

Date	September 28, 2016	Court	Intellectual Property High Court, Fourth Division
Case number	2015 (Gyo-Ke) 10260		
<p>– A case in which the court ruled that it should be considered to be in line with the purpose of Article 167 of the Patent Act to interpret the request for the trial in question, for which the primarily cited document is the same as that in the final and binding JPO decision on the previous case, many secondarily cited documents are also the same as those in said JPO decision, and only some evidence was added, as being on the basis of the "same facts and evidence" as those in said JPO decision.</p>			

References: Article 167, Article 36, paragraph (6), item (i), and Article 29, paragraph (2) of the Patent Act

Numbers of related rights, etc.: Patent No. 4008302 (Invention), Publication of Unexamined Patent Application No. 1997-144398 (Primarily Cited Document), Invalidation Trial No. 2015-800069 (JPO Decision), Invalidation Trial No. 2010-800013 (Previous JPO Decision), 2012 (Gyo-Ke) 10339 (Previous Judgment)

Summary of the Judgment

1. Regarding a request for a trial for patent invalidation in relation to the Invention titled "rotary disc tumbler lock and key," the JPO determined as follows in the JPO Decision: [i] The patent for the Invention (the "Patent") cannot be considered to be one granted for a patent application that does not fulfill the requirements provided in Article 36, paragraph (6), item (i) of the Patent Act; [ii] The Invention cannot be considered to be one which a person ordinarily skilled in the art could have easily made based on the invention stated in the Primarily Cited Document (hereinafter referred to as the "Cited Invention") and the inventions stated in other cited documents or well-known art.

2. In this judgment, the court determined as follows: [i] There is no ground for the plaintiff's allegation that the JPO Decision contains an error in its determination concerning the fulfillment of the support requirements; [ii] The plaintiff's allegation that the Invention can be easily arrived at by a person ordinarily skilled in the art based on the Primarily Cited Document falls under Article 167 of the Patent Act as mentioned below and is unacceptable. For confirmation, regarding the plaintiff's allegation [ii], the court also showed its determination that the Invention is not one that can be easily arrived at by a person ordinarily skilled in the art based on the Cited Invention.

(1) Developments in procedures, etc.

On January 20, 2010, the plaintiff filed a request for a trial for patent invalidation

in relation to the inventions claimed in Claims 1 to 3 in the scope of claims of the Patent, including the Invention. However, the JPO rendered a decision that dismissed the request (Previous JPO Decision) on August 21, 2012.

In the Previous JPO Decision, the JPO found the Cited Invention, which is the same as the Cited Invention found in the JPO Decision, based on the Primarily Cited Document that is the same as that in the JPO Decision, and also found common features and differences between the Invention and the Cited Invention in the same way as in the JPO Decision. In addition, regarding Difference 3, the JPO determined that a person ordinarily skilled in the art could not have easily arrived at Difference 3 based on Exhibits Ko 2 and 6 to 18 and Cited Documents 15 to 24 stated in the Previous JPO Decision.

The plaintiff instituted an action to seek rescission of the Previous JPO Decision, but the Intellectual Property High Court rendered a judgment that dismissed the plaintiff's claim (Previous Judgment) on May 23, 2013, and said judgment became final and binding. Hereby, the Previous JPO Decision also became final and binding.

(2) Regarding Article 167 of the Patent Act

A. Article 167 of the Patent Act provides that when a JPO decision in a trial for patent invalidation becomes final and binding, neither the parties nor intervenors may file a request for a trial on the basis of the same facts and evidence. The purpose of said Article is considered to have the effect of prohibition of double jeopardy on the parties and intervenors in order to promote one-time dispute resolution in a trial for patent invalidation so that there will be neither the situation where multiple different determinations are made in relation to the validity of a patent right, which is an exclusive right, (Article 68 of the Patent Act) nor resurrection of a dispute.

The parties and intervenors in the previous trial for patent invalidation made allegations and submitted evidence in relation to the existence of grounds for invalidation in the procedures of said trial and were also given an opportunity to make allegations and submit evidence in relation to the existence of grounds for rescission of the JPO decision on the previous trial for patent invalidation in legal proceedings if an action to seek rescission of said JPO decision is instituted. Therefore, it is not reasonable to understand the "same facts and evidence" in a narrow sense, from the perspective of preventing the resurrection of a dispute.

B. In this regard, in Article 167 of the Patent Act prior to amendment by Act No. 63 of 2011, the scope to which the double jeopardy prohibition effect extends was provided as "anyone," and the provisions of said Article also restricted the right to file a request for a trial of third parties who have not participated at all in the previous trial.

Therefore, it can be said that regarding third parties, it was problematic to interpret the meaning of the "same facts and evidence" in an expansive manner. However, the third-party effect was abolished through the aforementioned amendment, and the scope to which the double jeopardy prohibition effect extends was limited to the parties and intervenors who have participated in the procedures of the previous trial and could do their best for allegation and proof. Therefore, it is reasonable to interpret the meaning of the "same facts and evidence" with more emphasis on the purpose, i.e., promoting one-time dispute resolution in a trial for patent invalidation, as mentioned in A. above. C. In the trial in question (the "Trial"), the plaintiff alleged that the Invention is one that a person ordinarily skilled in the art could have easily made based on the invention stated in the Primarily Cited Document and the inventions stated in Exhibits Ko 1, 4 to 11, and 13 to 18 or well-known art.

However, as mentioned in (1) above, the same Primarily Cited Document was also used in the final and binding Previous JPO Decision, and Exhibits Ko 6 to 18 were also cited therein as the secondarily cited documents.

Therefore, the aforementioned allegation of the plaintiff in the Trial is an allegation that the Invention could have been easily arrived at by a person ordinarily skilled in the art, which is based on the same Primarily Cited Document as that in the final and binding Previous JPO Decision. The evidence other than the Primarily Cited Document is also nothing more than the result of addition of Exhibits Ko 1, 4 and 5 in addition to Exhibits Ko 6 to 18, which were cited as the secondarily cited documents in the Previous JPO Decision, as mentioned above.

It should be considered to be in line with the purpose of Article 167 of the Patent Act as mentioned in A. above to interpret the request for the Trial, for which the Primarily Cited Document is the same as that in the final and binding Previous JPO Decision, many secondarily cited documents are also the same as those in the Previous JPO Decision, and only some evidence was added, as being on the basis of the "same facts and evidence" as those in the Previous JPO Decision.

On these bases, the aforementioned allegation of the plaintiff in the Trial is on the basis of the "same facts and evidence" as those in the final and binding Previous JPO Decision. Therefore, it falls under Article 167 of the Patent Act and is thus unacceptable.

Judgment rendered on September 28, 2016, Original received on the same day, Court clerk

2015 (Gyo-Ke) 10260 The case of seeking rescission of JPO decision

Date of conclusion of oral argument September 14, 2016

Judgment

Plaintiff GOTOH MFG.CO., LTD

Defendant MIWA LOCK CO., LTD.

Main text

1 The plaintiff's claim shall be dismissed.

2 The plaintiff shall bear the court costs.

Facts and reasons

I. Claim

The trial decision rendered by the Japan Patent Office on November 25, 2015 with regard to Invalidation Trial No. 2015-800069 shall be rescinded.

II. Outline of the case

1. Developments in procedures, etc. at the JPO

(1) The defendant filed a patent application of the Invention titled "rotary disc tumbler lock and key" on August 5, 2002 (Priority Date: October 15, 2001, Japan) and the establishment was registered on September 7, 2007 (Patent No. 4008302. The number of claims: 3. Exhibit Ko 23. Hereinafter this patent is referred to as the "Patent.")

(2) The plaintiff made a request for a trial for patent invalidation of each of the inventions according to claims 1 to 3 in the scope of claims of the Patent on January 20, 2010, and the Japan Patent Office examined this case as Invalidation Trial No. 2010-800013 (Exhibit Ko 24; hereinafter referred to as the "Previous Trial").

(3) The defendant made a request for a trial for correction on October 27, 2011, and the Japan Patent Office examined this case as Correction No. 2011-390118. The Japan Patent Office rendered a trial decision on December 20, 2011 that the correction shall be approved, and the trial decision has become final and binding (hereinafter referred to as the "correction" Exhibit Ko 24).

(4) The Japan Patent Office rendered the trial decision dismissing the request (hereinafter referred to as the "Previous JPO decision".) on August 21, 2012 with regard to the Previous Trial.

The plaintiff filed a suit against the Previous JPO decision (2012 (Gyo-Ke) 10339).

The Intellectual Property High Court made the judgment dismissing the demand (Exhibit Otsu 2. Hereinafter referred to as the "Previous Judgment") on May 23, 2013, and the judgment has become final and binding.

(5) The plaintiff made a request for a trial for patent invalidation (hereinafter referred to as the "Trial") on the Invention according to claim 2 in the scope of claims of the Patent on March 20, 2015.

(6) The Japan Patent Office examined the aforementioned request for a trial as Invalidation No. 2015-800069, rendered a trial decision (hereinafter referred to as the "JPO decision") described in the attached written decision (copy) stating "the request for a trial of the case was groundless" on November 25, 2015 and a certified copy was delivered to the plaintiff on December 3, 2015.

(7) The plaintiff filed the suit against of the JPO decision on December 28, 2015.

2. Description of scope of claims

The description in claim 2 in the scope of claims after the correction is as follows (Exhibit Ko 24). Hereinafter the Invention described in this claim is referred to as the "Invention" and the description (Exhibits Ko 23, 24) as the "Description."

[Claim 2]

A key for a rotary disc tumbler lock which is a duplicate key of a rotary disc tumbler lock, comprising: an outer cylinder in which a cam groove having a cross sectional shape of a substantially V-shape is formed along a generatrix on an inner peripheral surface; an inner cylinder rotatably fitted with this outer cylinder, having a plurality of partition plates laminated in a center axis direction provided with a gap between them, and having a key hole penetrating along the center axis; and a locking bar extended along the generatrix of this inner cylinder, guided movably in a radial direction on an outer peripheral portion of the inner cylinder, and urged to a direction where an outer-side edge to be engaged with the cam groove protrudes outward, wherein, in a duplicate key of the rotary disc tumbler lock, an annular rotary disc tumbler in which a key insertion hole 26 having a size that can surround the key hole formed point-symmetrically with respect to the center axis of the inner cylinder at a center part is inserted in each of slots between the partition plates, one spot of a body portion thereof is pivotally supported, capable of swinging, by a support shaft penetrating the inner cylinder in an axial direction, an unlock notch is formed in a free end portion outer-side end edge which is the body portion of the rotary disc tumbler facing the support shaft with the key insertion hole between them and forming a part of an arc, while an engagement projection interfering with a flat plane portion in a blade of the

duplicate key which is reversible with a movement locus of a distal end inserted into the key hole is integrally projected on an opening end edge of the key insertion hole, each of the rotary disc tumblers is urged to a direction where this engagement projection gets closer to the duplicate key, the inner cylinder is locked by a backup pin penetrating in the axial direction at normal times, while when each of the engagement projections of a group of these tumblers is engaged with a corresponding dent formed in the blade of the duplicate key inserted into the key hole, the unlock notch of each of the rotary disc tumblers is aligned with an inner-side edge of the locking bar, in the flat plane portion of the blade aligned with the distal end of the engagement projection having the constant projected amount of the rotary disc tumbler when being inserted into the key hole, a mortar-shaped dent having a bottom and a plurality of types of sizes and depths is formed and configured such that the unlock notch of each rotary disc tumbler is aligned with the inner-side edge of the locking bar by the tumbler group having a swing angle changed in accordance with the depth of the mortar-shaped dent and a position in a width direction of the blade when the dent is engaged with the corresponding engagement projection, whereby when the inner cylinder is rotated integrally with the duplicate key (note by the judgment: as it is), the locking bar is moved in an inner-cylinder center axis direction by a wedge action generated between the cam groove and the locking bar so that the inner cylinder can be relatively rotationally moved with respect to the outer cylinder.

3 Summary of reasons for the JPO decision

(1) The reasons for the JPO decision are as described in the attached written decision (copy). In brief, [i] The patent for the Invention cannot be considered to be one granted for a patent application that does not fulfill the requirements provided in Article 36, paragraph (6), item (i) of the Patent Act; [ii] The Invention cannot be considered to be one which a person ordinarily skilled in the art could have easily made on the basis of the invention described in the Cited Document A below (hereinafter referred to as the "Cited Invention") and the inventions described in B to P below or well-known arts.

A. Cited Document: Japanese Unexamined Patent Application Publication No. 1997-144398 (Exhibit Ko 2)

B. Microfilm of Japanese Utility Model Application No. 1979-27530 (Japanese Unexamined Utility Model Application Publication No. 1980-128848) (Exhibit Ko 1)

C. U.K. Patent Application Publication No. 1417054 Description (Exhibit Ko 4)

D. U.S. Patent No. 3928992 Description (Exhibit Ko 5)

E. Japanese Utility Model Publication No. 1994-28616 (Exhibit Ko 6)

F. Japanese Utility Model Publication No. 1980-32998 (Exhibit Ko 7)

- G. Japanese Design Registration No. 965697 (Exhibit Ko 8)
- H. Japanese Design Registration No. 1110356 (Exhibit Ko 9)
- I. Microfilm of Japanese Utility Model Application No. 1982-149628 (Japanese Unexamined Utility Model Application Publication No. 1984-51958) (Exhibit Ko 10)
- J. CD-ROM of Japanese Utility Model Application No. 1992-89007 (Japanese Unexamined Utility Model Application Publication No. 1994-51443) (Exhibit Ko 11)
- K. Japanese Unexamined Patent Application Publication No. 2000-96889 (Exhibit Ko 13)
- L. Japanese Unexamined Patent Application Publication No. 1987-194374 (Exhibit Ko 14)
- M. CD-ROM of Japanese Utility Model Application No. 1993-42779 (Japanese Unexamined Utility Model Application Publication No. 1995-14041) (Exhibit Ko 15)
- N. Japanese Unexamined Patent Application Publication No. 1987-189269 (Exhibit Ko 16)
- O. Japanese Unexamined Patent Application Publication No. 1994-346639 (Exhibit Ko 17)
- P. Japanese Unexamined Patent Application Publication No. 1997-41742 (Exhibit Ko 18)

(2) The Cited Invention found by the JPO decision and the common features and differences between the Invention and the Cited Invention are as follows. The symbols "/" in the sentences indicate line breaks in the original sentences.

A. Cited Invention

A key for a lever tumbler lock which is a duplicate key of a lever tumbler lock, comprising:/ an outer cylinder 22 in which a cam groove 21 having a cross sectional shape of a substantially V-shape is formed along a generatrix on an inner peripheral surface;/ an inner cylinder portion 25 rotatably fitted with this outer cylinder 22, having a plurality of partition plates 23 laminated in a center axis direction provided with a gap between them and having a key hole 24 penetrating along the center axis; and/ a locking bar 27 extended along the generatrix of this inner cylinder portion 25, guided movably in a radial direction on an outer peripheral portion of the inner cylinder portion 25, and urged to a direction where an outer-side edge to be engaged with the cam groove 21 protrudes outward,/ wherein, in a duplicate key for a lever tumbler lock, a C-shaped lever tumbler 29 in which a key insertion notch having a size that can surround the key hole 24 formed point-symmetrically at a center part is formed is inserted in each of slots between the partition plates 23, one spot of a body portion thereof is pivotally supported, capable of swinging, by a support shaft 31 penetrating the inner cylinder portion 25 in

an axial direction, an unlock notch 28 is formed in a free end portion outer-side end edge which is the body portion of the lever tumbler 29 faced with the support shaft 31 with the key insertion notch between them and forming a part of an arc,/ while an engagement edge portion interfering with an end edge portion in a key body 12 of the duplicate key which is reversible with a movement locus of a distal end inserted into the key hole 24 is provided on an opening end edge of the key insertion notch,/ each of the lever tumblers 29 is urged by a tumbler spring 32 to a direction where this engagement edge portion gets closer to the duplicate key, the inner cylinder portion 25 is locked by a backup pin 33 penetrating in the axial direction at normal times,/ while when each of the engagement edge portions of a group of these lever tumblers 29 is engaged with a nick formed as an inwardly-convex inclined surface of a bottom portion 3, 3a of the valley in the end edge portion of the key body 12 in the duplicate key inserted into the key hole 24, a swing angle of each of the lever tumblers 29 is changed correspondingly to the nick, and the unlock notch 28 is aligned with an inner-side edge of the locking bar 27,/ configured such that at a portion of the key body 12 aligned with the engagement edge portion of the lever tumbler 29 when being inserted into the key hole 24, a nick formed as the inwardly-convex inclined surface of the bottom portion 3, 3a of the valley is formed, and when this nick is engaged with the engagement edge portion, the unlock notch 28 of each of the lever tumblers 29 is aligned with the inner-side edge of the locking bar 27,/ whereby when the inner cylinder portion 25 is rotationally moved integrally with the duplicate key, the locking bar 27 is moved to the center axis direction of the inner cylinder portion 25 by a wedge action generated between the cam groove 21 and the locking bar 27 so that the inner cylinder portion 25 can be relatively rotationally moved with respect to the outer cylinder 22.

B. Common features between the Invention and the Cited Invention

The key for a rotary tumbler lock which is a duplicate key of a rotary tumbler lock, comprising: an outer cylinder in which a cam groove having a cross sectional shape of a substantially V-shape is formed along a generatrix on an inner peripheral surface;/ an inner cylinder rotatably fitted with this outer cylinder, having a plurality of partition plates laminated in a center axis direction provided with a gap between them and having a key hole penetrating along the center axis; and/ a locking bar extended along the generatrix of this inner cylinder, guided movably in a radial direction on an outer peripheral portion of the inner cylinder, and urged to a direction where an outer-side edge to be engaged with the cam groove protrudes outward, wherein,/ in a duplicate key for a rotary tumbler lock, a rotary tumbler in which a key insertion portion having a size that can surround the key hole formed point-symmetrically at a center part is formed is

inserted in each of slots between the partition plates,/ one spot of a body portion thereof is pivotally supported, capable of swinging, by a support shaft penetrating the inner cylinder in an axial direction, an unlock notch is formed in a free end portion outer-side end edge which is the body portion of the rotary tumbler facing the support shaft with the key insertion portion between them and forming a part of an arc,/ while an engagement portion interfering with a blade of the duplicate key which is reversible with a movement locus of a distal end inserted into the key hole is integrally projected on an opening end edge of the key insertion portion,/ each of the rotary tumblers is urged to a direction where this engagement portion gets closer to the duplicate key, the inner cylinder is locked by a backup pin penetrating in the axial direction at normal times,/ while when each of the engagement portions of a group of these tumblers is engaged with a corresponding dent formed in the blade of the duplicate key inserted into the key hole, the unlock notch of each of the rotary tumblers is aligned with an inner-side edge of the locking bar,/ a dent corresponding to the blade and aligned with the engagement portion of the rotary tumbler when being inserted into the key hole is formed and configured such that the unlock notch of each of the rotary tumblers is aligned with the inner-side edge of the locking bar when this dent is engaged with the corresponding engagement portion,/ whereby when the inner cylinder is rotationally moved integrally with the duplicate key, the locking bar is moved to the inner cylinder center axis direction by a wedge action generated between the cam groove and the locking bar so that the inner cylinder can be relatively rotationally moved with respect to the outer cylinder.

C. Difference between the Invention and the Cited Invention

(a) Difference 1

The Invention is a key for a lock having a key hole formed point-symmetrically "with respect to the center axis of the inner cylinder," while the Cited Invention is a key for a lock not having such a key hole

(b) Difference 2

The Invention is a key for a lock in which the key insertion portion is the "key insertion hole," and the rotary tumbler having this "key insertion hole" formed at the center part is the "annular rotary disc tumbler," while the Cited Invention is a key for a lock in which the key insertion portion is the "key insertion notch," and the rotary tumbler having this "key insertion notch" formed at the center part is the "C-shaped lever tumbler."

(c) Difference 3

With regard to the configuration for the unlock notch of the rotary tumbler to be

aligned with the inner-side edge of the locking bar, the Invention accomplishes the alignment by "a swing angle of the tumbler group changed correspondingly to the depth of the mortar-shaped dent and a position in a width direction of the blade" by the engagement between the distal end of the "engagement projection" having the "constant projected amount" projected integrally on the opening end edge of the "rotary disc tumbler" and the "mortar-shaped dent having a bottom and plurality of types of sizes and depths" formed in the "flat plane portion" of the blade of the duplicate key, while the Cited Invention accomplishes the alignment by "a swing angle of each of the lever tumblers 29 changed correspondingly to the nick" when the "engagement edge portion" projected integrally with the opening end edge of the "C-shaped lever tumbler" and the corresponding "nick formed as an inwardly convex inclined surface of a bottom portion 3, 3a of the valley in the end edge portion of the key body 12" interfering with the end edge portion of the blade of the duplicate key and formed in the end edge portion.

(d) The JPO decision determined that the configuration according to the Invention in the difference 3 is interpreted as a configuration of a key in which (a) "in the flat plane portion of the blade" of "the duplicate key," "the mortar-shaped dent having a bottom and a plurality of types of sizes and depths" is formed; (b) and moreover, the "mortar-shaped dent having a bottom and a plurality of types of sizes and depths" formed in the "flat plane portion" of the blade of the duplicate key to be engaged with the distal end of the "engagement projection" having the "constant projected amount" projected integrally on the opening end edge of the "rotary disc tumbler" is provided and thus, "the dent of the key has the depth thereof and the position in the width direction of the blade following the arc by the swinging," and that the Cited Invention does not include such a configuration.

4 Grounds for rescission

- (1) Wrong determination relating to the support requirement (Article 36, paragraph (6), item (i) of the Patent Act) (ground for rescission 1)
- (2) Wrong determination on how easily the Invention could have been conceived of (ground for rescission 2)

(omitted)

IV. Court decision

1. The Invention

- (1) The scope of claims according to the Invention is as in [Claim 2] in the aforementioned II, 2, and the Detailed Description of the Invention in the Description

substantially has the following description (Exhibits Ko 23 and 24; for the figures cited in the following description, see the attached note 2).

A. Technical field of the Invention

The present invention relates to a new rotary disc tumbler lock ([0001]).

B. Conventional art

(a) There are several types of cylinder locks, and the cylinder locks which are major products of the applicant (note by the judgment: the defendant) and are found to have relatively high safety include a lever tumbler lock ([0002]).

(b) This lever tumbler lock has, as illustrated in [Fig. 1] and [Fig. 2], [i] an outer cylinder 2 in which a cam groove 1 is formed along a generatrix on an inner peripheral surface; [ii] an inner cylinder 5 rotatably fitted with this outer cylinder, having a plurality of partition plates 3 and 3 laminated in a center axis direction provided with a gap between them, and [iii] having a key hole 4 penetrating along the center axis; and [iv] a locking bar 6 extended along the generatrix of this inner cylinder 5, guided movably in a radial direction on an outer peripheral portion of the inner cylinder, and urged to a direction where an outer-side edge to be engaged with the cam groove 1 protrudes outward ([0003]).

Moreover, a lever tumbler 11 is inserted in each of slots 7 between the partition plates. The lever tumbler 11 has an overall shape of substantial C-shape, one end portion is pivotally supported, capable of swinging, and an unlock notch 9 for receiving an inner-side edge of the locking bar 6 is formed in a free end portion outer-side end edge. The lever tumbler 11 is urged to a direction interfering with a side end edge of a key inserted into the key hole and is locked by a backup pin 8 penetrating the inner cylinder in the axis direction at normal times ([0004]).

It is configured such that, when each of a group of these tumblers is engaged with the corresponding key groove of the duplicate key inserted into the key hole, the unlock notch 9 of each of the lever tumblers 11 is aligned with the inner side edge of the locking bar 6 (not shown) ([0005]).

Therefore, by inserting the duplicate key into the key hole 4 and by relatively rotationally moving the inner cylinder 5 in the outer cylinder 2, a wedge action is generated between the cam groove 1 and the locking bar 6, whereby the locking bar 6 can be moved in the center axis direction of the inner cylinder; that is, the cylinder lock is brought into an unlock state, and the inner cylinder 5 is rotationally moved in an unlocking direction ([0006]).

(c) In an ordinary lever tumbler lock, the inner cylinder 5 is configured by integrally connecting [i] a plurality of the partition plates 3 and 3, [ii] a key guide 12, and [iii] a

tail plug 14 to which a tail piece 13 is attached (see [Fig. 1]) through a first retainer 15 illustrated in [Fig. 3] and a second retainer (not shown) which is plane-symmetric with the same ([0007]).

That is, the retainer 15 forms a part of the cylinder (inner cylinder 5) and is a plate-shaped body in which a flange 16 for retaining is formed on a front end, and a plurality of longitudinally long and rectangular receiving holes 17 and 17 are formed along the generatrix thereof.

An insertion piece 18 ([Fig. 4]) formed on an outer peripheral portion of the partition plate 3 is inserted into each of the receiving holes 17 excluding those which are the closest to and the farthest from the flange 16, and these plurality of partition plates 3 and 3 are integrally connected together with the second retainer, not shown, on the opposite side. Reference numeral 22 in [Fig. 4] denotes a guide groove for the locking bar 6.

The insertion piece (not shown) similar to the insertion piece 18 formed on the outer peripheral surface of the key guide 12 is inserted into the receiving hole 17 which is the closest to the flange 16. Similarly, the tail plug 14 (see [Fig. 1]) is attached to an inner end of the retainer 15 (Right end in [Fig. 3]; the receiving hole 17 which is the farthest from the flange 16 is located).

By fitting the inner cylinder 5 configured as above with the outer cylinder 2, the inner cylinder 5 is held so as not to be disassembled. A double-ring stopper plate 19 having a retaining function similar to that of the flange 16 of the retainer 15 is attached to an inner end of the inner cylinder 5 and is fixed by a retainer ring 21 ([0008] to [0011]).

C. Problems to be Solved by the Invention

(a) The lever tumbler lock configured as in the aforementioned B exerts predetermined functions, and particularly since the locking bar 6 emits a click sound during rotational movement of the inner cylinder, its sense of use is excellent and also since picking is difficult, it is often used as a lock for a doorway of housing ([0012]).

(b) However, on the other hand, since the shape of the lever tumbler 11 is the substantial C-shape, rigidity is relatively low, and deformation is not nonexistent if a different key is rotated with a strong force ([0013]).

Moreover, since a key groove is formed in a side end edge of a body portion (hereinafter referred to as a "blade") of the duplicate key to be inserted into the key hole, a formation spot of the key groove cannot be increased and thus, the number of variable keys is limited ([0014]).

Furthermore, since a sectional shape of the key is not vertically symmetrical, a reversible key that can be inserted into the key hole regardless of the front or the rear of the blade cannot be made, which still leaves room for improvement ([0015]).

(c) Thus, the present invention has an object to provide a new rotary disc tumbler lock in which rigidity of a tumbler is high and robust, a reversible key is possible, and the number of variable keys is large, as well as a key thereof ([0016]).

4. Means for Solving the Problem

The invention described in claim 2 is for solving the problem in the aforementioned 3 ([0018]).

5. Example

(a) Large differences between the conventional lever tumbler lock illustrated in [Fig. 1] to [Fig. 4] and the rotary disc tumbler lock according to the present invention are two points; that is, [i] the shape of the tumbler is annular; and [ii] in a duplicate key, a key groove is not formed in the side end edge of the blade but a dent is formed in the flat plane portion and the end edge portion ([0019]).

(b) [Fig. 5] illustrates a slot 7 of the rotary disc tumbler lock according to an example of the present invention, and this slot 7 is formed between a plurality of partition plates 3 and 3 connected to each other by a retainer 15 with a flange 16 similarly to a slot in the conventional lever tumbler lock ([0020]).

Moreover, in [Fig. 5], a support shaft 23 above and a backup pin 9 below are provided so as to penetrate the inner cylinder 5 in parallel with a key hole, respectively, so as to sandwich the key hole 4 formed along a center axis of the inner cylinder between them (see [Fig. 1]. [0021]).

(c) A sectional shape of the key hole 4 (duplicate key 24) is made point-symmetric with respect to the center axis of the inner cylinder 5 in order to make a duplicate key a reversible key which can be inserted into the key hole 4 regardless of the front or the rear of the duplicate key ([0025]).

Moreover, the duplicate key 24 used for a locking/unlocking operation of the rotary disc tumbler lock according to the present invention is, as illustrated in [Fig. 6] and [Fig. 7], molded so that a distal end of a body portion (blade) to be inserted into the key hole 4 has an arc shape and is chamfered, and a dent 25 is formed at a predetermined spot on the flat plane portion illustrated in [Fig. 6] and on the end edge portion illustrated in [Fig. 7] ([0026]).

The sectional shape of this dent 25 is, as indicated by a dot line in the sectional

shape of the duplicate key 24 in [Fig. 5], for example, and as illustrated in [Fig. 6] and [Fig. 7], an inverted trapezoid having a bottom and it has a plurality of types of depths (four types in the illustrated example) ([0027]).

On the other hand, in the conventional lever tumbler lock or the like illustrated in [Fig. 1] and [Fig. 2], it is well-known that a V-shaped key groove, not a dent, is formed, in the side end edge of the blade ([0029]).

(d) Into each of slots 7 and 7, as illustrated in [Fig. 8], an annular rotary disc tumbler 27 having a key insertion hole 26 with a size that can surround the key hole 4 formed at a center part is inserted. The aforementioned "annular" means that a body portion of the rotary disc tumbler 27 surrounding the key insertion hole 26 forms a closed curve, and an outer shape of the rotary disc tumbler 27 is substantially circular as illustrated ([0031], [0032]).

Each of the rotary disc tumblers 27 has one spot (an upper end portion in the illustrated example) of a body portion thereof pivotally supported by a support shaft 23 (note by the judgment: The "support shaft 22" is a clear error; the same applies to the following), capable of swinging, and both an inner-side edge and a free end portion outer-side edge (a lower end portion in [Fig. 8]) are molded to have an arc shape around the support shaft 23 ([0033], [0034]).

At a predetermined angular position of the free end portion outer-side edge of the rotary disc tumbler 27, an unlock notch 9 having a rectangular shape, for example, is formed ([0035]). A formation angular position of this unlock notch 9 has four types, for example, according to the depth of the dent 25 of the duplicate key, whereby variable keys of the rotary disc tumbler locks are obtained ([0036]).

The free end portion inner-side edge of the rotary disc tumbler 27 is formed so as to pass by a lower end of the backup pin 8, and a locking step portion 28 is formed on a left end portion in [Fig. 8] ([0037]).

On the other hand, on an opening end edge of the key insertion hole 26, an engagement projection 29 with a movement locus of the distal end interfering with the flat plane portion of the blade of the duplicate key 24 is integrally projected as illustrated in [Fig. 8] ([0039]).

Moreover, each of the rotary disc tumblers 27 is urged by an elastic force of the tumbler spring 31 made of a thin plate spring to a direction where the engagement projection 29 gets closer to the duplicate key 24 similarly to the conventional lever tumbler lock ([0041]).

(e) As illustrated in [Fig. 8], when the duplicate key 24 is not inserted into the key hole 4, the locking step portion 28 of each of the rotary disc tumblers 27 is locked so as to be

in elastic contact with the backup pin 8, and each of the rotary disc tumblers 27 is locked at the angular position illustrated in [Fig. 8] ([0042]).

When the duplicate key 24 is inserted into the key hole 4, and the engagement projection 29 of each of the rotary disc tumblers 27 is locked into the corresponding dent 25 of the duplicate key, as illustrated in [Fig. 10], the projected amount of the engagement projection 29, the depth of the dent 25, and the angular position of the unlock notch 9 are set so that the unlock notches 9 and 9 of all the rotary disc tumblers 27 and 27 are aligned with the inner-side edge of the locking bar 6 ([0043]).

In the illustrated example, the projected amount of the engagement projection 29 is made constant; in other words, the position of the distal end of the engagement projection 29 with respect to the center of the support shaft 23 is made constant, and when the distal end of the engagement projection 29 is locked into the dent 25 in the blade of the duplicate key and is brought into contact with a bottom surface thereof, the swing angle of the rotary disc tumbler 27 is changed in accordance with the depth of the dent 25 and the chosen one in the plurality of unlock notches 9 and 9 illustrated in [Fig. 8] is aligned with the inner-side edge of the locking bar 6 ([0044]).

With regard to the rotary disc tumbler lock according to the example of the present invention configured as above, when the duplicate key 24 is not inserted into the key hole 4 or a variable key different from the duplicate key is inserted into the key hole 4, the unlock notch 9 of at least the single rotary disc tumbler 27 is angularly shifted from the inner side edge of the locking bar 6 (see [Fig. 8]. [0047]).

When the inner cylinder 5 is to be rotated in this state, the locking bar 6 is to be pushed out of the cam groove 1 by the wedge action generated between the locking bar 6 and the cam groove 1, but the movement is prevented by the free end portion outer-side edge of the rotary disc tumbler 27, and the inner cylinder 5 cannot be rotated. That is, this rotary disc tumbler lock is not unlocked ([0048]).

When the duplicate key 24 is inserted into the key hole 4, as illustrated in [Fig. 10], the unlock notches 9 and 9 of all the rotary disc tumblers 27 and 27 are aligned with the inner-side edge of the locking bar ([0049]).

When the inner cylinder is rotated in this state, similarly to the conventional lever tumbler lock, movement of the locking bar 6 in the inner-cylinder center axis direction is made possible by relative rotational movement between the inner cylinder 5 and the outer cylinder 2, and this rotary disc tumbler lock is unlocked ([0050]).

F Advantageous Effect of the Invention

As is obvious from the description above, in the present invention, the shape of the

tumbler is made annular and thus, rigidity of the tumbler can be largely improved as compared with the conventional lever tumbler lock, and strength and safety as the lock can be improved ([0070]).

Moreover, unlike the duplicate key in the conventional lever tumbler lock, the variable keys are obtained not by the V-shaped key groove formed in the end edge portion of the blade but by the depth of the dent and thus, an interval between one dent 25 and another adjacent dent 25 can be made shorter than that between the conventional key grooves ([0071]).

In other words, the number of tumblers can be increased in the inner cylinder whose outer shape dimension is restricted by standards, and the number of variable keys can be increased for that portion. For example, the conventional lever tumbler lock can contain seven tumblers at most but the rotary disc tumbler lock according to the present invention can contain eleven tumblers (see [Fig. 6]. [0072]).

Moreover, when the projected amount of the engagement projection of the rotary disc tumbler is made constant or when it is changed, the center position needs to be slightly changed in the width direction of the blade or in the width direction of the end edge portion of the blade in accordance with the depth of the dent and thus, duplication of the key becomes difficult, whereby safety as a lock is improved, and various effects are exerted ([0074]).

(2) Features of the Invention

According to the aforementioned (1), the features of the Invention are as follows:

- A. The Invention relates to a new rotary disc tumbler lock ([0001]).
- B. Conventionally, the lever tumbler lock is a cylinder lock found to have relatively high safety ([0002]), and particularly since the locking bar 6 emits a click sound during rotational movement of the inner cylinder, its sense of use is excellent and also since picking is difficult, it is often used as a lock for a doorway of housing ([0012]).
- C. However, the conventional art has problems such that [i] since the shape of the lever tumbler 11 is the substantial C-shape, rigidity is relatively low, and deformation is not nonexistent if a different key is rotated with a strong force ([0013]); [ii] since a key groove is formed in a side end edge of a body portion (blade) of the duplicate key to be inserted into the key hole, a formation spot of the key groove cannot be increased and thus, the number of variable keys is limited ([0014]); and [iii] since a sectional shape of the key is not vertically symmetrical, a reversible key that can be inserted into the key hole regardless of the front or the rear of the blade cannot be made ([0015]).

Thus, the Invention has an object to provide a new rotary disc tumbler lock in which

rigidity of a tumbler is high and robust, a reversible key is possible, and the number of variable keys is large, as well as a key thereof ([0016]).

D. The Invention has employed the configuration described in Claim 2 as means for solving the problem of the aforementioned C ([0018]).

E. In the Invention, [i] the shape of the tumbler is made annular and thus, rigidity of the tumbler can be largely improved as compared with the conventional lever tumbler lock, and strength and safety as the lock can be improved ([0070]); [ii] unlike the duplicate key in the conventional lever tumbler lock, the variable keys are obtained not by the V-shaped key groove formed in the end edge portion of the blade but by the depth of the dent and thus, an interval between one dent 25 and another adjacent dent 25 can be made shorter than that between the conventional key grooves, and thus, the number of tumblers can be increased, and the number of variable keys can be increased for that portion ([0071], [0072]); and [iii] when the projected amount of the engagement projection of the rotary disc tumbler is made constant, the center position needs to be slightly changed in the width direction of the blade or in the width direction of the end edge portion of the blade in accordance with the depth of the dent and thus, various effects are exerted such that duplication of the key becomes difficult, and safety as a lock is improved ([0074]).

2. Ground for rescission 1 (Wrong determination relating to the support requirement)

(1) The plaintiff alleges that the configuration in which, with regard to the dent having a horizontal bottom surface, the distal end of the engagement projection is brought into contact with the bottom surface of the dent is not described in the Description on the ground that the "distal end" described in Claim 2 in the scope of claims of the Patent refers only to an apex as a specific one point (see the attached note 1).

(2) Description in scope of claims

Claim 2 in the scope of claims of the Patent has description on the relationship between the engagement projection of the rotary disc tumbler and the duplicate key that "an engagement projection interfering with a flat plane portion in a blade of a duplicate key which is reversible with a movement locus of a distal end inserted into the key hole is integrally projected on an opening end edge of the key insertion hole," "when each of the engagement projections of a group of these tumblers is engaged with a corresponding dent formed in the blade of the duplicate key inserted into the key hole," and "in the flat plane portion of the blade aligned with the distal end of the engagement projection having a constant projected amount of the rotary disc tumbler inserted into the key hole, a mortar-shaped dent having a bottom and plurality of types of sizes and depths is formed and when the dent is engaged with the corresponding engagement

projection."

However, there is no description on the specific shape of the "dent" and a specific meaning of the "distal end."

(3) Description of the Description

The Description has the description on the relationship between the engagement projection of the rotary disc tumbler and the duplicate key that "on an opening end edge of the key insertion hole 26, an engagement projection 29 with a movement locus of the distal end interfering with the flat plane portion of the blade of the duplicate key 24 is integrally projected as illustrated in [Fig. 8]." ([0039]), "this engagement projection 29 is, as illustrated in [Fig. 9], projected with a projected position shifted so that the movement locus of the distal end interferes with the end edge portion of the blade in some cases." ([0040]), "when the duplicate key 24 is inserted into the key hole 4, and the engagement projection 29 of each of the rotary disc tumblers 27 is locked into the corresponding dent 25 of the duplicate key," ([0043]), "in the illustrated example, the projected amount of the engagement projection 29 is made constant; in other words, the position of the distal end of the engagement projection 29 with respect to the center of the support shaft 23 is made constant, and when the distal end of the engagement projection 29 is locked into the dent 25 in the blade of the duplicate key and is brought into contact with the bottom surface thereof, the swing angle of the rotary disc tumbler 27 is changed in accordance with the depth of the dent 25," ([0044]), and "the dents 25 and 25 of the duplicate key into which the engagement projection is locked" ([0046]).

However, there is no description on the specific meaning of the "distal end." Moreover, no description is made on the specific shape of the "dent" other than the illustrations in [Fig. 5] to [Fig. 7] and [Fig. 10].

(4) As in the aforementioned (2), in Claim 2 in the scope of claims of the Patent, bringing the distal end of the engagement projection of the rotary disc tumbler into contact with the bottom surface of the dent of the duplicate key is not directly described. In the aforementioned claim, even if the description that "in the flat plane portion of the blade aligned with the distal end of the engagement projection having a constant projected amount of the rotary disc tumbler when being inserted into the key hole, a mortar-shaped dent having a bottom and plurality of types of sizes and depths is formed and when the dent is engaged with the corresponding engagement projection" is interpreted to have a meaning that the distal end of the engagement projection of the rotary disc tumbler is brought into contact with the bottom surface of the dent of the duplicate key, with regard to the meaning of the "distal end," it cannot necessarily be interpreted to mean only the apex as a specific one point as alleged by the plaintiff. To

the contrary, from the description that "the flat plane portion of the blade aligned with the distal end of the engagement projection" in the aforementioned claim, it is natural to interpret that the "distal end" is not only the apex as the specific one point but a portion on an end having some degree of a range. Moreover, in the Invention, each of the rotary disc tumblers is made to swing by engaging the mortar-shaped dent having a bottom provided in plural in the duplicate key with each of the engagement projections provided on each of the rotary disc tumblers, and the unlock notch provided in each of the rotary disc tumblers is aligned with the inner-side edge of the locking bar so as to unlock, and by considering that use for opening/closing of a doorway of a housing is assumed ([0012]), it is only necessary that an end portion of the engagement projection is brought into contact with the bottom surface of the dent of the duplicate key in the engagement, and it is considered that the apex of the engagement projection does not need to be brought into contact with the bottom surface thereof.

As described above, the allegation by the plaintiff is wrong on the premises and cannot be employed.

(5) Summary

Therefore, the ground for rescission 1 alleged by the plaintiff has no reasons.

3. Ground for rescission 2 (Wrong determination on how easily the Invention could have been conceived of)

(1) Previous JPO decision

A. As described in II. 1, the plaintiff filed a request for a trial for patent invalidation in relation to the inventions claimed in Claims 1 to 3 in the scope of claims of the Patent, including the Invention, and the JPO rendered a decision that dismissed the request (Previous JPO decision).

In the Previous JPO decision, the JPO found the Cited Document, which is the same as the Cited Invention found in the JPO decision, based on the Cited Document (Exhibit Ko 2) as the Primarily Cited Document and also found common features and differences between the Invention and the Cited Invention in the same way as in the JPO decision and in addition, regarding Difference 3, the JPO determined that a person ordinarily skilled in the art could not have easily arrived at Difference 3 based on Exhibits Ko 2 and 6 to 18 and Cited Documents 15 to 24 stated in the Previous JPO decision (Exhibit Otsu 2).

B. As described in II. 1, the plaintiff instituted an action to seek rescission of the Previous JPO decision, but the Intellectual Property High Court rendered a judgment that dismissed the plaintiff's claim (Previous Judgment), and the judgment became final

and binding. Hereby, the Previous JPO decision also became final and binding.

(2) Regarding Article 167 of the Patent Act

A. Article 167 of the Patent Act provides that when a JPO decision in a trial for patent invalidation becomes final and binding, neither the parties nor intervenors may file a request for a trial on the basis of the same facts and evidence. The purpose of the Article is considered to have the effect of prohibition of double jeopardy on the parties and intervenors in order to promote one-time dispute resolution in a trial for patent invalidation so that there will be neither the situation where multiple different determinations are made in relation to the validity of a patent right, which is an exclusive right (Article 68 of the Patent Act), nor resurrection of a dispute.

The parties and intervenors in the previous trial for patent invalidation made allegations and submitted evidence in relation to the existence of grounds for invalidation in the procedures of the trial and were also given an opportunity to make allegations and submit evidence in relation to the existence of grounds for rescission of the JPO decision on the previous trial for patent invalidation in legal proceedings if an action to seek rescission of the JPO decision of the trial for invalidation of the patent is instituted. Therefore, it is not reasonable to understand the "same facts and evidence" in a narrow sense, from the perspective of preventing the resurrection of a dispute.

B. In this regard, in Article 167 of the Patent Act prior to amendment by Act No. 63 of 2011, the scope to which the double jeopardy prohibition effect extends was provided as "anyone," and the provisions of the Article also restricted the right to file a request for a trial of third parties who have not participated at all in the previous trial. Therefore, it can be said that regarding third parties, it was problematic to interpret the meaning of the "same facts and evidence" in an expansive manner. However, the third-party effect was abolished through the aforementioned amendment, and the scope to which the double jeopardy prohibition effect extends was limited to the parties and intervenors who have participated in the procedures of the previous trial and could do their best for allegation and proof. Therefore, it is reasonable to interpret the meaning of the "same facts and evidence" with more emphasis on the purpose; i.e., promoting one-time dispute resolution in a trial for patent invalidation, as described in A above.

C. In the Trial, the plaintiff alleged that the Invention is one that a person ordinarily skilled in the art could have easily made on the basis of the Cited Document (Exhibit Ko 2) as the Primarily Cited Document and the inventions stated in Exhibits Ko 1, 4 to 11, and 13 to 18 or well-known art.

However, as described in (1) above, the Cited Document (Exhibit Ko 2) was also used as the Primarily Cited Document in the final and binding Previous JPO decision,

and Exhibits Ko 6 to 18 were also cited as secondarily cited documents.

Therefore, the aforementioned allegation of the plaintiff in the Trial is an allegation that the Invention could have been easily arrived at by a person ordinarily skilled in the art, which is based on the same Primarily Cited Document as that in the final and binding Previous JPO decision, and the evidence other than the Primarily Cited Document is also nothing more than the result of addition of Exhibits Ko 1, 4, and 5 in addition to Exhibits Ko 6 to 18, which were cited as the secondarily cited documents in the Previous JPO decision as described above.

It should be considered to be in line with the purpose of Article 167 of the Patent Act as described in A above to interpret the request for the Trial, for which the Primarily Cited Document is the same as the final and binding Previous JPO decision, many secondarily cited documents are also the same as the Previous JPO decision, and only some evidence was added, as being on the basis of the "same facts and evidence" as those in the Previous JPO decision.

On these bases, the aforementioned allegation of the plaintiff in the Trial is on the basis of the "same facts and evidence" as those in the final and binding Previous JPO decision and therefore, it falls under Article 167 of the Patent Act and is thus unacceptable (in this regard, the JPO decision is wrong which determined that this was not the request for a trial based on the same evidence as the Previous Trial because Exhibits Ko 4 and 5 not submitted as the evidence at the Previous Trial were submitted at the Trial and allegation was made that the key having a mortar-shaped dent is known for a key for rotating tumbler lock not alleged in the Previous Trial.). Therefore, the ground for rescission that the determination of the JPO decision excluding the allegation is wrong should be considered to be unreasonable.

(3) How easily the Invention was conceived of

As described in the aforementioned (2) C, the JPO decision rendered determination on the allegation of the plaintiff that the Invention could have been easily conceived of on the basis of the Cited document does not violate Article 167 of the Patent Act, and it is considered that the plaintiff alleges that the determination on how easily the Invention was conceived of by the JPO decision is wrong on the ground of the determination. Thus, determination is added below to the ground for rescission 2.

A. Finding of the Cited Invention

(a) The scope of claims in the Cited Document describes as follows:

[Claim 1]

A reversible key for a lever tumbler lock in which a nick having a selected depth to

be brought into contact with an arbitrary number of C-shaped lever tumblers and to align/displace each of the lever tumblers at an unlock position is provided on both side edges of a flat-plate shaped key body, characterized in that bottom portions of valleys of the nick forming a pair on the both side edges of the key body are both inclined in a thickness direction of the key body, and the inclination of the bottom portions of the pair of valleys is opposite with respect to a plane forming a right angle with a flat-plate surface of the key body and including a center axis of the key body.

(b) The Detailed Description of the Invention in the Cited Document substantially describes as follows (for [Fig. 1] to [Fig. 5] cited in the following description, see the attached note 3):

a. Field of the Invention

The present invention relates to a reversible key for lever tumbler lock and a manufacturing method thereof ([0001]).

b. Conventional Art

A conventional reversible key for lever tumbler lock has problems that, due to shapes of nicks forming a pair on both side edges of a key body or the like, improper duplication can be achieved by a profile key cutting machine or the like, and even if the C-shaped lever tumbler is inserted with a front and a rear opposite in the lever tumbler lock, locking/unlocking can be achieved by the same reversible key and the number of variable keys is forced to be decreased and the like ([0004], [0005]).

c. Problems to be Solved by the Invention

The present invention has an object to make duplication difficult by changing a shape of a nick of a key body to a new one and to exclude the decrease in the number of variable keys ([0006]).

d. Means for Solving the Problems

The present invention has employed the configuration described in claim 1 in the scope of claims in order to solve the aforementioned problem in c ([0008]).

e. Embodiments of the Invention

(a) A lever tumbler lock 2 used with a reversible key 1 of the present invention being inserted has, as illustrated in [Fig. 3] to [Fig. 5], [i] an outer cylinder 22 in which a cam groove 21 is formed along a generatrix on an inner peripheral surface; [ii] an inner cylinder portion 25 rotatably fitted with this outer cylinder 22, having a plurality of partition plates 23 juxtaposed at an interval and [iii] having a key hole 24 penetrating in a longitudinal direction; and [iv] a locking bar 27 extended along the generatrix of the inner cylinder portion 25, attached movably in a radial direction of the inner cylinder portion 25, and urged outward by a push spring 26. ([0012]).

(b) In a plurality of slots formed by the partition plates 23, the C-shaped lever tumbler 29 in which an unlock notch 28 for selectively receiving the locking bar 27 is formed is pivotally attached to the respective distal end portions by a support shaft 31, and each of the lever tumblers 29 is urged by a tumbler spring 32 in a direction interfering with a side edge portion of the key to be inserted into the key hole 24 ([0013]).

The lever tumbler lock is configured such that, when a duplicate key is inserted into the key hole 24, each of a group of these tumblers 29 is engaged with a corresponding nick of the duplicate key inserted into the key hole 24, and the unlock notch 28 of each of the tumblers is aligned with an inner side edge of the locking bar 27 ([0014]).

When the duplicate key is rotated in that state, the locking bar 27 is moved in an inner-cylinder radial direction by a wedge action generated between the cam groove 21 and the locking bar 27 and thus, the inner cylinder portion 25 including a backup pin 33 and a front key guide 34, the partition plate 23, a retainer 35 surrounding the periphery, a rear tail plug 36, and the like can be rotationally moved in general to an unlock direction or in a lock direction ([0015]).

(c) [Fig. 1] shows a reversible key made of a lug 11 and the flat-plate shaped key body 12 ([0011]).

A feature of the reversible key according to the present invention is the nicks provided on the both side edges of the key body 12 ([0018]). Bottom portions 3 and 3a of valleys of the nicks provided so as to form a pair on the plane forming a right angle with a center axis 1 on both side edges of the key body 12 are, as clearly illustrated in [Fig. 2], both inclined to the thickness direction of the key body 12, and the inclination of the bottom portions 3 and 3a of the pair of valleys forms a right angle with the plane P illustrated in [Fig. 2]; that is, the flat plates 14 and 14 of the key body 12, and are opposite to each other in relation to the plane including the center axis 1 of the key body 12 ([0019]). Moreover, in the illustrated example, the bottom portion 3 (3a) of each of the inclined valleys is formed having an inwardly convex surface. By forming the inclined surface of the bottom portion 3 (3a) having a curved surface as above, improper duplication of the key is made further difficult, but the inclined surface may be made a plane ([0021]).

(d) The inclined surface of the bottom portion 3 (3a) in each of the nicks in the key body 12 is formed in accordance with a difference in a front shape of the corresponding tumbler 29. As illustrated in [Fig. 2], for example, when a straight line passing through a fixed point A changes an angle around the fixed point A with respect to the key body before cutting, angular depths d_1 , d_2 , ... d_n with the straight line changing its angle passing the key body (12) is selected in accordance with a type of the

corresponding tumbler 29 with respect to a straight line AO running into a ridge line on one side edge of the key body (12), and the nick with the depth d_n is cut. The depth of the bottom portions 3 and 3a of the valley illustrated in [Fig. 2] is d_2 ([0022]).

(e) The lever tumbler 29 illustrated in [Fig. 5] is attached so as to form a C-shape, and the lever tumbler 29 illustrated in [Fig. 6] is attached so as to form an inverted C-shape having the same front shape on the same row with the front and the rear opposite. In the C-shaped tumbler 29 in [Fig. 5], the unlock notch 28 reaches the unlock position by being pushed by the nick at the predetermined position in a length direction in the key of the present invention, but with regard to the inverted C-shaped tumbler 29 in [Fig. 6], a shallow portion of the bottom portion 3a of the inclined nick makes a collision even if the same key is used. Thus, unlike the conventional reversible key, the unlock notch 28 does not occupy the unlock position, and the inner cylinder portion 25 is not rotatable with respect to the outer cylinder 22. This indicates that, although the key of the present invention is reversible, the decrease in the number of variable keys is excluded ([0024] to [0026]).

f. Effect of the Invention

According to the reversible key of the present invention, since the bottom portions of the valleys forming the pair in the nicks on the both side edges are formed having inclined surfaces opposite to each other, improper duplication is made difficult, and such an effect is obtained that the decrease of the number of variable keys caused by being made reversible can be excluded. Moreover, the one with the inclined surface on the bottom portion made into a curved surface makes improper duplication more difficult ([0037], [0038]).

(c) According to the aforementioned (a) and (b), it is found that the Cited Invention as found by the JPO decision (the aforementioned II. 3. (2) A.) is described in the Cited Document.

Moreover, the Cited Document is found to disclose as follows on the Cited Invention:

- a. The Cited Invention relates to a reversible key for lever tumbler lock ([0001]).
- b. The conventional reversible key for lever tumbler lock has problems that improper duplication can be achieved easily by a profile key cutting machine or the like due to the shape of the nicks forming the pair on the both side edges of the key body or the like, that even if the C-shaped lever tumbler is inserted with the front and the rear opposite in the lever tumbler lock, locking/unlocking can be achieved by the same reversible key and the number of variable keys is forced to be decreased and the like ([0004], [0005]).
- c. The Cited Invention has an object to make duplication difficult by changing a shape

of a nick of a key body to a new one and to exclude the decrease in the number of variable keys ([0006]).

d. In order to solve the problems in the aforementioned c, the Cited Invention has employed a configuration as the duplicate key of a lock including the C-shaped lever tumbler 29 or the like pivotally attached by the support shaft 31, capable of swinging, the nick formed as the curved inclined surface in the bottom portion 3, 3a of the valley is formed on the end edge portion of the key body 12, and when the duplicate key is inserted into the key hole 24, each of the lever tumblers 29 is engaged with the corresponding nick and swings by changing the swing angle in accordance with a length to the bottom portion of the nick, whereby the unlock notch 28 of each tumbler is aligned with the inner-side edge of the locking bar 27 so that unlocking can be carried out ([Claim 1], [0008], [0011] to [0015], [0018], [0019], [0021], [0022]).

e. By means of the configuration of the aforementioned d, improper duplication is made difficult, and such effect is exerted that the decrease in the number of variable keys due to being made reversible can be excluded ([0024] to [0026], [0037], [0038]).

B. Regarding differences between the Invention and the Cited Invention

(a) It is found that the differences 1 to 3 (the aforementioned II. 3. (2) C. (a) to (c)) as found by the JPO decision exist between the Invention and the Cited Invention.

(b) According to the aforementioned 1, in the Invention, since the one spot of the body portion in the annular rotary disc tumbler is pivotally supported by the support shaft penetrating the inner cylinder in the axis direction, capable of swinging, the annular rotary disc tumbler swings around the support shaft.

Moreover, regarding the projection/provision positions of the engagement projection and the unlock notch, the engagement projection is integrally projected on the opening end edge of the key insertion hole of the annular rotary disc tumbler, and the unlock notch is formed in the free end portion outer-side end edge facing the support shaft having the key insertion hole between them.

On the other hand, regarding the configuration in the duplicate key, when the dent having the bottom including the plurality of types of sizes and depths formed on the flat plane portion in the blade of the duplicate key is engaged with the engagement projection having the constant projected amount of the annular rotary disc tumbler, the swing angle of the group of tumblers is changed in accordance with the depth of the dent and the position of the blade in the width direction. Moreover, as described above, since the annular rotary disc tumbler swings around the support shaft pivotally supporting its body portion, the dent of the duplicate key engaged with the engagement

projection projected on the opening end edge of the key insertion hole of the annular rotary disc tumbler becomes deeper as it is closer to the center of the key in the width direction. Moreover, since the projected amount of the engagement projection is constant, a distance between the distal end of the engagement projection and the center of the support shaft is constant, whereby the position and the depth of the dent of the duplicate key engaged with the engagement projections of the tumbler group; that is, a locus of the position and the depth of each of the dents of the duplicate key engaged with each of the engagement projections of each of the annular rotary tumblers, follows an arc around the support shaft.

According to the above, the Invention includes the configuration as in the aforementioned II. 3. (2) C. (d); that is, the configuration in which (a) the "mortar-shaped dent having the bottom and the plurality of types of sizes and depths" is formed "on the flat plane portion of the blade" of the "duplicate key"; (b) and moreover, since the "mortar-shaped dent having the bottom and the plurality of types of sizes and depths" formed "on the flat plane portion of the blade" of the duplicate key to be engaged with the distal end of the "engagement projection" having "the constant projected amount" projected integrally on the opening end edge of the "rotary disc tumbler" is provided, "the dent of the key has its depth and the position of the blade in the width direction following an arc by the swing."

(c) According to the aforementioned a, in the Cited Invention, since the one spot of the body portion of the C-shaped lever tumbler 29 which is a rotary tumbler is pivotally supported by the support shaft 31 penetrating the inner cylinder portion 25 in the axis direction, capable of swinging, the C-shaped lever tumbler 29 swings around the support shaft. The engagement edge portion engaged with the duplicate key is provided on the opening end edge of the key insertion notch provided in the C-shaped lever tumbler 29, and the unlock notch 28 is formed in the free end portion outer-side end edge facing the support shaft 31 with the key insertion notch between them.

On the other hand, with regard to the configuration of the duplicate key, when the nick formed as the inwardly convex inclined surface of the bottom portions 3 and 3a of the valleys in the end edge portion of the key body 12 in the duplicate key is engaged with the engagement edge portion of the C-shaped lever tumbler 29, the swing angle is changed correspondingly to the nick.

However, unlike the Invention, the nick of the duplicate key to be engaged with the engagement edge portion of the lever tumbler 29 is provided in the end edge portion of the key body 12, and moreover, presence and an amount of projection of the engagement edge portion are unclear and thus, it should be considered that the

relationship among the positions and the depth of the plurality of nicks of the duplicate key is unclear.

(d) According to the above, the Cited Invention does not include the configuration of the aforementioned (b) and thus, finding of the differences by the JPO decision is not wrong.

C. How easily the invention was conceived of in relation to the difference 3

(a) As described in the aforementioned II. 3. (1), the JPO decision determined that the invention could not have been easily made by a person ordinarily skilled in the art on the basis of the Cited Invention, the inventions described in Exhibits Ko 1, 4 to 11, 13 to 18, or the well-known art.

(b) Regarding the invention described in Exhibit Ko 1

As described in D. (a) below, it is not found that Exhibit Ko 1 discloses the configuration of a tumbler including an engagement projection projected so as to have a constant projected amount, and even if such configuration is disclosed and is applied to the Cited Invention, the difference other than the projected amount of the engagement projection in the difference 3 is not solved by the application but still remains.

(c) Regarding Exhibits Ko 4 and 5

The lock in Exhibit Ko 4 is one in which a security member 21 which is an annular rotary disc tumbler is rotated around a center axis of a boss 22a of a carrier 22 to be combined with that, and the lock in Exhibit Ko 5 is one in which a locking disc 58 which is an annular rotary disc tumbler is rotated around a center axis of a lock cylinder 16 which receives this. On the other hand, as described in the aforementioned a, the lock in the Cited Invention is one in which the C-shaped lever tumbler 29 swings around the support shaft 31 pivotally supporting the one spot of the body portion thereof.

As described above, an operation mechanism of each of the locks in Exhibits Ko 4 and 5 does not have a support shaft pivotally supporting each of the annular rotary disc tumbler and thus, does not swing around such support shaft but is rotated around the center axis of the boss 22a or the lock cylinder 16, which is largely different from the operation mechanism of the lock in the Cited Invention. Moreover, the key of the Cited Invention and the key described in Exhibits Ko 4 and 5 all relate to the duplicate key to each of the lock and thus, the configuration of each key is different in accordance with the difference in the operation mechanism of each lock.

As described above, Exhibits Ko 4 and 5 are largely different from the Cited Invention in the operation mechanism of each lock and it is considered that the

configuration of the key is also different in accordance with the difference and thus, the application itself of an art of the lock or the key described in Exhibits Ko 4 and 5 to the Cited Invention could not have been easily conceived of by a person ordinarily skilled in the art.

(d) Moreover, it is not found that Exhibits Ko 6 to 11, 13 to 18 disclose the configuration (a) (b) as a key according to the Invention of the difference 3 found by the JPO decision as in the aforementioned II. 3. (2) C. (d).

(e) According to the above, the determination of the JPO decision is not wrong.

D. Regarding allegation of the plaintiff

(a) The plaintiff alleges that the invention described in Exhibit Ko 1 discloses the configuration of the tumbler projected having the constant projected amount, and application of this to the Cited Invention is easy and the application arrives at the configuration of the Invention in relation to the difference 3.

However, Exhibit Ko 1 does not have description on the projected amount of the engagement edge portion, and it is not found that the configuration of the tumbler including the engagement projection projected having a constant projected amount is disclosed. Even if such configuration is disclosed and that is applied to the Cited Invention, the differences other than the projected amount of the engagement projection in the difference 3 are not solved by the application but still remain.

(b) The plaintiff alleges that the configuration of the Invention is obtained by making a change of a degree of design change such that a recess (nick) of the inclined surface of the key in the invention described in Exhibit Ko 1 is applied to the well-known "mortar-shaped dent" in the "flat plane portion."

However, the Invention and the Cited Invention are both inventions relating to the duplicate key corresponding to each lock, and the dent or the nick provided in the key is closely related to the operation mechanism of the lock, which unlocks the corresponding lock and thus, how easily the invention could have been conceived of cannot be determined only on the basis of the dent or the shape of the key by omitting the operation mechanism of the lock.

(c) The plaintiff alleges that the Invention is an invention of a key, and approval of the patentability itself based on that the structure of the lock such as the shape of the tumbler and the operation mechanism is different from the well-known key which existed at the filing of the application of the Patent is irrational.

However, as described in the aforementioned (b), although the Invention and the Cited Invention are both inventions of a key, they are inventions as a duplicate key

corresponding to each lock and thus, how easily the invention could have been conceived of cannot be determined only on the basis of the shape of the key by omitting the structure of the lock.

(4) Summary

According to the above, the ground for rescission 2 alleged by the plaintiff is groundless.

4. Conclusion

As described above, any of the grounds for rescission by the plaintiff is groundless and therefore, the plaintiff's request shall be dismissed because of lack of the ground, and judged as in the Main Text.

Intellectual Property High Court, Fourth Division

Presiding Judge	TAKABE Makiko
Judge	FURUKAWA Kenichi
Judge	SUZUKI Wakana

(Attached Note 1)

FIG. 1

B Explanatory diagram 1 Explanatory diagram illustrating actions of engagement projection and dent of the Invention.

Explanatory diagram 1

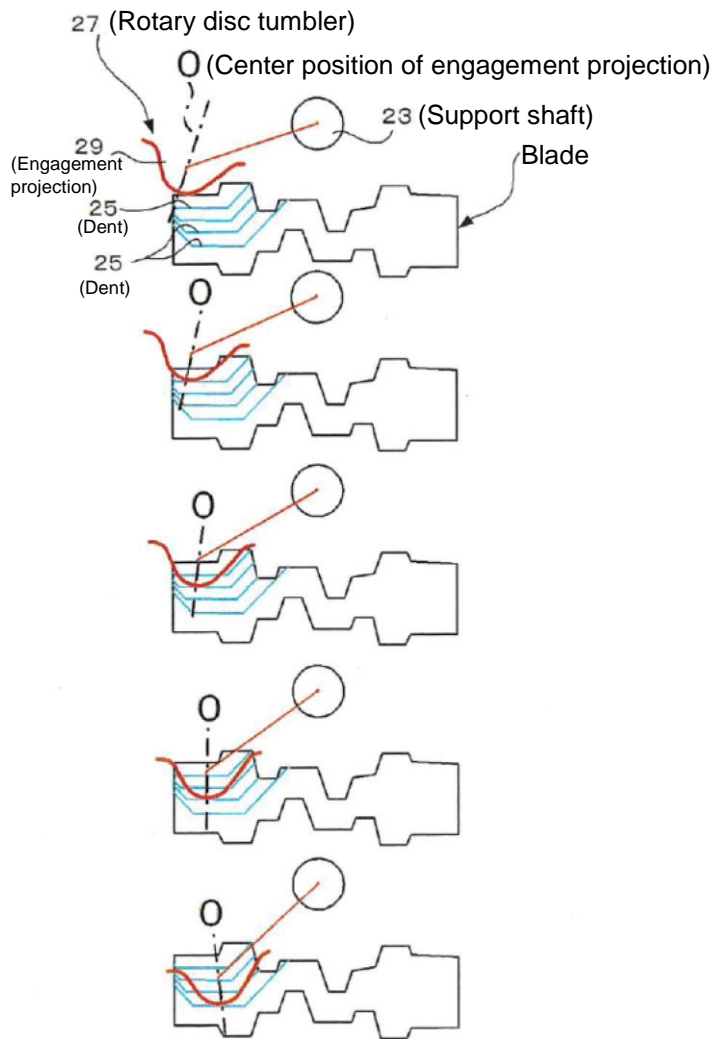
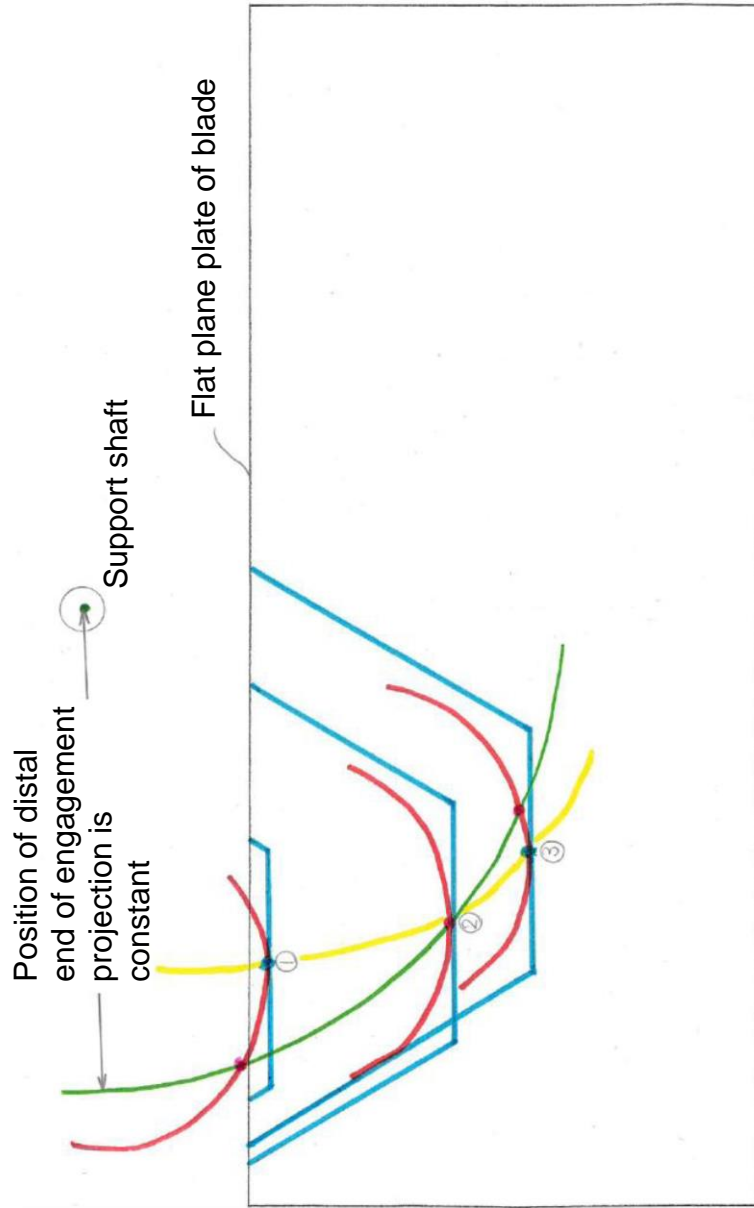
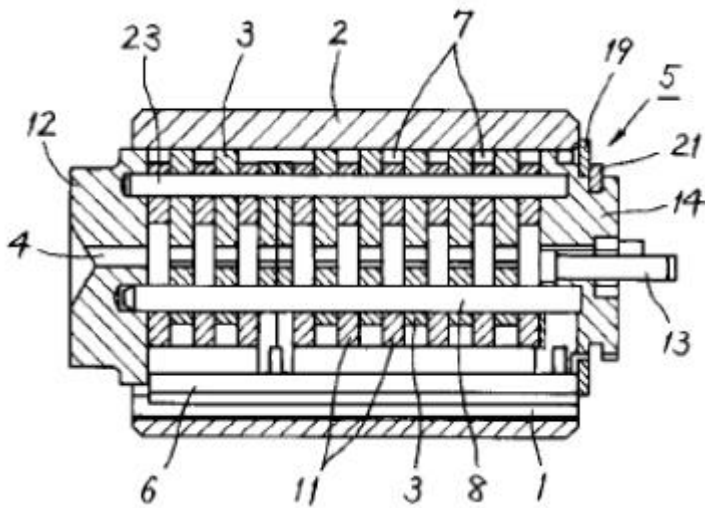


FIG. 2

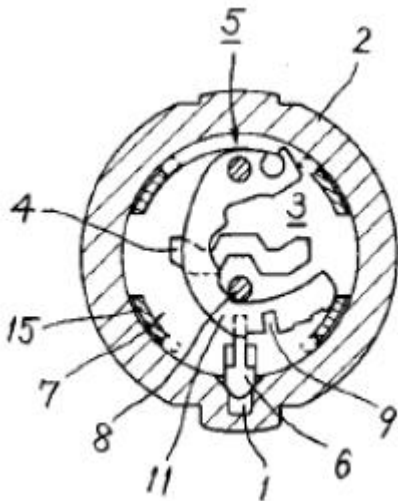


(Attached note 2) Drawings on the Description (Exhibit Ko 23)

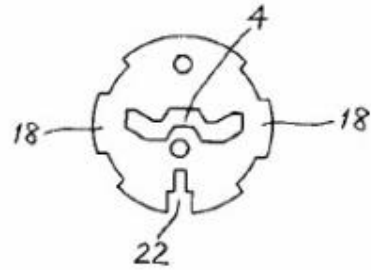
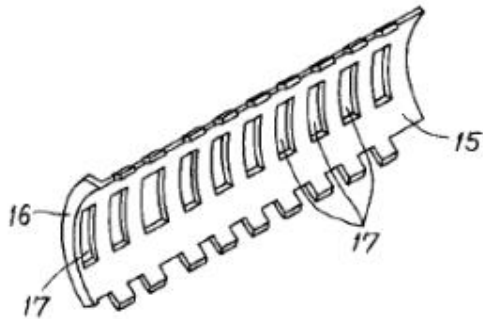
[Fig. 1] Longitudinal sectional view illustrating an example of conventional lever tumbler lock



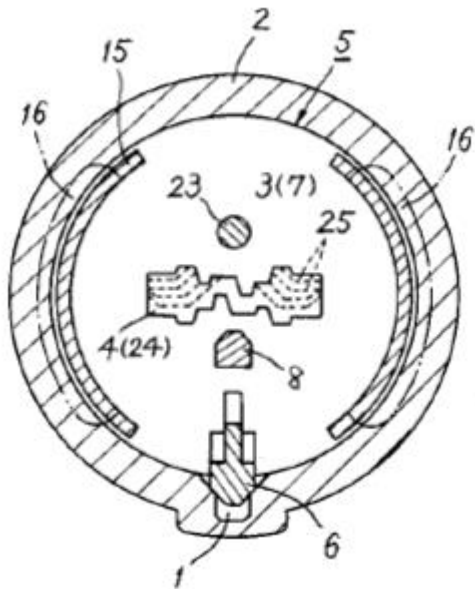
[Fig. 2] Cross sectional view of [Fig. 1]



[Fig. 3] Appearance perspective view of retainer [Fig. 4] Front view of partition plate

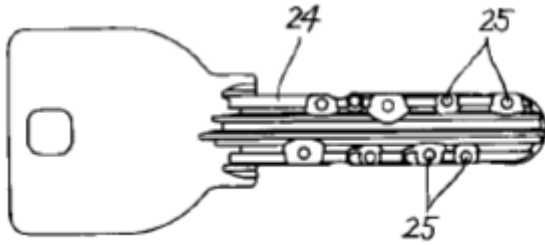


[Fig. 5]



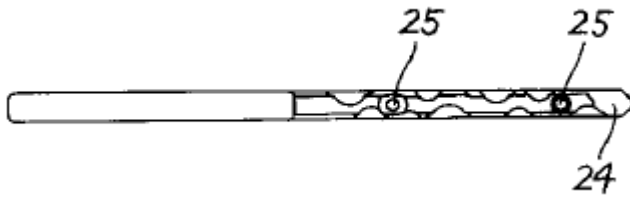
Cross sectional view of a rotary disc tumbler lock according to an example of the present invention, illustrating a state where a tumbler is removed.

[Fig. 6]



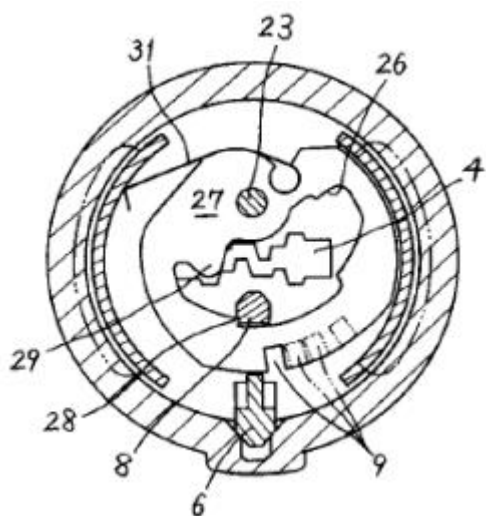
Plan view of duplicate key of rotary disc tumbler lock according to an example of the present invention

[Fig. 7]



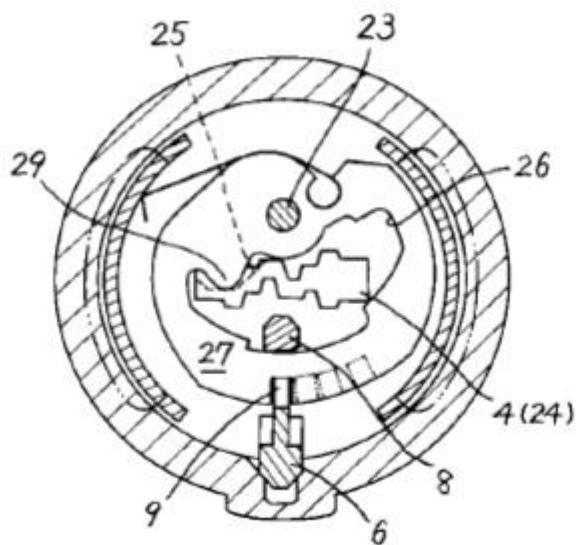
Side view of duplicate key of rotary disc tumbler lock according to an example of the present invention

[Fig. 8]



Cross sectional view of the rotary disc tumbler lock according to an example of the present invention, illustrating a state where a tumbler having an engagement projection brought into contact with a flat plane portion in a blade of the duplicate key provided is attached.

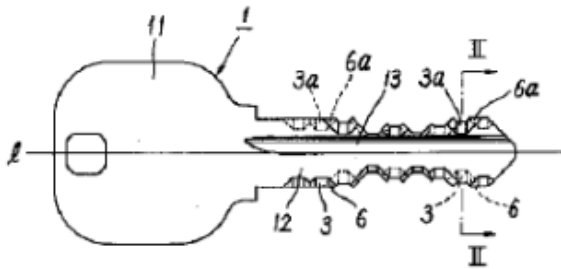
[Fig. 10]



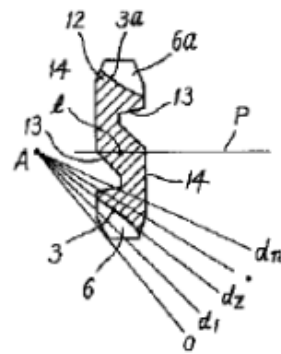
Cross sectional view of the rotary disc tumbler lock similar to [Fig. 8] and illustrating a state where the duplicate key is inserted into a key hole.

(Attached note 3) Drawings described in Exhibit Ko 2

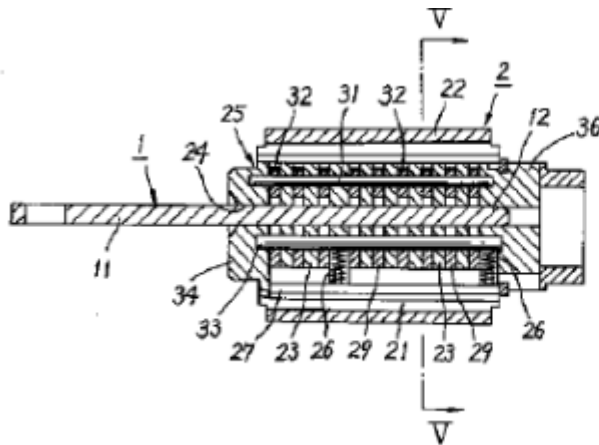
[Fig. 1]



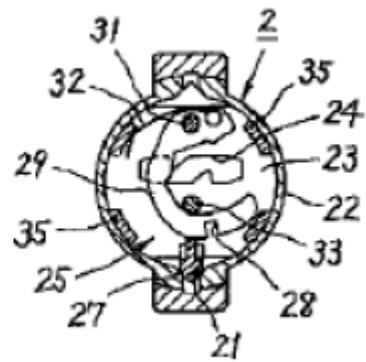
[Fig. 2]



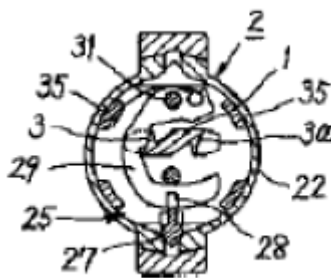
[Fig. 3]



[Fig. 4]



[Fig. 5]



[Fig. 1] Plan view illustrating an example of a reversible key

[Fig. 2] Enlarged sectional view on II-II line in [Fig. 1]

[Fig. 3] Longitudinal side view illustrating an example of a lever tumbler lock in a state where the key in [Fig. 1] is inserted

[Fig. 4] Cross sectional view on IV-IV line in a state where the key has been removed from the lever tumbler lock in [Fig. 3]

[Fig. 5] Cross sectional view on V-V line of the lever tumbler lock in [Fig. 3]