the Plaintiff are well founded.

For the foregoing reasons, the Plaintiff's claim is well founded and thus shall be affirmed. Therefore, the judgment is rendered as mentioned in the main text.

Intellectual Property High Court, Third Division

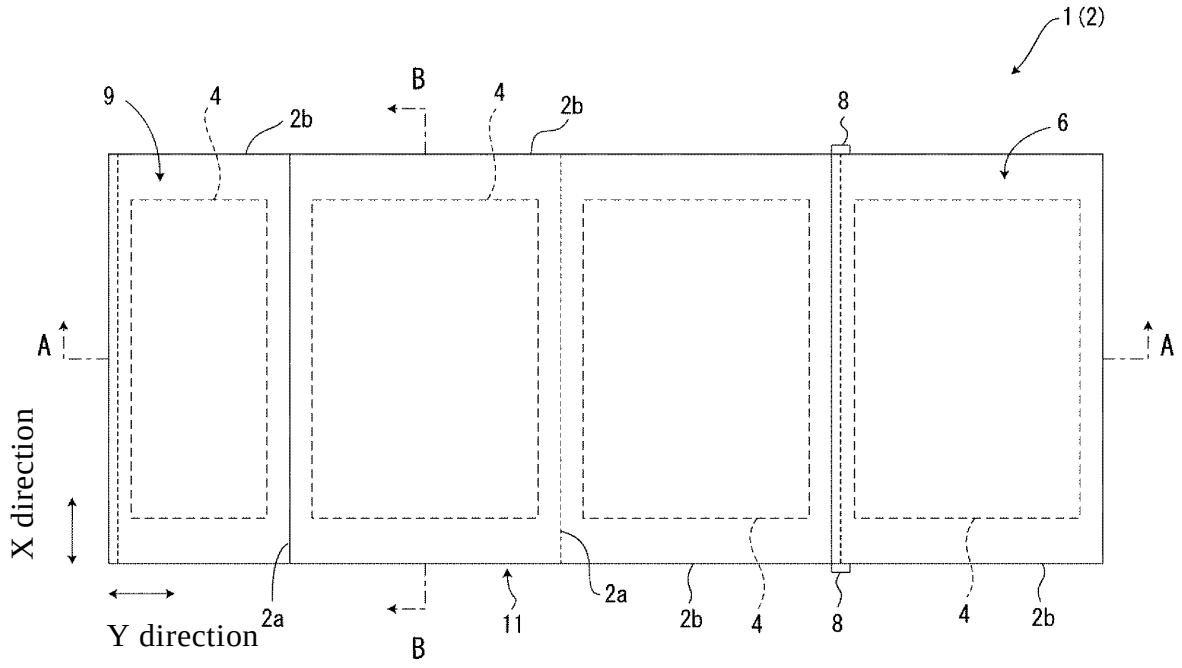
Presiding Judge TSURUOKA Toshihiko

Judge NAKADAIRA Ken

Judge TSUNO Michinori

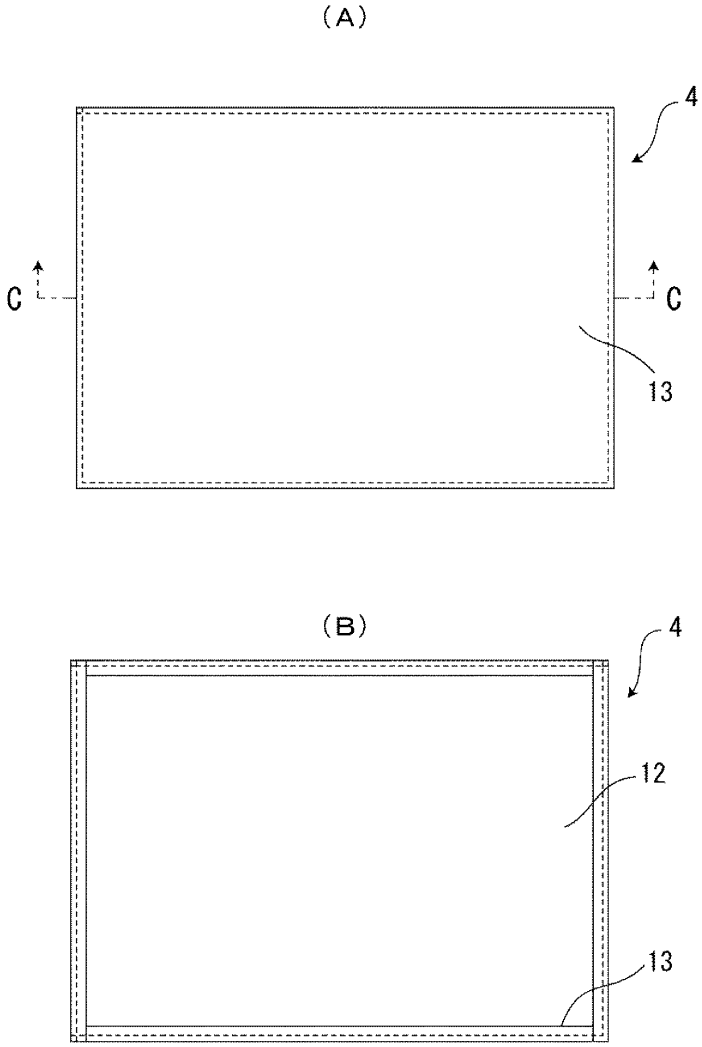
(Attachment)

[Figure 1]



(Attachment)

[Figure 4]



(Attachment)

[Figure 5]