Patent Right	Date	March 11, 2021	Court	Intellectual Property High Court, Second Division
	Case number	2020 (Gyo-Ke) 10075		
- A case in which the court rescinded the JPO decision on opposition that revoked the patent concerning the patent right related to the invention titled "Package and manufacturing method of the package" (Patent No. 6436439) on the grounds that no inventive step is found.				

Case type: Rescission of Patent Revocation Decision
Results: Granted
References: Article 29, paragraph (2) of the Patent Act
Related rights, etc.: Patent No. 6436439
Decision of JPO: Opposition No. 2019-700452

Summary of the Judgment

1. Difference 1
(1) Difference 1 is as stated below.

In Invention 2, "the aforementioned non-heat-shrinkable film is a laminated heat-sealing layer over polyester film, with a thickness of 8μm or more and 30μm or less, a shrinkage ratio in the longitudinal direction of 5% or less and a shrinkage ratio in the lateral direction of 4% or less when having the film shrunk by hot air at 150°C for 30 minutes," while in the invention indicated in Exhibit Ko 1 (Unexamined Patent Application Publication No. 2001-10663) (hereinafter the invention is referred to as "Exhibit Ko 1 Invention"), non-heat-shrinkable film is not specified concretely.

(2) According to the statement in Exhibit Ko 1, in Exhibit Ko 1 Invention, it is found that a person skilled in the art could have designed, as necessary, a non-heat-shrinkable film "with a thickness of 8μm or more and 30μm or less, a shrinkage ratio in the longitudinal direction of 5% or lower and a shrinkage ratio in the lateral direction of 4% or lower when the film is shrunk by hot air at 150°C for 30 minutes."

(3) In Exhibit Ko 1, polyester, polypropylene, and polyamide are indicated as non-heat-shrinkable films. Therefore, a person skilled in the art could easily conceive of using polyester film as a non-heat-shrinkable film in Exhibit Ko 1 Invention.

(4) A. In Exhibit Ko 2 (microfilm in Utility Model Application No. 1983-71513 (Unexamined Utility Model Application Publication No. 1984-176074)), it is indicated that when polypropylene is used as a heat-shrinkable synthetic resin film and polypropylene is used for the parts of non-heat-shrinkable resin film that come into

contact with the heat-shrinkable synthetic resin film, since both parts are of the same material, polypropylene, they preferably bond by thermal compression. Therefore, Exhibit Ko 1 discloses the idea to provide a layer for thermal compression bonding, which is a heat-sealing layer, on the side of non-heat-shrinkable film that comes into contact with the heat-shrinkable film in order to bond the heat-shrinkable film and the non-heat-shrinkable film.

B. Exhibit Otsu 1 (Unexamined Patent Application Publication No. 2010-100331) discloses that "one of the edges of the first film roll for a belt, on which adhesive to seal different kinds of film rolls is applied at points in specified intervals, and the line on the second film roll for a belt that extends along its center line, are sealed by heat at points in specified intervals" and it is found that adhesive is layered although it is applied in specified intervals and that adhesive is applied in the form of a line possessing width. Therefore, it is found that Exhibit Otsu 1 discloses the idea to provide a heat-sealing layer between two films in order to bond the heat-shrinkable film and the non-heat-shrinkable film.

C. According to the aforementioned statements in Exhibit Ko 2 and Exhibit Otsu 1, it is found that providing a laminated heat-sealing layer between two films in order to bond a heat-shrinkable synthetic resin film and a non-heat-shrinkable film had been well-known art as of the time before the application for the Patent was filed and it is found that the determination concerning which of two films should be provided with the heat-sealing layer was only a choice between two alternatives. Based on these facts, a person skilled in the art could have easily conceived of providing a heat-sealing layer on the non-heat-shrinkable film.

(5) Consequently, a person skilled in the art could have easily invented Difference 1 based on Exhibit Ko 1 Invention.

2. Difference 2

(1) Difference 2 is as stated below.

In Invention 2, the heat-shrinkable film is a "heat-shrinkable polyester film" and "it contains 50mol% or more of an ethylene terephthalate unit and 10mol% or more in total of a unit derived from polyhydric alcohol other than ethylene glycol and a unit derived from polyvalent carboxylic acid other than terephthalic acid, when deeming the entire component unit of polyester as 100mol%; it consists of a polyester resin containing neopentyl glycol and/or 1,4-Cyclohexanedimethanol as a monomer that can be a non-crystalline component; the heat-shrinkage ratio in the longitudinal direction is 10% or more and 60% or less and the heat-shrinkage ratio in the lateral direction is less than 30% when it is shrunk by heat in hot water at 90^{o}C for 10 seconds." On the other hand,

in Exhibit Ko 1 Invention, the heat-shrinkage ratio is 50% (in hot water at 90°C for 10 seconds), but is not specified in concrete terms in that way.

(2) Both Exhibit Ko 1 Invention and the matters indicated in Exhibit Ko 3 (Unexamined Patent Application Publication No. 2009-143605) are found to belong to the technology field of lunch box packages.

However, the problems to be solved by Exhibit Ko 1 Invention concerning lunch box packages using heat-shrinkable tubes are prevention of the deformation of containers and distortion of tubes when packing, without implementing complicated heat-shrinkage control and prevention of the deformation of lunch box containers when re-heating them in stores using a microwave. On the other hand, the problems in the invention indicated in Exhibit Ko 3 concerning a heat-shrinkable film that forms a label are to make the heat-shrinkable film have good shrinkage property in the longitudinal direction: which is the main shrinkage direction, high mechanical strength in the lateral direction that is at a right angle to the main shrinkage direction, good shrinkage finish when it is shrunk by heat after wrapping around a bottle directly from a film roll, and good workability in post-processing, as well as good tearing properties.

In order to solve the aforementioned problems, in Exhibit Ko 1 Invention, tube (20) is formed with non-heat-shrinkable film (21) and heat-shrinkable film (22); heat-shrinkable film (22) is a roll with the width in the circumferential direction being 1/2 or less of total perimeter of the tube; and tube (20) shrinks to the length of the perimeter that is almost equivalent to the outer perimeter of the lunch box container as a result of heat-shrinkage of heat-shrinkable film (22) and is fastened to the lunch box container. On the other hand, in the case of the heat-shrinkable film in the invention indicated in Exhibit Ko 3, "in a packaging bag, it is a heat-shrinkable polyester film containing 60mol% or more of an ethylene terephthalate unit and 15mol% or more in total of a unit derived from polyhydric alcohol other than ethylene glycol and a unit derived from polyvalent carboxylic acid other than terephthalic acid, when deeming the entire component unit of polyester as 100mol% as a heat-shrinkage film; and it (consists of) a polyester resin containing neopentyl glycol and/or 1,4-Cyclohexanedimethanol as a monomer that can be a non-crystalline component." Thus, figures are specified.

According to the above, Exhibit Ko 1 Invention and the invention indicated in Exhibit Ko 3 have little commonality both in terms of the problem and the means to solve the problem. Therefore, it is not found that there is a motivation to apply the matters indicated in Exhibit Ko 3 to Exhibit Ko 1 Invention.

Therefore, it cannot be said that a person skilled in the art could have easily conceived of the structure of Invention 2 related to Difference 2 based on Exhibit Ko 1

Invention and the matters indicated in Exhibit Ko 3.

3. Difference 3

(1) Difference 3 is as stated below.

Concerning a cyclic film, in Invention 2, "both ends of the aforementioned heat-shrinkable polyester film and the aforementioned non-heat-shrinkable film are bonded on both sides of the container with a cover"; on the other hand, in Exhibit Ko 1 Invention, both ends of the heat-shrinkable film and the non-heat-shrinkable film are bonded to each other by heat, but it is unknown whether they are bonded on both sides of the lunch box container.

(2) Exhibit Ko 1 indicated that "Figure 2 indicates conditions where tube (20) is fitted onto the lunch box (10) to which it is to be attached. Figure 2 is an example where tube (20) is fitted onto the lunch box in a manner where heat-shrinkable film (22) is positioned on the bottom side of the lunch box container; however, the tube may be placed towards the side of the container or a location from the bottom to the side of the container, not limited to the aforementioned manner." Therefore, in Exhibit Ko 1 Invention, a person skilled in the art could have made both ends of heat-shrinkable film (22) and both ends of non-heat-shrinkable film (21) bonded on both sides of the lunch box container by placing heat-shrinkable film (22) to cover the bottom to the side, as necessary.

Therefore, a person skilled in the art could have easily conceived of the structure of Invention 2 related to Difference 3 in Exhibit Ko 1 Invention.