

judgedate:

January 24, 1980

caseid:

1979 (Gyo-Tsu) 2

casename:

A case of seeking rescission of the JPO decision

casetitle:

Judgment relating to allowance/denial of finding of the common general technical knowledge of a person ordinarily skilled in the art at the time of filing of the utility model registration on the basis of material not appearing in the procedure of the trial in order to clarify the meaning of the device described in the publication heard/determined in the procedure of the trial in the lawsuit against trial decision made by the JPO for invalidation of the utility model registration

summary judge:

In the lawsuit against trial decision for invalidation of the utility model registration, in order to clarify the meaning of the device described in the publication heard/determined in the procedure of the trial, finding of the common general technical knowledge of a person ordinarily skilled in the art at the time of filing of the utility model registration on the basis of material not appearing in the procedure of the trial is allowed.

court second:

Tokyo High Court, Judgment of September 28, 1978

references:

Article 3 of the Utility Model Act, Article 37, paragraph (1), item (i) of the Utility Model Act, Article 47 of the Utility Model Act

Main text

The present final appeal shall be dismissed.
Appellant shall bear the cost of the final appeal.

Reasons

The reasons of the final appeal by the attorneys of the final appeal, ●●●● and ●●●●

In the lawsuit against trial decision for invalidation of the utility model registration, determination on lawfulness/unlawfulness of the decision by finding presence of an invalidation cause in comparison with a device described in a publication not heard/determined in the procedure of the trial is not allowed, and this is the purpose of the court precedent of this court (see Supreme Court 1967 (Gyo-Tsu) 28 Judgment of the Grand Bench on March 10, 1976/Minshu vol. 30, No. 2, page 79). However, in determining lawfulness/unlawfulness of the decision by finding the presence of the invalidation cause in comparison with a device described in a publication heard/determined in the procedure of the trial, even if the common general technical knowledge at the time of filing of the application of the utility model registration of a person having ordinary knowledge in the technical field to which the aforementioned device belongs (hereinafter, referred to as a "person ordinarily skilled in the art") is found on the basis of the material not appearing in the procedure of the trial, and the presence of the invalidation cause is found thereby after clarifying the meaning of the device, that cannot be considered to be determination on lawfulness/unlawfulness of the decision by finding the presence of the invalidation cause in comparison with the device described in the publication not heard/determined in the procedure of the trial.

When considering the above for this case, it is obvious in view of the judgment in prior instance that the court of prior instance found the common general technical knowledge of a person ordinarily skilled in the art at the time of filing of the aforementioned utility model registration by Exhibit Otsu 1-2 in the statement, whereby the present device was found to disclose the art of sealed packaging in the present device in the third cited example heard/determined in the procedures of the trial, and supported the determination in the decision that the present device could have been conceived of extremely easily from the first to third cited examples and thus, there is no unlawfulness in the statement in the judgment in prior instance, and the gist cannot be employed.

Therefore, the judgment shall be rendered as in the main text unanimously by all

the judges pursuant to Article 7 of the Administrative Case Litigation Act and Articles 401, 95, and 89 of the Code of Civil Procedure.

Supreme Court, First Petty Bench

Presiding judge: MOTOYAMA Toru

Judge: DANDO Shigemitsu

Judge: FUJISAKI Masato

Judge: TODA Hiromu

Judge: NAKAMURA Jiro