

Note: When any ambiguity of interpretation is found in this provisional translation, the Japanese text shall prevail.

## 6. Cases pertinent to Prior Application (Article 39 of the Patent Act)

In order to make clear the examination practice in relation to the determination on whether or not claimed inventions can be patented under Article 39(1) to (4) of the Patent Act, the outline of the determination thereon, as well as the measures of the applicant is explained below based on specific examples.

(Points to Note)

These cases have been prepared with an aim to describe the examination practice. Therefore, it should be noted that modification such as clarification is added to the claims etc. in the above cases to ease explanation.

### List of Case

(In the list, "○" means that the claimed invention can be patentable under Article 39(1) to (4) of the Patent Act. In contrast, "×" means that the claimed invention cannot be patentable under Article 39(1) to (4) of the Patent Act)

Case No.	Title of Invention	Remark	Conclusion
Example 1	Tyrosine kinase inhibitor	Relating to divisional application	×

[Case 1]

The description, etc. of divisional application

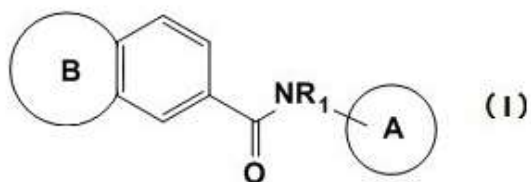
Title of Invention

Tyrosine kinase inhibitor

What is claimed is:

[Claim 1]

A compound represented by the formula (I):



wherein a ring A is a 5 to 7-membered ring, and a ring B is an unsaturated heterocyclic ring, a group R<sub>1</sub> is hydrogen or a C1-6 alkyl group.

[Claim 2]

The compound according to claim 1 wherein the ring A is a 6 to 7-membered ring.

Excerpt from Detailed Description of the Invention

The compounds represented by the formula (I) are useful as a tyrosine kinase inhibitor.

The compound wherein the ring A is a 5-membered ring, the compound wherein the ring A is a 6-membered ring, and the compound wherein the ring A is a 7-membered ring are stated so as to be recognized individually by a person skilled in the art.

[Conclusion]

The invention according to claim 1 of the divisional application (hereinafter, referred to

The description, etc. of original application

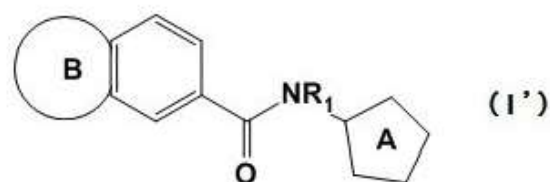
Title of Invention

Tyrosine kinase inhibitor

What is claimed is:

[Claim 1]

A compound represented by the formula (I'):



wherein a ring A is a 5-membered ring, and a ring B is an unsaturated heterocyclic ring, a group R<sub>1</sub> is hydrogen or a C1-6 alkyl group.

Excerpt from Detailed Description of the Invention

The compounds represented by the formula (I') are useful as a tyrosine kinase inhibitor.

The compound wherein the ring A is a 5-membered ring, the compound wherein the ring A is a 6-membered ring, and the compound wherein the ring A is a 7-membered ring are stated so as to be recognized individually by a person skilled in the art.

as "Invention 1") is the same as the invention according to claim 1 of the original application (hereinafter, referred to as "Invention 2"), for which a patent has been granted. Therefore, a patent cannot be granted for Invention 1 under Patent Act Article 39(2).

[Explanation]

The ring A of Invention 1 has virtually alternatives of 5 to 7-membered rings. Among them, the invention in which the ring A being a 5-membered ring is supposed to be a matter specifying the invention (hereinafter, referred to as "Invention 1-1") is an invention that can be recognized individually by a person skilled in the art based on the statement in the description of the invention. In comparison of Invention 1-1 and Invention 2, they are not different.

Accordingly, in case where Invention 1-1 is presumed to be the earlier application and Invention 2 is presumed to be the later application, Invention 2 of the later application is considered to be the same as Invention 1-1 of the earlier application, and in case where Invention 2 is presumed to be the earlier application and Invention 1-1 is presumed to be the later application, Invention 1-1 of the later application is considered to be the same as Invention 2 of the earlier application.

Therefore, Invention 1 is the same as Invention 2.

[Measures of the applicant]

The divisional application is to be limited to the invention according to claim 2.