

2204 Determination Regarding Whether or Not "When a Claim Concerning an Invention of a Product Includes a Manufacturing Method for a Product" is Relevant

1. Basic idea

- (1) The Examiner shall determine whether or not at least a portion of claims pertaining to an invention of a product corresponds to a "case where a claim includes a manufacturing method for a product" in taking into consideration, in addition to the descriptions, the claims, and the drawings, also technical knowledge in the technical field to which the invention belongs (it is necessary for the Examiner to note that even if the following types and operative examples are formally relevant, there are cases in which different determinations may be made on the basis of technical knowledge in the technical field).
- (2) In view of the fact that the burden of proof for the description requirement, in general, is on the applicant side, if necessary, the Examiner may, in treating a "case where a claim includes a manufacturing method for a product" as being relevant to at least a portion of claims pertaining to an invention of a product, by notifying a reason for rejection for a violation of the requirement of definiteness, provide an opportunity to claim and prove that "impossible/impractical circumstances" exist, or an opportunity for objection/amendment, to an applicant. Furthermore, by doing so, it is appropriate to prevent the application from subsequently becoming a patent containing a reason for invalidation, or profits of a third party from being unfairly harmed.

2. Types and operative examples corresponding to "case where a claim includes a manufacturing method for a product"

Type (1-1): Case in which, pertaining to manufacturing, a description of elements over time exists

Operative Example:

"a polarizer formed by application to a supporting body, and irradiation at a temperature of alignment with the liquid crystal phase"

"an apparatus having an anchorage formed by inserting a bolt provided with a convex portion into a hole provided with a concave portion so that the concave portion and the convex portion are engaged, and screwing a nut into an end portion

of the bolt"

Example of Amendment:

"a manufacturing method for a polarizer formed by application to a supporting body, and irradiation at a temperature of alignment with the liquid crystal phase"

"an apparatus having an anchorage formed such that, into a hole provided with a concave portion, a bolt provided with a convex portion is inserted in a state in which the concave portion and the convex portion are engaged, and a nut is screwed into an end portion of the bolt" (corresponds to "type (2): a case in which, simply by indicating a state, a structure or a feature is merely identified")

Type (1-2): Case in which, pertaining to manufacturing, a description exists in which a technical feature or condition is attached

Operative Example:

"A polymer C acquired by reacting a monomer A with a monomer B at 50°C."

"A fluorescent body formed by sintering under 1 to 1.5 atmospheric pressures."

"A rubber manufactured good in which roughening treatment, in which a particulate substance is caused to collide with the exterior surface, has been applied"

Example of Amendment:

A manufacturing method for a polymer C in which a monomer A is reacted with a monomer B at 50°C."

"A manufacturing method for a fluorescent body manufactured via a sintering step under 1 to 1.5 atmospheric pressures."

"A manufacturing method for a rubber manufactured good in which roughening treatment, in which a particulate substance is caused to collide with the exterior surface, has been applied"

Type (1-3): Case of referring to an invention of a manufacturing method

Operative Example:

"A rubber composition manufactured using any of the manufacturing methods in claims 1 to 8"

"A polymer manufactured using any of the manufacturing methods in claims 1 to 4"

Example of Amendment:

(Normally, if an invention of a manufacturing method is left as referred to, it is

not possible to prevent, by way of an amendment, a "case in which a manufacturing method for a product is described" from being relevant.)

3. Types/operative examples not corresponding to a "case in which a manufacturing method for a product is described"

Type (2): Case in which, by indicating simply a state, a structure or a feature is merely identified

Operative Example:

"An item in which a resin composition has been cured"

"An article in which an affixed chip is bonded to a sensor chip"

"An item in which A is formed to be of a different thickness from B"

"A composition formed by combining A with B"

"A tire created using a rubber composition"

"A laminated film formed by placing a layer C between a layer A and a layer B"

"Isolated cell," "Extract," "Threshed rice," "Spirits," "Plating layer,"

"Removably configured"