

Patent Right	Date	February 25, 2021	Court	Intellectual Property High Court, Second Division
	Case number	2020 (Gyo-Ke) 10058		
<p>- A case in which the court rescinded a JPO trial decision that maintained a patent against a request for trial for patent invalidation concerning the patent for an invention titled "Frame structure of bed, etc." on the grounds that there is an error in judgment of inventive step.</p>				

Case type: Rescission of Trial Decision to Maintain

Results: Rescission

References: Article 29, paragraph (1) and paragraph (2) of the Patent Act

Related rights, etc.: Patent No. 3024698

### Summary of the Judgment

1. This case is a lawsuit seeking rescission of a trial decision made by the JPO in which the patent for an invention titled "Frame structure of bed, etc." was invalidated. The issue of the case is whether the invention in question involves novelty and an inventive step.

2. In this judgment, the court held as outlined below and rescinded the JPO decision that found the novelty and inventive step.

#### (1) Outline of the Invention

A. The "frame" as used in the Invention is acceptable as long as it is a component different from the floorboard and it includes the one combined with the floor material as one unit.

B. The expressions as used in the Invention "part of the frame is designed to be replaceable with a frame for replacement of a different length" and "the frame on the leg side is designed ...to be replaceable with a frame with different dimensions and specifications" mean that "part of the frame is designed to be replaceable with a frame for replacement whose length is different from that of the original frame" and do not include adding another frame to the original frame.

C. The expressions as used in the Invention "to respond to a user's physical size" and "by responding to a user's physical size" mean making the frame respond to a user's body height. The purpose of the expressions is to limit the structure where part of the frame of the bed, etc. can be replaced with a frame of a different length.

#### (2) Existence of novelty

A. Comparison between Invention 1 and the invention related to an operating table,

"Maquet 1120.21B" (Product 1), sold by Hansen Maquet Kabushiki Kaisha (hereinafter referred to as "Maquet") (Product 1 Invention (iii))

It is not obvious whether the purpose of "comprises part of the frame to be replaceable with a frame for replacement of a different length" is to "make the frame correspond to a user's physical size." Therefore, Invention 1 is not identical to Product 1 Invention (iii).

#### B. Comparison between Invention 2 and Product 1 Invention (iii)

Concerning Product 1 Invention (iii), it is not obvious whether "the frame on the leg side is designed ...to be replaceable with a frame of different dimensions or specifications" has the purpose "to respond to a user's physical size" and therefore Invention 2 and Product 1 Invention (iii) are not identical.

#### (3) Existence of an inventive step

##### A. Difference

##### (A) Difference between Invention 1 and Product 1 Invention (iii) (Difference 1)

In Invention 1, the purpose of "a frame supporting the floorboard is designed to be replaceable with a frame for replacement of a different length" is "to respond to a user's physical size"; however, in Product 1 Invention (iii), this point is not clear.

##### (B) Difference between Invention 2 and Product 1 Invention (iii) (Difference 2)

The purpose of Invention 2, " the frame on the leg side is designed ...to be replaceable with a frame of different dimensions or specifications" is "to respond to a user's physical size"; however, this point is not clear in Product 1 Invention (iii).

#### B. Judgment concerning Difference 1 and Difference 2

##### (A) Well-known art

It is found that when the application for the Patent was filed, there was a need for an operating table with a tabletop having a length suited to a patient's body height and medical institutions requested an operating table for which the tabletop length could be adjusted; that in order to respond to such request, operating tables with various sized components that could be combined to adjust the tabletop length as needed were sold; and that in pediatric surgery, operating tables whose tabletop length could be adjusted had become common to an extent.

##### (B) Embodiment of Product 1 Invention (iii)

As the embodiment of Product 1 Invention (iii), some cases are found where a headboard was added at the edge of the backboard on the leg side to respond to a patient's body height even though it is not a "replacement."

##### (C) The ease of conceiving of the invention

In Product 1 Invention (iii), it is possible to create a table top by selecting a

combination in the order from the head side of patients out of [i] combination of backboard, seating board, and leg board, [ii] combination of backboard (short type), seating board, and back board, and [iii] combination of backboard (short type), seating board, and leg board, as necessary; or selecting a combination out of [iv] combination of various headboards, backboards, seating boards, and leg boards, [v] combination of various headboards, backboards (short type), seating boards, and backboards, and [vi] various headboards, backboards (short type), seating boards, and leg boards, as necessary, and it is also possible to change the aforementioned combination [i] to the aforementioned combination [ii] or to change the aforementioned combination [ii] to the aforementioned combination [iii], or to change the aforementioned combination [iv] to the aforementioned combination [v] or to change the aforementioned combination [v] to the aforementioned combination [vi]. Brochures and manuals, Exhibits Ko 1, 2, 4, and 5, have no statement to prohibit or recommend these combinations. Rather, Exhibit Ko 2 has statements that "Maquet Operating Table System 1120 is designed in the module method" (page 2) and "is a very flexible module method-based operating table system that has been adopted globally."

As mentioned in (B) above, Product 1 was used by adding a headboard to the end of the backboard on the leg side for a tall patient, and it is found that a person skilled in the art who knew the fact that there was a request for adjusting a tabletop of an operating table in accordance with a patient's body height and that various components had been combined for responding to such request, as mentioned in (A) above, could have easily conceived of the idea of replacing various modules in Product 1 Invention (iii) to adjust an operating table in accordance with a patient's body height.