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

8. Court precedents relating to Special Application

Classification	Content	No.	Date of Decision (Case No.)	Relevant Portion of Examination Guidelines
101	As to whether it satisfies the requirement of division of patent application or not	1	Intellectual Property High Court Decision, April 27, 2006 (2005 (Gyo KE) No. 10623)	Part VI, Chapter 1 1.3
102	As to whether it is appropriate to notify Article 50 bis or not	2	Intellectual Property High Court Decision, February 25,2010 (2011 (Gyo KE) No. 10352)	Part VI, Chapter 1 2
103	As to whether it satisfies the requirement of conversion of application or not		-	PartVI, Chapter 2
104	As to whether it satisfies the requirement of patent application based on utility model registration or not		-	Part VI, Chapter 2

(101)-1

Relevant portion of Examination Guidelines	Part VI, Chapter 1, Section 1, 3.
Classification of the Case	101: As to whether it satisfies the requirement of division of patent application or not
Keyword	

1. Bibliographic Items

Case	"Base resin for chemically amplified positive resist" (Opposition to the grant of a patent) Intellectual Property High Court Decision, April 27, 2006 (2005 (Gyo KE) No. 10623)
Source	Website of Intellectual Property High Court
Application No.	Japanese Patent Application No. 2001-136724 (JP 2001-356483A)
Classification	G03F 7/039
Conclusion	Dismissal
Related Provision	Article 44(1)
Judges	IP High Court First Division, Presiding judge: Katsumi SHINOHARA, Judge: Mitsuru SHISHIDO, Judge: Yoshiaki SHIBATA

2. Overview of the Case

(1) Summary of Claimed Invention

The claimed invention is related to a chemically amplified positive resist composition which has high sensitivity and high resolution, is excellent in heat resistance, temporal storage stability, depth of focus, and storage stability of a resist solution, can form a resist pattern excellent in a profile without substrate dependence, and induces to radiation such as ultraviolet rays, far ultraviolet rays, eximer lasers such as KrF and ArF, X rays, and electron rays.

(2) Statement of Description Originally Attached to Application of Original Application (Original Description)

"(A) "Conventionally, semiconductor devices such as IC and LSI are manufactured by repeating, a few times, the steps of performing photolithography using a photoresist composition, etching, diffusing impurities, forming wiring and the like. ...

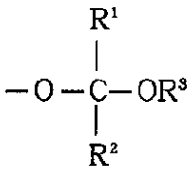
In the description of United States Patent No. 4,491,628, as the chemically amplified resist, a resist composition obtained by combining a resin component in which a hydroxyl group in polyhydroxystyrene is substituted to a tert-butoxycarbonyloxy group and an acid generator such as onium salt is proposed" (paragraphs [0002] to [0004])

(B) "However, the resist composition has problems in which the resolution and depth of focus are not sufficient and bridging in which the upper part of a resist pattern is continuous like eaves occurs.

... The present inventors has completed the present invention by substituting two different kinds of substituent in a specific ratio respectively, as a resin component in which the solubility with respect to an alkali solution is increased with the action of acid, using a mixture of polyhydroxystyrene having a specific molecular weight and molecular weight distribution (Mw/Mn) and a compound generating acid with radiation, and blending a compound of organic carboxylic acid" (paragraphs [0005] to [0009])

(C) ... "The present invention executing the purpose is related to a positive resist composition comprising: (A) a resin component in which the solubility with respect to an alkali solution is increased with the action of acid; (B) a compound generating acid with radiation; and (C) a compound of an organic carboxylic acid, wherein the component (A) is a mixture of (a) polyhydroxystyrene having the weight-average molecular weight of 8,000 to 25,000 and the molecular weight distribution of 1.5 or less in which 10 to 60 mol% of a hydroxyl group is substituted to a residue represented by chemical formula 2,

[Chemical formula 2]



where R^1 represents a hydrogen atom or a methyl group, R^2 represents a methyl group or an ethyl group, and R^3 represents a lower alkyl group having the carbon number of 1 to 4, and (b) polyhydroxystyrene having the weight-average molecular weight of 8,000 to 25,000 and the molecular weight distribution of 1.5 or less in which 10 to 60 mol% of a hydroxyl group is substituted to a tert-butoxycarbonyloxy group" (paragraphs [0012] to [0013])

(D) "In a mixing ratio of the resin component (A), it is preferable that the component (a) is 30 to 90 wt.% and the component (b) is 10 to 70 wt.%" (paragraph [0014]).

(E) In working examples 1 to 3, it is stated that 3 g of polyhydroxystyrene of the component (b) obtained by production example 1 (paragraph [0070]) and 3 g of polyhydroxystyrene of the component (a) obtained by the production example 2 (paragraph [0071]) were used."

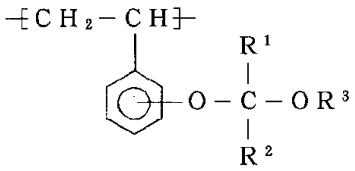
(cited from the Court Decision)

(3) The Claims (After Correction) (Claims 1 and 2 Defined as “Present Invention 1” and “Present Invention 2” in this order)

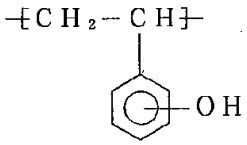
[Claim 1] Base resin for chemically amplified positive resist for a KrF excimer laser which is composed of a poly(hydroxystyrene) derivative having the weight-average molecular weight of 8,000 to 25,000 and molecular weight distribution (Mw/Mn) of 1.5 or less, wherein the poly(hydroxystyrene) derivative is composed of: 10 to 60 mol% of a structural unit represented by chemical formula 1, where R^1 represents a hydrogen atom or a methyl group, and R^2 and R^3 each represent a methyl group or an ethyl group; and 90 to 40 mol% of a structural unit

represented by chemical formula 2.

[Chemical formula 1]



[Chemical formula 2]



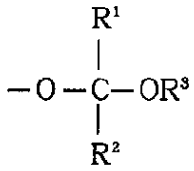
[Claim 2] A solution for resist pattern formation obtained by dissolving a chemically amplified positive resist composition comprising the base resin for chemically amplified positive resist for a KrF excimer laser according to Claim 1, in a solution comprising propylene glycol monomethyl ether acetate.

(4) Procedural History

October 30, 1995	:	Patent application by plaintiff (patentee) (original application) (Japanese Patent Application No. H7-305113) (see "Statement of Description Originally Attached to Application of Original Application (Original Description)")
March 29, 2000	:	Divisional application out of the original application by plaintiff (child application) (Japanese Patent Application No. 2000-91921)
May 7, 2001	:	Divisional application out of the child application by plaintiff (grandchild application, present patent application) (see "the claims")
April 11, 2003	:	Registration of establishment of patent right (present patent)
December 18, 2003	:	Filing opposition to the grant of a patent by defendant (Igi No. 2003-73033)
March 15, 2005	:	Demand for correction by plaintiff (see "The Claims")
June 20, 2005	:	Decision that "the correction is permitted. … The patent is invalidated".

3. Portions of Decision/Trial Decision relevant to the Holding

Decision (cited from the Court Decision)
… In the original description, it is not stated that a poly(hydroxystyrene) derivative of the present invention is only used as a resin component (base resin), and it cannot be obvious, and the present inventions 1 and 2 cannot be granted for the inventions stated in the original description. Consequently, the present patent application is not permitted as patent application prescribed by Patent Act Article 44(1), and the filing date is May 7, 2001 being the actual filing date.
Decision

Allegations by Plaintiff	Allegations by Defendant
(2) Claim 1 of the scope of claims in the description originally attached to the application of the original application (hereinafter, referred to as "original description"), is the invention claimed in a positive resist composition comprising components (A), (B) and (C), wherein the component (A) is a mixture of: (a) polyhydroxystyrene having the weight-average molecular weight of 8,000 to 25,000 and molecular weight distribution of 1.5 or less, in which 10 to 60 mol% of a hydroxyl group is substituted to a residue represented by chemical formula 1; [Chemical formula 1]  (where R^1 represents …, R^2 represents …, and R^3 represents …)and (b) polyhydroxystyrene having the weight-average molecular weight of 8,000 to 25,000 and molecular weight distribution of 1.5 or less, in which 10 to 60 mol% of a hydroxyl group is substituted to a tert-butoxycarbonyloxy group. In detailed explanation of the invention, as examples of "the component (a)", a production example of polyhydroxystyrene in which a part of hydroxyl group is substituted to 1-ethoxyethoxy group is indicated (production example 2 and comparative production example), and as specific examples of groups in the chemical formula, 1-methoxyethoxy group, 1-ethoxyethoxy group and the like are stated (paragraph [0014]). These groups correspond to a group in chemical formula 1 in the present invention 1, wherein R^1 represents a hydrogen atom or a methyl group, and R^2 and R^3 each represent a methyl group	(101) It is evident that in the present invention 1, there is included the case that a polyhydroxystyrene derivative having the weight-average molecular weight of 8,000 to 25,000 and molecular weight distribution of 1.5 or less, wherein the polyhydroxystyrene derivative is composed of: 10 to 60 mol% of a structural unit represented by chemical formula 1 of the present invention 1; and 90 to 40 mol% of a structural unit represented by chemical formula 2 of the present invention 1, (hereinafter, referred to as "a polyhydroxystyrene derivative of the present invention 1") is individually used as base resin in a chemically amplified positive resist composition for a KrF excimer laser. On the other hand, in the original description, it is stated as prior art that "in the description of United States Patent, for example, a resist composition combining a resin component in which a hydroxyl group in polyhydroxystyrene is substituted to a tert-butoxycarbonyloxy group, and an acid generator such as onium salt, is proposed as chemically amplified resist" (paragraph [0004]). Since there are problems in such a conventional resist composition (paragraphs [0005] to [0008]), in the invention stated in the original description, it is an essential constituent element that a mixture of the component (a) being a polyhydroxystyrene derivative in which a part of group is substituted to "an alkoxyalkyloxy group" represented by chemical formula 1 in the original description and the component (b) being a polyhydroxystyrene derivative in which a part of group is substituted to "a tert-butoxycarbonyloxy group", which is stated as a conventionally publicly known resin component in the original description. (2) Consequently, in the invention stated in the original description, it is not taken into consideration

or an ethyl group. (3) The decision charges that as it is evident from these statements (the statement of the original description), the component (a) stated in the original description corresponds to a poly(hydroxystyrene) derivative of the present invention, but, in the original description, it is only stated that a mixture of the components (a) and (b) is used as a resin component (basic resin), and it is not stated to use a resin component consisting of the component (a), that is, it is not stated and supposed that the component (a) is only used as a resin component (base resin). However, idea that a mixture of the components (a) and (b) being two kinds of polyhydroxystyrene is used as a resin component for chemically amplified positive resist, does not suddenly strike a person skilled in the art. Firstly, idea that the component (a) or (b) is individually used as a resin component occurs. Next, a person skilled in the art should ascertain the effect by preparing a resist composition using the components respectively, and strike on idea of mixing these components. Consequently, in working examples 1 to 3 in the original description, a polyhydroxystyrene derivative of the component (b) obtained by production example 1 and a polyhydroxystyrene derivative of the component (a) obtained by production example 2 are stated, and thus it is potentially indicated that only the component (a) obtained by production example 2 is individually used as a resin component.	that the component (a), that is, the polyhydroxystyrene derivative of the present invention 1 is individually used. Further, it is not stated and cannot be obvious in the original description that the polyhydroxystyrene derivative of the present invention 1 can be only used as base resin in a chemically amplified positive resist composition for a KrF excimer laser. Accordingly, the present patent application cannot be permitted as legally divisional application prescribed by previous Article 44(1), and the decision that the filing date is May 7, 2001 being the actual filing date, has no error. (3) The plaintiff alleges that firstly, idea that the component (a) or (b) is individually used as a resin component occurs, idea of mixing these components should be conceived in the next stage, and thus it is potentially indicated that the component (a) is individually used as a resin component. However, in the original description, it is stated that base resin consists of only the component (b) as prior art, and it is only stated that to solve defects in prior art, the publicly known component (b) or a mixture of the components (a) and (b) is used. Consequently, in the original description, the potential indication that only the component (a) is used cannot be found.
Judgement by the Court (3) … In the original description, for the base resin for chemically amplified positive resist, it is stated a resin component in which a hydroxyl group in the polyhydroxystyrene is substituted to a tert-butoxycarbonyloxy group is well-known as prior art, and in order to overcome the problem of use of, such component: “two different kinds of substituents are substituted respectively in a specific ratio is used as the resin component”; relating to the two different kinds of substituents and specific ratio, components (a) and (b) in resin (A) are used in a specific ratio respectively; and the component (b) produced by the production	

example 1 and the component (a) produced by the production example 2 are used in the working examples 1 to 3.

As described above,,the original description stated that the both components (a) and (b) are used for the resin, however, it is not explicitly stated that the component (a) or the component (b) is separately used. Further, in the original description, it is stated that the component (a) is added to the component (b) which is used in the prior art, but it is not suggested that the component (a) which is not used in prior art is separately used, and even if the statement of the original description is considered in detail, it cannot be said that it is obvious from the statement of the original description that the component (a) is separately used.

Each present invention includes the techcnial matter that the component (a) is separately used for the base resin for chemically amplified positive resist. However, it is apparent that the original description does not state, for the base resin for chemically amplified positive resist, the technical matter of each present invention that the component (b) is not used but the component (a) is separately used, and that those technical matters are not obvious from the statement of the original description.

(101)-2

Relevant portion of Examination Guidelines	Part IV, Chapter 1, Section 1, 3.
Classification of the Case	101: As to whether it satisfies the requirement of division of patent application or not
cgKeyword	

1. Bibliographic Items

Case	"Folding container" (Trial for Invalidation) Intellectual Property High Court Decision, February 25, 2010 (2009 (Gyo KE) No. 10352)
Source	Website of Intellectual Property High Court
Application No.	Japanese Patent Application No. H11-239078 (JP 2000-72141A)
Classification	B65D 6/18
Conclusion	Acceptance
Related Provision	Article 44(1)
Judges	IP High Court Third Division, Presiding Judge: Toshiaki IIMURA, Judge: Ken NAKAHIRA, Judge: Hiroyuki UEDA

2. Overview of the Case

(1) Summary of Claimed Invention

The claimed invention relates to a collapsible folding container that houses various types of industrial parts, and others, and that is used for transporting/conveying the parts. In the conventional folding container, each of folding side plates is made by connecting two independent plates together in a foldable manner with hardware, like a hinge. Further, the folding side plates are connected further with a bottom plate with hardware, like a hinge. Therefore, the number of constituent parts and the number of assembling steps are increased, which in turn results in a problem of a hike in production cost. In order to solve the problem, there is adopted a structure in which a center core of a plastic corrugated cardboard is transversally cut from the inside to form a hinge. Cut surfaces are made such that end faces of the cut center cores butt with each other while the side plates stand upright.

(2) Statements in the description or drawings first attached to the request of the original patent application (originally attached description etc.)

"A [0002] [Prior Art] A folding container configured such that ... is proposed as a folding container of this type.

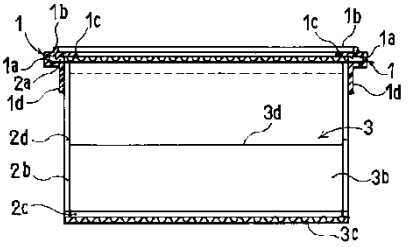
B [0003] [Problem to be Solved by the Invention] However, in the folding container of this type, lower edges

of the folding side plates on both sides become free. When the lower edges are kept free as they are, the strength of the container decreases. In order to maintain the strength of the side plates, a sturdy fitting mechanism must be interposed between two sides of the bottom plate and the lower edges of both folding side plates, and these portions must be fitted together. The fitting mechanism becomes intricate, which in turn results in a problem of making operation for folding and assembling the container intricate.

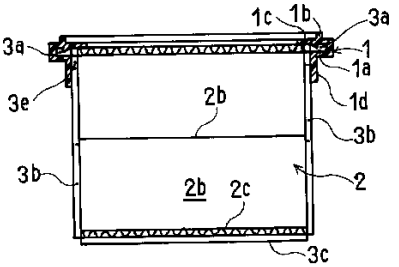
C [0004] The claimed invention has been conceived in view of the problem and aims at providing a folding container that has sufficient strength and enables folding and assembling operation to be easily performed.

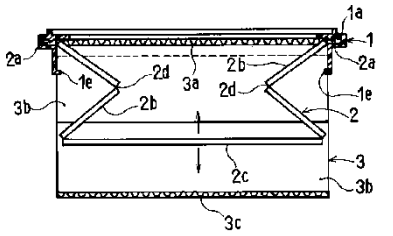
D [0005] [Means for Solving the Problem] To accomplish the object, a folding container of the claimed invention comprises a rectangular-frame-shaped upper frame; inner side plates whose upper-end holding portions are fixed to mutually-opposed two sides of the upper frame; and outer side plates whose upper-end holding portions are fixed to other mutually-opposed two sides of the upper frame and that are to be disposed outside inner side plates, wherein the inner side plates are formed so as to form continuous side plates on both sides of the bottom plate and be assumed that they have a C-shaped opening; the outer side plates are disposed so as to form continuous side plates on both sides of the bottom plate, be assumed that they have a C-shaped opening, intersect with the inner side plates in a shape of a cross, and overlap the bottom plates with each other; and wherein hinges that go inside in the course of folding are provided in substantially center portions of the respective side plates of the inner side plates and the respective side plates of the outer side plates." (Cited from the Court Decision)

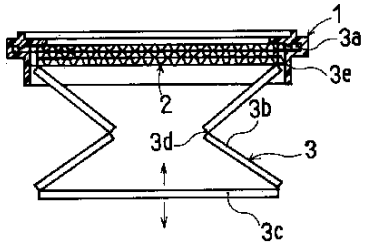
"[0011] Each of the inner side plates 2 is made up of a holding portion 2a to be inserted into an indentation 1a, a side plate 2b continued from the holding portion 2a, and a bottom plate 2c continued from the side plate 2b. The respective portions are integrally formed by way of the repeatedly-foldable hinge. .... In addition, a horizontal hinge 2d is provided in a center area of the side plate 2b, and the side plate 2b is foldable so as to push the hinge 2d inside.



[0012] As the case with the inner side plates, each of the side plates 3 is made up of a holding portion 3a to be inserted into the indentation 1a; a side plate 3b continued from the holding portion 3a by way of a stationary wall portion 3e, and a bottom plate 3c continued from the side plate 3b, wherein the respective portions are integrally formed way of the repeatedly-foldable hinge. .... In addition, a horizontal hinge 3d is provided in a center area of the side plate 3b, and the side plate 3b is foldable so as to push the hinge 3d inside." (Cited from JP H6-211240A)

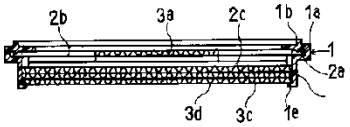






"E [0018] Incidentally, in relation to the inner side plates 2 and the outer side plates 3 of the embodiment, in a thickness direction, a portion of the

plastic corrugated cardboard is cut into a hinge. However, the corrugated cardboard can also be simply folded into a hinge. Moreover, the hinge can also be embodied as another hinge-butt-type hinge. In addition to being formed from the plastic corrugated cardboard, the inner side plates 2 and the outer side plates 3 can also be formed from a plastic plate, a metal plate, a paper corrugated cardboard, and others.



F [0024] [Effect of the Invention] As described above, in the folding container of the claimed invention, the C-shaped inner side plates and the C-shaped outer side plates, which are held at both ends thereof by the upper frame and which are disposed so as to intersect in a cross shape, form side walls of the container. Accordingly, the strength of the container is not deteriorated by free ends, and a fitting mechanism of an intricate structure is not required. Therefore, a structure is simple, and the container can be easily manufactured at low cost, so that assembling and folding operation can be performed simply. Moreover, the bottom of the container is formed into a double bottom from the bottom plates of the inner side plates and the bottom plates of the outer side plates. Hence, the strength of the container is enhanced, and the container can also house and transport a heavy load." (Cited from the Court Decision)

(3) Statement of the Claims (Claim 1 of the claimed patent application is stated)

[Claim 1] A folding container having side plates that form horizontal hinge at any positions in a height direction and that can be folded inside comprises the following requirements (a) to (d).

(a) Each of the side plates is formed from a plastic corrugated cardboard having a center core between two corrugated cardboard liners.

(b) A direction of use of the plastic corrugated cardboard is set such that the center core is oriented in the height direction of the side plate.

(c) The hinge is formed by transversally cutting the center core of the plastic corrugated cardboard from the inside.

(d) Cut faces of the plastic corrugated cardboard are made such that end faces of the cut center core butt with each other while the side plate stands upright.

(4) Procedural History

January 12, 1993	:	Patent Application (Original Patent Application) by Plaintiff (Patentee) (Japanese Patent Application No. H5-3539) (see "statements in the description (Original description) first attached to the request of the original patent application")
August 26, 1999	:	Divisional application of a portion of the original patent application by Plaintiff (Patent application Concerned) (see "Statement of the Claims")
July 26, 2002	:	Registration of establishment of a patent right (Patent Concerned)
February 27, 2009	:	Request of Trial for Patent Invalidation by Defendant (Muko No. 2009-800050)
September 29, 2009	:	The appeal stating that "the invention claimed in claim 1 ... shall be invalid."

3. Portions of Appeal/Trial Decisions relevant to the Holding

Appeal Decision (cited from the Court Decision)
(1) In view of statements about an object, means for accomplishing the object and effects of the means, the description or drawings (...called "Originally attached description etc.") first attached to the request of the original patent application are admitted that they include statements about the invention (hereinafter called an "Originally-Filed Invention") pertinent to the folding container comprising "a structure in which the inner side plates are formed so as to form continuous side plates on both sides of the bottom plate and be assumed that they have a C-shaped opening and in which the outer side plates are disposed so as to form continuous side plates on both sides of the bottom plate, be assumed that they have a C-shaped opening, intersect with the inner side plates in a shape of a cross, and overlap the bottom plates with each other" (hereinafter often called a "Structure of an Originally-Filed Invention"). (2) The invention (hereinafter called an "Original Invention Concerned") stated in the scope of claims of the description attached to the request of the patent application concerned can be said to be a folding container which changes to a box-shaped assembled state in which a bottom plate is surrounded by four side plates and in which mutually-opposed two foldable side plates and the bottom plate are integrally formed. In the original invention concerned, two side plates having a mutually-opposed relation can be said to be clearly two sets. However, it is not specified that each of two sets is formed such that two side plates and a bottom plate are integrally formed; namely, side plates are continuously formed on both sides of the bottom plate. Also, it is not specified that the bottom plates are at least two. Therefore, it is obvious from them that the invention can be said to be an invention that does not always have the structure of the originally-filed invention. Meanwhile, the originally attached description etc. of the originally-filed invention can be said to include statements about the originally-filed invention having the structure of the originally-filed invention. However, there is no reason that the original invention concerned is stated. (3) The patented invention concerned can be said to obviously be a folding container having side plates, and it can also be said to be obvious that the container has a bottom. However, it is not specified that the side plates are formed continuously on the bottom plate. Therefore, it is obvious that the patented invention concerned can be said to be an invention that does not always have the structure of the originally-filed invention. Meanwhile, the originally attached description etc. of the originally-filed invention can be said to include statements about the originally-filed invention having the structure of the originally-filed invention. However, there is no reason that the patented invention concerned is stated. In that case, even at the time of filing of the patent application concerned and the time of a decision to grant a patent concerned, the patent application concerned violates provisions of Article 44(1) of the Patent Act....
Decision

Allegations by Plaintiff	Allegations by Defendant
...when a decision is made as to whether or not the patented invention concerned fulfills the requirements for a divisional application of Article 44(1) of the Patent Act, there is no ground that the patented invention concerned should be identical with the "structure of the originally-filed invention" found by the trial decision. The trial decision admits that the configuration of the patented invention concerned is stated in the originally attached description etc. of the original application, however, the appeal interprets that the invention is not an invention stated in the scope of claims of the original patent application nor fulfills the requirements for a divisional application of Article 44(1) of the Patent Act. In these points, the trial decision is fallacious.	...the object and effect of the patented invention concerned should be admitted on the basis of the object and effect of the invention objectively interpreted from the statements in the originally attached description etc. of the originally-filed invention. The trial decision finds the "structure of the originally-filed invention" from the statements in the originally attached description etc. of the originally-filed invention, and the finding is free of a fallacy.

Judgment by the Court

...all configurations of the patented invention concerned are stated in the originally attached description etc. of the originally-filed application.

First, among the configurations of the patented invention concerned, the "configuration in which the folding container has side plates which are folded inside so as to form a horizontal hinge at an arbitrary position in a height direction" and the "configuration in which (a) the side plates are formed from a plastic corrugated cardboard having a center core between two corrugated cardboard liners" are shown in the drawings of the originally attached description etc. of the originally-filed application.

Next, among the configurations of the patented invention concerned, the "configuration in which (b) the plastic corrugated cardboard is set in such a way that the center core is oriented in a height direction of the side plates," the "configuration in which (c) the hinge is formed by transversely cutting the center core from the inside of the plastic corrugated cardboard, and the "configuration in which (d) the cut face of the plastic corrugated cardboard is made such that the end faces of the cut center core butt with each other" can be admitted that they are stated in the originally attached description etc. of the originally-filed application or obvious from the originally attached description etc. along with ....

the statements in the claims of the original patent application and the statements of the detailed description of the invention and drawings of the original description comprehensively. Hence, the patented invention concerned fulfills the predetermined requirements of Article 44(1) of the Patent Act.

in order to fulfill the requirements of Article 44(1) of the Patent Act, it is sufficient to interpret whether or not the patented invention concerned is stated in the original description, claims, and drawings in the originally filed application. On the other hand, the trial decision, however, does not interpret whether or not the patented

invention concerned is stated in the original description, claims, and drawings in the originally filed application, but does lead to the conclusion that the claimed invention is not stated in the originally attached description etc. of the original patent application, on the grounds that the patented invention concerned does not specify the configuration that "side plates are continuously formed on the bottom plate" described in the "structure of the originally-filed invention", in comparison with the "structure of the originally-filed invention" found by the trial decision limitedly and the patented invention concerned.

However, the determination of the trial decision fails to provide rational explanations about (1) why the patented invention concerned must be compared with the "structure of the originally-filed invention" rather than with the invention stated in the entirety of the originally attached description etc. of the originally-filed invention; and (2) why the fact that the configuration that the "side plates are continuously formed on the bottom plate," among the "structures of the originally-filed invention" found by the trial decision limitedly is not specified in the patented invention concerned, means that the patented invention concerned is not stated in the originally attached description etc. of the originally-filed application. The technique of determination and the conclusion of the trial decision lack rationality.