

Patent Right	Date	December 3, 2020	Court	Intellectual Property High Court, Third Division
	Case number	2019 (Gyo-Ke) 10117		
- A case in which, in the decision on the opposition to the granted patent, the judgment by the Japan Patent Office which did not approve the request for correction since the correction related to the claim falls under addition of a new matter, was determined to be an error.				

Case type: Recission of Patent Revocation Decision

Result: Granted

References: Article 120-5, paragraph (9) and Article 126, paragraph (5) of the Patent Act

Related rights, etc.: Patent No. 6093811

Decision: Opposition No. 2017-700814

Summary of the Judgment

1. An opposition was made to the present patent of the invention titled "MECHANICAL PARKING APPARATUS, CONTROL METHOD OF MECHANICAL PARKING APPARATUS, AND METHOD OF PROVIDING SAFETY CHECK FUNCTION OF MECHANICAL PARKING APPARATUS". In the court procedures thereof, the Patentee made the present correction request for the scope of claims. The JPO did not approve the present correction request, by holding that the correction falls under addition of a new matter, and after examination of the claims before correction as a target, rendered the present decision that the patent shall be revoked, since the present patent invention lacks novelty/inventive step.

2. The judgment held as follows and judged that the judgment of the present decision that the present correction falls under addition of a new matter was an error.

(1) The reason why the present decision judged that the present correction falls under the addition of a new matter is that, in the present description and the like, a position where a user who makes a safety check (hereinafter, referred to as a "checker") checks safety in a getting on/off room and the like (hereinafter, referred to as a "safe check making position") and a safety check end input means located at the neighborhood thereof are supposed to be inside the getting on/off room in principle, and only when the checker makes a safety check by a camera and a monitor, it can be exceptionally located outside the getting on/off room; however, despite the above, in Claim 1 after the correction, the safety check making position and the safety check

end input means can be located outside the getting on/off room even if the checker visually makes a safety check (hereinafter, referred to as the "visual check configuration outside the getting on/off room"), which falls under the addition of a new matter in this point.

(2) Since Claim 1 after the correction does not specify whether the safety check making position or the position of the safety check end input means is inside or outside of the getting on/off room at all in the wording thereof, it is obvious that the visual check configuration outside the getting on/off room can also be included.

Thus, by examining the recitation in the present description and the like, it is sure that, in embodiments 1, 2, and 4 related to a case in which the checker visually makes a safety check, the safety check end input means is supposed to be provided in the getting on/off room, while only in embodiment 3 in which the checker makes a safety check by the camera and the monitor, it is described that the safety check end input means may be provided in plural number inside and outside of the getting on/off room, and there is no recitation on an embodiment on the premise of the visual check configuration outside the getting on/off room. However, since these are only recitations of the embodiments, generally speaking, they do not limit the structure of the invention to the structure described in the embodiment. In view of the entire present description and the like, too, there is no recitation from which it can be understood that the structure of the invention is limited to the structure described in embodiments 1 to 4.

On the other hand, from a viewpoint of the object/meaning of the invention, the object/meaning of the invention that the safety check should be made more reliably could be achieved only if the safety check making position and the safety check end input means are at positions where the safety in the getting on/off room and the like can be checked, and there is no reason why the position should be limited to inside or outside the getting on/off room.

(3) Therefore, it is not considered that inclusion of the visual check configuration outside the getting on/off room in Claim 1 after the correction falls under the addition of a new matter.