judgedate:
December 7, 1962

caseid:
1961 (O) 464

casename:
A case of seeking rescission of the JPO decision

casetitle:
Judgment relating to necessity of giving consideration to the technical level at the time of filing of the patent application in the lawsuit against the JPO decision confirming the scope of the patent right

summary judge:
In the lawsuit against the JPO decision confirming the scope of the patent right, in determining the scope of the patent right, the technical level at the time of filing should also be considered.

court second:
Tokyo High Court, Judgment of January 31, 1961

references:
Article 84 of the Old Patent Act (Act No. 96 of 1921), Article 128-2 of the Old Patent Act (Act No. 96 of 1921)

Main text

The present final appeal shall be dismissed.

Appellant shall bear the cost of the final appeal.

Reasons

The reasons for the final appeal by the attorneys of the final appeal, ●●●●, ●●●●, ●●●●, D, and E are as described in the attached document.

First point of the reasons for the final appeal

The gist is that, regarding the summary of the present Patent No. 124514, the judgment in prior instance that excluded the forward-and-backward motion in relational movement between the axle and the vehicle body and moreover held that there was a causal relation between a difference in the radiuses of the two arc surfaces and an idling relation ignores the laws of physics and is unlawful.

However, regarding the derailment preventing device of Appellant's patent, it is understood that the judgment in prior instance does not assert that the axle and the vehicle body do not move forward or backward, but only holds that, in view of the recitation in the description of the present patent and the like, the invention of the aforementioned patent was not made for the purpose of particularly allowing the forward-and-backward motion, and this point should not be taken up as the summary of the present patent invention. The aforementioned holding is sufficiently acceptable. Moreover, regarding the relationship between the idling hole of the vehicle body support base and the arc surface of the axle, as described also in the judgment in prior instance, the "detailed description of the invention" in the present patent description describes that "... by crimping the large-diameter arc surface on the upper part of the idling hole (5) onto the arc-shaped seat surface with a small diameter on the axle side, the relational movement gap between the axle (2) and the support base is sufficiently made to remain over to the lower part from both the right and left sides of the axle...", and there are no reasons that it should be considered to be unlawful as in the statement that the judgment in prior instance understood that the two have causal relations. The gist has no grounds.

The second point of the same

The gist states that the differences between the present invention and the re-corrected drawing (A) are only two points; that is, the sizes of the contact between the arc surfaces with different diameters and whether the gap between the two sides is sufficient or not, and it is not the problem of a technical idea or the working effect but is only a design problem. However, according to the explanation of the judgment in

prior instance, the present patent is to prevent derailment by providing a sufficient gap between the axle and the idling hole of the vehicle body support base, while in the re-corrected drawing (A), the left and right gaps remain to the limit allowing vertical movement of the axle, and the derailment is to be prevented by allowing the vertical movement, and from the aforementioned re-corrected drawing (A), it can be understood that the present patent invention is based on another device. The purpose of the judgment in prior instance can be sufficiently accepted, and there is no unlawfulness in the judgment in prior instance as asserted in the statement.

The third point of the same

The gist blamed understanding of the judgment in prior instance that the "sufficient idling gap" in the present patent description has the meaning of the "idling gap with a considerable size". But as in the statement, there is no problem in understanding that the aforementioned gap has the meaning of the "considerable size" to such a degree that could make the relational movement between the vehicle body and the axle smooth and easy, and it cannot be understood that the judgment in prior instance has an intention to deny Appellant's assertion particularly on the point in the statement. The meaning of the judgment in prior instance is stated in comparison with the re-corrected drawing (A), and the right and left gaps in the re-corrected drawing (A) are smaller than in the case of the present patent and thus, in the case of the re-corrected drawing (A), it is not considered to prevent derailment by making the right and left movement easy and smooth.

The gist seems to assert that, with the right and left gaps as in the re-corrected drawing (A), derailment cannot be prevented, but it cannot be understood from this fact, to the contrary, that the right and left gaps in the re-corrected drawing (A) are the gaps required for derailment prevention.

The gist also asserts that whether the matter belonging to the scope of claims is publicly known or not is the problem that should be determined in a trial for patent invalidation by invoking the court precedent of the Daishin-in (Predecessor of the Supreme Court of Japan) and whether the matter belonging to the scope of the right is publicly known or not does not have to be defined in this case, and blames the judgment in prior instance for finalizing the scope of rights of the present patent by the publicly known matters at the time of 1929.

Of course, unlike the trial for patent invalidation, effective establishment of the patent right is premised in the trial for confirmation of the scope of right and thus, in a lawsuit against the trial decision, too, whether the contents of the patent are publicly known or not cannot be argued. However, when considering what invention is

granted a patent right, the technical level at that time has to be considered, because a portion which was publicly known at that time cannot be considered to be a novel invention since the patent right is granted to a novel industrial invention. In the case of the present case, too, according to the finding in the judgment in prior instance, to insert the axle into the idling hole of the vehicle body so as to prevent derailment without fixing the vehicle body and the axle as a derailment preventing device of a coal wagon or the like was asserted to be publicly known at the time of application of the present patent. Then, it should be understood that the present patent was granted to its unique structure as stated in the judgment in prior instance, and since the re-corrected drawing (A) is different from the present patent in the point as in the holding in prior instance, it is reasonable that the judgment in prior instance held that the aforementioned re-corrected drawing (A) does not belong to the scope of the present patent right, and the judgment in prior instance has no unlawfulness as in the statement.

Therefore, pursuant to Articles 401, 95, and 89 of the Code of Civil Procedure, the judgment shall be rendered as in the main test unanimously by all the judges.

Supreme Court, Second Petty Bench
Presiding Judge: IKEDA Katsu
Judge: KAWAMURA Daisuke
Judge: OKUNO Kenichi
Judge: YAMADA Sakunosuke
Judge: KUSAKA Asanosuke