Appeal decision

Appeal No. 2015- 4953

Israel Appellant

POCARED DIAGNOSTICS LTD.

Osaka, Japan Patent Attorney R&C IP LAW FIRM

The case of appeal against the examiner's decision of refusal of Japanese Patent Application No. 2012-530975 "SYSTEM FOR CONDUCTING IDENTIFICATION OF BACTERIA IN BIOLOGICAL SPECIMEN" [international publication WO2011/035304 published on March 24, 2011, National Publication of International Patent Application No. 2013-505467 published on February 14, 2013] has resulted in the following decision:

Conclusion

The appeal of the case was groundless.

Reason

No. 1 History of the procedures

The application was filed on September 21, 2010 as an International Patent Application (priority claim under the Paris Convention received by a foreign patent office on September 21, 2009, September 20, 2010, USA), reasons for refusal were notified on January 6, 2014, and a written opinion was submitted and an amendment was made on May 15, 2014. The examiner's decision of refusal was made on November 7, 2014, an appeal against the examiner's decision of refusal was requested on March 13, 2015, and an amendment was made at the same time.

No. 2 Decision to dismiss the amendment dated March 13, 2015

[Conclusion of Decision to Dismiss the Amendment]

The amendment (hereinafter, referred to as "the Amendment") dated March 13, 2015 shall be dismissed.

[Reason]

1 Details of the Amendment

The description of Claim 1 of the scope of claims amended by the Amendment is as follows (the underline represents an amended part.).

"A system for cooling and controlling the temperature of specimens in a plurality of optics cups in an optical analysis, comprising:

a carousel for supporting a plurality of disposable cartridges, each cartridge supporting a disposable optics cup containing a specimen to be optically analyzed by an optical analyzer,

the carousel having a plurality of inlet openings and outlet openings, <u>each</u> <u>provided at a cell section</u> at which one of the disposable cartridges <u>is arranged</u>;

a turntable having a plurality of inlet openings and outlet openings <u>provided for</u> <u>each of the cell sections, associated with each</u> of the inlet openings and outlet openings in the carousel; and

an insulation plate located below the turntable, the insulation plate including <u>a</u> <u>pair of</u> thermal electric coolers for cooling the air circulated through the inlet openings and outlet openings from the carousel to the turntable for controlling the temperature of the specimens."

2 Purpose of the Amendment

The Amendment of Claim 1 includes the following amendments:

(a) an amendment, concerning "a plurality of inlet openings and outlet openings" "included in" "the carousel", for making the concept more narrow from "each associated with one of the disposable cartridges " of Claim 1 before amendment to "<u>each provided</u> <u>at a cell section at which one of the disposable cartridges is arranged</u>";

(b) an amendment, concerning "a plurality of inlet openings and outlet openings" "included in" "the turntable", for making the concept more narrow from "each associated with one of the plurality of the inlet openings and outlet openings in the carousel" to "provided for each of the cell sections, associated with each of the plurality of the inlet openings and outlet openings in the carousel"; and

(c) an amendment, concerning "thermal electric cooler" "included in" "the insulation plate", for making the concept narrower from "at least one" of Claim 1 before amendment to "a pair of".

Therefore, since the Amendment is for making the concept more narrow of matters required to identify the invention described in Claim 1 before amendment, it

corresponds to Article 17-2(5)(ii) of the Patent Act aiming at restricting the scope of claims.

3 Judgment on independent requirements for patentability

It will be examined below as to whether an invention relating to Claim 1 after the Amendment (hereinafter referred to as "the Amended Invention") complies with the provision of Article 126(7) of the Patent Act which is applied mutatis mutandis pursuant to the provisions of Article 17-2(6) of the Patent Act; in other words, whether the appellant should be granted a patent for it independently at the time of patent application.

(1) Described matters in the Cited Document

A In WO 2009/100197 (hereinafter referred to as "the Cited Document 1"), became available to the public through electric telecommunication line before the priority date of the application, a publication cited in the reasons for refusal stated in the examiner's decision, the following matters are described together with illustrations of drawings (underlines are added by the body).

(A) "36. <u>A system for cooling and controlling the temperature of specimens in a plurality of optics cups in an optical analysis, comprising:</u>

a carousel for supporting a plurality of disposable cartridges, each supporting a disposable optics cup containing a specimen to be optically analyzed by an optical analyzer;

the carousel having a plurality of openings, each associated with one of the disposable cartridges;

a turntable having a plurality of openings, each associated with one of the openings in the carousel;

a tubing system surrounding the turntable for carrying chilled water from a thermal electric cooler to the turntable and cool water from the turntable to the thermal electric cooler; and

a fan in association with the tubing system for circulating chilled air through the plurality of openings of said turntable to cool and then control the temperature of the specimens."

(B) "[00114] As best shown in FIG. 14, an upper surface 86 of the carousel 15 has a plurality of sections, some of which are indicated by reference number 88. Each section

<u>88 forms a cell and has an opening 90. The cool air</u> distributed by Flatpak fan 82 traveling from openings 84 of the turntable 80 travels through the openings 90 and into its respective cell of the sections 88."

(C) "[00115] Referring to FIGS. 14 and 15, it is to be appreciated that <u>each section 88</u> forming the carousel 15 supports a disposable cartridge 112, similar to the cartridge 112 as shown in FIGS. 2 and 3A."



FIG. 13



FIG. 14

From (A) to (C) described above, it is recognized that, in the Cited Document 1, the following inventions (hereinafter referred to as "the Cited Invention") are described.

A system for cooling and controlling the temperature of specimens in a plurality of optics cups in an optical analysis, comprising:

a carousel for supporting a plurality of disposable cartridges, each supporting a disposable optics cup containing a specimen to be optically analyzed by an optical analyzer;

the carousel having a plurality of openings, each associated with one of the disposable cartridges;

a turntable having a plurality of openings, each associated with one of the openings in the carousel;

a tubing system surrounding the turntable for carrying chilled water from a thermal electric cooler to the turntable and cool water from the turntable to the thermal electric cooler; and

a fan associated with the tubing system for circulating chilled air through the plurality of openings of said turntable to cool and then control the temperature of the specimens, wherein

an upper surface of the carousel has a plurality of sections, each section forming a cell and having an opening,

the cool air traveling from the openings of the turntable travels through the openings in the carousel and into its respective cell of the sections, and

each section forming the carousel supports a disposable cartridge.

B In Japanese Unexamined Patent Application Publication No. 2009-8611 (hereinafter referred to as "the Cited Document 2"), a publication cited in the reasons for refusal stated in the examiner's decision, distributed before the priority date of the application, the following matters are described together with illustrations of drawings (underlines are added by the body).

(A) "[0028]

As shown in FIGS. 3 and 4, the first reagent storage 1 comprises <u>the reagent</u> <u>case unit 19</u>, <u>storing the reagent bottle 6</u>, a detachable reagent cover 20 covering the reagent case unit 19, <u>the holding unit 21 rotatably holding the reagent bottle 6 stored in</u> <u>the reagent case unit 19</u>, a cooling unit 22 for cooling the reagent bottle 6 to a predetermined temperature, and a thermal insulating unit 23 for thermally insulating the reagent case unit 19.

[0029]

The first reagent storage 1 further includes a circulating unit 24, arranged in the reagent case unit 19, for circulating air in each space of a first space 25, which is a space between a bottom surface of the reagent case unit 19 and a bottom portion of the holding unit 21, second spaces 26, 27, which are spaces formed between the adjacent reagent bottles 6 of the holding unit 21, and a third space 28, which is a space formed near a center of the holding unit 21."

(B) "[0033]

The holding unit 21 is placed separately from the reagent case 190 and the reagent cover 20 of the reagent case unit 19, and includes <u>a first tray 30 for rotatably</u> <u>holding the first racks 31 for holding the reagent bottle 6</u>, and a second tray 32 for rotatably holding the second racks 33, for holding the reagent bottle 6.

[0034]

<u>The cooling unit 22 comprises, for example, a Peltier device, for cooling the</u> reagent case 190, arranged on the bottom surface of an outside of the reagent case 190 of the reagent case unit 19, a temperature sensor which detects a temperature at a predetermined position in the reagent case 190, and a control circuit which controls the Peltier device on the basis of a temperature detection signal from the temperature sensor. [0035]

The thermal insulating unit 23 comprises a thermal insulating member which covers the outer surface of the reagent case 190 of the reagent case unit 19. The circulating unit 24 comprises, for example, a fan with excellent waterproofness. The circulating unit 24 is placed in the third space 28 or the first space 25 near the center of the holding unit 21."

(C) "[0038]

As shown in FIG. 5, <u>the first tray 30 comprises a first disk 300</u>, a first guide 301, a tray cover 302, and first holding members 304. <u>The first disk 300 holds the first racks 31 from below</u>. The first disk 300 has a doughnut shape and a circular opening portion in the central portion. The first guide 301 has an annular shape and is fixed to the lower surface of the first disk 300. <u>The tray cover 302 covers the circular opening in the central portion of the first disk 300 from above</u>. The first holding member 304 comprises a magnet, a magnetic member, or the like for holding the first rack 31." [0039]

The first disk 300 has many first openings 303 to allow air to circulate between the first space 25 and the bottom portions of the first racks 31. The many first openings 303 are provided on the circumference of the first disk 300. The first disk 300 detachably holds the plurality of first racks 31 with the first holding members 304 fixed at an upper surface thereof."

(D) "[0041]

The tray cover 302 comprises a wall surface member, having a tubular shape with an upper opening being closed, placed near the first rack 31. The tray cover 302 forms the third space 28. A side surface of the tray cover 302 has many fourth openings 305 over the entire wall surface member to allow air to circulate between side portions of the first racks 31 and the third space."

(E) "[0047]

Immediately under each reagent bottle 6 of the base plate 310 and between adjacent reagent bottles 6, second openings 317 are provided so as to allow air to circulate between the first space 25 and the second space 26 through the first openings 303 of the first tray 30."

(F) "[0052]

With this structure, as shown in FIG. 8, third openings 318 are formed by the adjacent inner holding plates 313 and the inner plate 314. The second space 26 is connected to the third space 28 through the third openings 318 and the fourth openings 305 of the tray cover 302."

(G) "[0063]

The operation of cooling the first reagent stored in each reagent bottle 6 in the first reagent storage 1 of the automatic analyzer 100 will be described below with reference to FIGS. 1 to 9.

When the automatic analyzer 100 is powered on, the cooling unit 22 and circulating unit 24 of the first reagent storage 1 operate. The cooling unit 22 cools the air contained in the first and fourth spaces 25 and 29 in the reagent case 190 and the reagent cover 20 through the reagent case 190 of the reagent case unit 19. The circulating unit 24 aspirates the air contained in the third space 28 in the tray cover 302 of the first tray 30 of the holding unit 21, and discharges the air into the first and fourth spaces 25 and 29. This makes the air cooled in the first and fourth spaces 25 and 29 flow into the second spaces 26 and 27 formed in the first and second racks 31 and 33 of the holding unit 21. The air flowed into the space 28 is aspirated into the circulating unit 24 again.

[0064]

At the second racks 33 and the reagent bottles 6 held on the second racks 33, the air cooled in the first space 25 flows into the second spaces 27 through the first openings 323 of the second tray 32 and the second openings 337 of the second racks 33. The air cooled in the fourth space 29 is prevented by the projection 191 of the reagent case unit 19 from flowing to above the reagent bottles 6, and flows into the second space 27 through fifth openings 339 of the second tray 32. [0065]

The partition plates 331 and end side plates 332 of the second racks 33 prevent the air flowing into the second spaces 27 from flowing to above the reagent bottles 6.

The air then passes between the side surfaces of the adjacent reagent bottles 6 and the depressed surfaces which form the second spaces 27. At this time, the air cools the first reagent in each reagent bottle 6. The passing air flows from the third openings 338 of the second racks 33.

[0066]

In this manner, since the air cooled in the first and fourth spaces 25 and 29 can be made to flow to the side portions and bottom portions of the respective reagent bottles 6 forming the second spaces 27, the cooled air can be blown against a wide area of each reagent bottle 6. This makes it possible to efficiently keep the first reagent cool in each reagent bottle 6.

[0067]

The projection 191 prevents the air cooled in the fourth space 29 from flowing above the reagent bottles 6. In addition, the partition plates 331 and end side plates 332 of the second racks 33 prevent the air flowing into the second spaces 27 from flowing above the reagent bottles 6. This can restrict the flow of air flowing into the second spaces 27 and prevent the first reagent in each reagent bottle 6 from evaporating. [0068]

<u>At the first racks 31 and the reagent bottles 6 held on the first racks 31, the air cooled in the first space 25 flows into the second spaces 26 through the first openings 303 formed in the first tray 30 and the second openings 317 formed in the first racks 31. The air flowing from the third openings 338 formed in the second racks 33 flows to the second spaces 26 through the fifth openings 319 formed in the first racks 31. [0069]</u>

The partition plates 311 and the end side plates 312 of the first racks 31 prevent the air flowing into the second spaces 26 from flowing to above the reagent bottles 6. The air then passes between the side surfaces of the adjacent reagent bottles 6 and the depressed surfaces which form the second spaces 26. At this time, the air cools the first reagent in each reagent bottle 6. The passing air flows from the third openings 318 formed in the first racks 31.

[0070]

<u>In this manner</u>, since the air cooled in the first space 25 can be made to flow to the side portions and bottom portions of the reagent bottles 6 forming the second spaces 26, the cooled air can be blown against a wide area of each reagent bottle 6. This makes it possible to efficiently keep the first reagent cool in each reagent bottle 6."

(H) "[0072]

In the tray cover 302 of the first tray 30, air flowing from the third openings 318 formed in the first racks 31 flows into the third space 28 through the fourth openings 305 formed in the tray cover 302 located near the first racks 31."

(I) From FIG. 4, a tabular bottom wall of the thermally insulating unit 23 including the cooling unit 22, for cooling the air circulating from the first racks 31 to the first tray 30, can be viewed.

[FIG. 4]



第1試薬庫 1 1 First reagent storage 28 第3の空間 28 Third space 20試薬カバー 20 Reagent cover 21 保持部 21 Holding unit 試薬容器 6 6 Reagent bottle 試薬ケース部 19 19 Reagent case unit 191 突起 **191** Projection 190 試薬ケース 190 Reagent case 192 ローラ 192 Roller $2\ 3$ 遮熱部 23 Thermal insulating unit 第2のモータ Second motor 2 2 冷却部 22 Cooling unit 2424 Circulating part 循環部

第10	のモータ	First motor
30	第1のトレイ	30 First tray
32	第2のトレイ	32 Second tray
25	第1の空間	25 First space
26	第2の空間	26 Second space
29	第4の空間	29 Fourth space
27	第2の空間	27 Second space
33	第2のラック	33 Second rack
31	第1のラック	31 First rack

[FIG. 5]



3	0	第	第1のトレイ	30 First tray
3	0	2	トレイカバー	302 Tray cover
3	0	5	第4の開口部	305 Fourth opening
3	0	0	第1のディスク	300 First disk
3	0	1	第1のガイド	301 First guide
3	0	4	第1の保持体	304 First holding member
3	0	3	第1の開口部	303 First opening
3	2	第	52のトレイ	32 Second tray

3 2 0 第 2 のディスク 320 Second disk

321 第2のガイド	321 Second guide
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323	第1の開口部	323 First op	bening
		1	0

324 第1の保持体 324 First holding member

[FIG. 6]

31 第1のラック



31 第1のラック	31 First rack
内周側	Inner circumferential side
314 内側板	314 Inner plate
311 仕切り板	311 Partition plate
313 内側保持板	313 Inner holding plate
318 第3の開口部	318 Third opening
312 端側板	312 End side plate
316 第2の保持体	316 Second holding member
26 第2の空間	26 Second space
310 底板	310 Base plate

$3\ 1\ 7$	第2の開口部	317 Second opening
319	第5の開口部	319 Fifth opening
$3\ 1\ 5$	外側板	315 Outer plate
外周側		Outer circumferential side

[FIG. 7]



トレイカバー 302 302 Tray cover 314 内側板 314 Inner plate 313 内側保持版 313 Inner holding plate 第4の開口部 305 305 Fourth opening 26 第2の空間 26 Second space 3 1 8 第3の開口部 318 Third opening 内周側 Inner circumferential side 28 第3の空間 28 Third space 窪み面 Depressed surface 3 1 0 底板 310 Base plate 第1のトレイ 30 30 First tray 25第1の空間 25 First space 303 第1の開口部 303 First opening $3\ 1\ 7$ 第2の開口部 317 Second opening

319 第5の開口部	319 Fifth openings
仕切り板の中空部分	Hollow portion of partition plate
仕切り板の下面	Lower surface of partition plate
外周側	Outer circumferential side
315 外側板	315 Outer plate
311 仕切り板	311 Partition plate
31 第1のラック	31 First rack
6 試薬容器	6 Reagent bottle

(2) Comparison between the Amended Invention and the Cited Invention

A "A system for cooling and controlling the temperature of specimens in the plurality of optics cups in optical analysis" of the Cited Invention corresponds to "a system for cooling and controlling the temperature of specimens in the plurality of optics cups in optical analysis" of the Amended Invention.

B Since, in the Cited Invention, "the cool air moved from the opening of the turntable passes through the opening of the carousel and moves into each cell of the section", the opening of "the carousel" of the Cited Invention can be said to be an inlet opening.

"Each section", "forming the carousel", "supporting a disposable cartridge", can be said to be a cell section in which one of the disposable cartridges is arranged.

Therefore, "the carousel" of the Cited Invention, "having an opening", provided in "each section", for supporting the plurality of disposable cartridges", "the disposable cartridges" "each supporting a disposable optics cup containing a specimen for optical analysis by an optical analyzer", "for supporting a disposable cartridge", and "the carousel" of the Amended Invention, "having the plurality of inlet openings and outlet openings each provided at a cell section at which one of the disposable cartridges is arranged, for supporting the plurality of disposable cartridges, each of the disposable cartridges supporting a disposable optics cup containing a specimen for optical analysis by an optical analyzer" are common in terms of a point of being "a carousel having" "a plurality of inlet openings provided at each cell section at which one of the disposable cartridges is arranged, for supporting the plurality of disposable cartridges, each of the disposable cartridges is arranged, for supporting the plurality of disposable cartridges, each of the disposable cartridges supporting a disposable optics cup containing a specimen for optical analysis by an optical analyzer" are common in terms of a point of being "a carousel having" "a plurality of inlet openings provided at each cell section at which one of the disposable cartridges is arranged, for supporting the plurality of disposable cartridges, each of the disposable cartridges supporting a disposable optics cup containing a specimen for optical analysis by an optical analyzer".

C Based on the examination in B described above, "the turntable having a plurality of

openings each associated with one of the openings in the carousel" of the Cited Invention and "the turntable having a plurality of inlet openings and outlet openings provided for each of the cell sections, associated with each of the plurality of the inlet openings and outlet openings in the carousel" of the Amended Invention" are common in terms of a point of being "a turntable having" "a plurality of inlet openings" "associated with each" of the plurality of the inlet openings in the carousel".

D Based on the examination in B described above, "the tubing system, surrounding the turntable, for carrying chilled water from the thermal electric cooler to the turntable, for carrying cool water from the turntable to the thermal electric cooler, and the fan associated with the tubing system for circulating chilled air through the plurality of openings of the turntable for cooling and controlling the temperature of the specimen" of the Cited Invention and "the insulation plate located below the turntable, including a pair of thermal electric coolers for cooling the air circulating from the carousel to the turntable through the plurality of inlet openings and outlet openings, for controlling the temperature of the specimen" of being a structure "including the thermal electric cooler" "for cooling the air circulating" "through" "the plurality of inlet openings, located below the turntable, for controlling the temperature of the specimen".

Therefore, the two correspond in terms of being a system for cooling and controlling the temperature of specimens in the plurality of optics cups in optical analysis, comprising:

a carousel, having a plurality of inlet openings each provided at a cell section at which one of the disposable cartridges is arranged, supporting the plurality of disposable cartridges, each of the disposable cartridges supporting a disposable optics cup containing a specimen for optical analysis by an optical analyzer;

a turntable having a plurality of inlet openings each associated with the plurality of the inlet openings in the carousel; and

a structure including a thermal electric cooler for cooling the air circulating through the plurality of inlet openings, located below the turntable, for controlling the temperature of the specimen, and differ in the following points.

(The different feature 1)

While, in the Amended Invention, the openings included in the carousel and the associated openings included in the turntable include not only the inlet openings but

also "the outlet openings" and cool the air circulating through the plurality of inlet openings "and outlet openings from the carousel to the turntable", it is not apparent whether the Cited Invention is similar to it.

(The different feature 2)

While, in the Amended Invention, the plurality of openings provided at the turntable are provided "for each cell section", it is not apparent whether the Cited Invention is similar to it.

(The different feature 3)

While, in the Amended Invention, the structure including the thermal electric cooler, located below the turntable, for cooling the air circulating from the carousel to the turntable through the plurality of openings, for controlling the temperature of the specimen, is an "insulation plate", it is not apparent whether the Cited Invention is similar to it.

(The different feature 4)

While, in the Amended Invention, the thermal electric coolers are a pair, it is not apparent whether the Cited Invention is similar to it.

(3) Examination and decision on the different features

(Regarding the different feature 1)

As described above in (1) B (G) and (H), the Cited Document 2 has the following description:

(a) In the first rack 31 and the reagent bottle 6 held by the rack, cooled air flows in through the first openings 303 of the first tray 30 rotatably holding the first rack 31 and the second openings 317 of the first rack 31, the flowing-in air passes through between the side surfaces and the depressed surfaces of the adjacent reagent bottles 6, and, at this time, cools the first reagent in each reagent bottle 6, the passing air flows out from the third openings 318 of the first rack 31,

(b) in this manner, it becomes possible to blow the cooled air to the wide range of the surface of each reagent bottle 6, and to efficiently cool the first reagent in the reagent bottle 6,

(c) and, in the tray cover 302 of the first tray 30, the air flowing out from the third openings 318 of the first rack 31 flows in from the fourth openings 305 of the tray cover 302, near the rack.

Since "the reagent bottles 6" described in the Cited Document 2 are many "reagent bottles 6" held by "the first rack 31", the reagent bottles 6 correspond to "the cartridge" of the Cited Invention. Since "the first rack 31" described in the Cited Document 2 "holds" "the reagent bottles 6", the first rack 31 corresponds to "the carousel" of the Cited Invention. Since "the first tray 30" including "the tray cover 302" rotatably holds" "the first rack 31", the first tray 30 corresponds to "the turntable" of the Cited Invention.

Therefore, "the second openings 317 of the first rack 31" and "the first openings 303 of the first tray 30" of the Cited Document 2 correspond to "the openings' of the 'carousel' "and "the openings' of 'the turn table'".

Also, "the third openings 318 of the first rack 31" described in the Cited Document 2 through which "the air" "passing between the side surfaces of the adjacent reagent bottles 6 and the depressed surface" "flows out" and "the fourth openings 305 of the tray cover 302" through which "the air flowing out from the third openings 318 of the first rack 31" "flows in" can both be said to be outlet openings.

While the Cited Invention cools a specimen in an optics cup supported by the disposable cartridge, the above described technical matters described in the Cited Document 2 cools the reagent in the reagent bottle 6. They are common in terms of a point of being a mechanism of cooling the content of the cartridge supported by the carousel. Therefore, it can be said that it would have been easy for a person skilled in the art to conceive of the mechanism of the Amended Invention associated with the different feature 1 by cooling the air circulating from the carousel to the turntable through the inlet openings and the outlet openings provided at the carousel and the turntable by applying the technical matters described in the Cited Document 2 for efficiently cooling the specimen in the disposable optics cup supported by the disposable cartridge supported by the carousel in the Cited Invention.

While it is a design matter of a person skilled in the art to determine how to actually provide the turntable and the carousel with the outlet openings, it can be said that it would have been easy for a person skilled in the art to configure, as the Cited Document 2 described in the above-described (1) B (D), with a wall surface member, having a tubular shape with an upper opening being closed, arranged near the first rack 31, so that air circulation is possible between the fourth openings 305 of the tray cover 302 and the side portions of the first rack 31, or to provide the outlet openings by associating with the upper surface of the turntable and the lower surface of the carousel similar to the inlet openings when a flat tabular carousel is arranged above the flat tabular turntable, as can be seen from FIG. 13 of the Cited Document 1.

Further, since the Cited Document 1 has the following description,

"[00118] A further embodiment of the invention envisions a turntable similar to that described and illustrated above with reference to FIGS. 13-15. An aluminum block is located below the turntable and has a plurality of passageways associated with the turntable for <u>carrying chilled air from a TE chiller or cooler to the turntable and cool air from the turntable and, thus, from the carousel to the TE chiller</u> for cooling the specimens and then cooling the temperature of the specimens in a similar manner described hereinabove with reference to FIGS. 13-15", it can be added that a person skilled in the art, when encountering this, may have a sufficient motivation for applying the technical matters described in the above-described Cited Document 2 as embodiment means for conveying the cool air from the carousel to the T E cooling device, which is the thermal electric cooler.

(Regarding the different feature 2)

Since the plurality of openings provided at the turntable of the Cited Invention are each associated with one of the openings of each section of the carousel supporting the cartridge, it can be said that it would have been easy for a person skilled in the art to simply provide each section of the carousel supporting the cartridge with the plurality of openings provided at the turntable.

It can be also said that it would have been easy for a person skilled in the art to similarly provide each section of the carousel supporting the cartridge with the plurality of openings provided at the turntable when providing the turntable and the carousel with the outlet openings by applying the technical matters described in the Cited Document 2 as examined in the above-described different feature 1.

Therefore, it would have been easy for a person skilled in the art to conceive of the configuration of the Amended Invention associated with the difference 2 from the Cited Invention and the technical matters described in the Cited Document 2.

(Regarding the different feature 3)

As described in the above-described (1) B (A), (B), (G), and (I), the Cited document 2 has a description of the tabular bottom wall of the thermal insulating unit 23, located below the first tray 30 for controlling the temperature of the reagent bottles 6, including the cooling unit 22 using a Peltier device for cooling the air circulating from the first rack 31 to the first tray 30 through the first openings 303 of the first tray 30, the second openings 317 of the first rack 31, the third openings 318 of the first rack 31, and the fourth openings 305 of the tray cover 302 of the first tray 30.

It can be said that "the reagent bottle 6", "the first rack 31", "the first tray 30", "the second openings 317 of the first rack 31", and "the first openings 303 of the first tray 30" described in the Cited Document 2 correspond to "the cartridge", "the carousel", "the turntable", and "the openings' of 'the carousel' and 'the openings' of 'the turn table".

"The third openings 318 of the first rack 31" through which "the air" "passing through between the side surfaces of the adjacent reagent bottle 6 and the depressed surface" "flows out" and "the fourth openings 305 of the tray cover 302" through which "the air flowing out from the third openings 318 of the first rack 31" "flows in" can both be said to be outlet openings.

Further, it is common technical knowledge that the cooling unit using the Peltier device corresponds to the thermal electric cooler.

It can be said that it would have been easy for a person skilled in the art to conceive of the configuration of the Amended Invention associated with the different feature 3 by applying the technical matters of the above-described Cited Document 2 in place of the configuration of the Cited Invention of the tubing for carrying the cool water for efficiently cooling while simplifying the device.

Moreover, the Cited Document 1 has the description of the above-described paragraph [00118]. It is added that it can be said that a person skilled in the art who encounters the Cited Document 1 may have a sufficient motivation for applying the technical matters described in the above described Cited Document 2 as embodiment means for conveying the chilled air from the TE chiller or the cooler to the turntable and conveying the cool air from the turntable and the carousel to the TE chiller in place of the configuration of the tubing for carrying the cool water of the Cited Invention.

(Regarding the different feature 4)

Concerning the thermal electric cooler, the number and arrangement thereof is a design matter that can be appropriately selected by a person skilled in the art based on the required cooling performance, cooling efficiency, and cost or the like, there is no significant difficulty in making it a pair and it can be said that it could have been easily done by a person skilled in the art.

(On Effects)

The effects of the Amended Invention are within a range that can be predicted from the cited Invention and the technical matters described in the Cited Document 2 and they cannot be said to be especially significant.

(4) Summary

As described above, since the Amended Invention could have been easily invented by a person skilled in the art based on the Cited Invention and the technical matters described in the Cited Document 2, the appellant should not be granted a patent for it independently at the time of patent application in accordance with the provisions of Article 29(2) of the Patent Act.

4 Summary

Therefore, since the Amendment violates the provisions of Article 126(7) of the Patent Act which is applied mutatis mutandis pursuant to the provisions of Article 17-2(6) of the Patent Act, the Amendment should be dismissed in accordance with the provisions of Article 53(1) of the Patent Act as applied mutatis mutandis by replacing certain terms pursuant to the provisions of Article 159(1) of the Patent Act.

No. 3 Judgment on the Invention

1 Identification of the Invention

Since the amendment dated on March 13, 2015 has been dismissed as described above, the invention relating to Claim 1 of the Application is recognized as what is specified by the matters described in Claim 1 of the scope of claims amended by the amendment dated on May 15, 2014, the invention relating to Claim 1 (hereinafter referred to as "the Invention") is as follows.

"A system for cooling and controlling the temperature of specimens in a plurality of optics cups in an optical analysis, comprising:

a carousel for supporting a plurality of disposable cartridges, each cartridge supporting a disposable optics cup containing a specimen to be optically analyzed by an optical analyzer,

the carousel having a plurality of inlet openings and outlet openings, each associated with one of the disposable cartridges;

a turntable having a plurality of inlet openings and outlet openings, each associated with one of the plurality of the inlet openings and outlet openings in the carousel; and

an insulation plate located below the turntable, the insulation plate including at least one thermal electric cooler for cooling the air circulated through the inlet openings and outlet openings from the carousel through the turntable for controlling the temperature of the specimens."

2 Described matters of the Cited Document

The described matters of the Cited Document 1 and the Cited Document 2 cited in the reasons for refusal of the examiner's decision are as described in "No. 2" "3" "(1)".

3 Judgment

The Invention is obtained by making the concept of the matters specifying the Invention higher concerning "the plurality of inlet openings and outlet openings" "included in" "the carousel" of the Amended Invention examined in the foregoing "No. 2" "2", making the concept of the matters specifying the Invention higher concerning "the plurality of inlet openings and outlet openings" "included in" "the turntable," "each associated with one of the plurality of inlet openings and outlet openings and outlet openings in the carousel", and making the concept of the matters specifying the Invention more broad concerning "the thermal electric cooler" "included in" "the insulation plate".

As a result, since the Amended Invention corresponding to what is obtained by making the concept of the matters specifying the Invention more narrow could have been easily invented by a person skilled in the art based on the Cited Invention and the technical matters described in the Cited Document 2 as examined in the foregoing No. 2 3 (3), the Invention also could have been easily invented by a person skilled in the art based on the Cited Invention and the technical matters described in the technical matters described in the Zited Document 2 as examined in the foregoing No. 2 3 (3), the Invention also could have been easily invented by a person skilled in the art based on the Cited Invention and the technical matters described in the Cited Document 2 by the similar reason.

No. 4 Closing

As described above, since the Invention could have been easily invented by a person skilled in the art based on the Cited Invention and the technical matters described in the Cited Document 2, the appellant should not be granted a patent in accordance with the provisions of Article 29(2) of the Patent Act.

Therefore, the Application should be rejected without examining other claims. Therefore, the appeal decision shall be made as described in the conclusion.

May 2, 2016

Chief administrative judge: MISAKI, Hitoshi Administrative judge: FUJITA, Toshihiko Administrative judge: KORIYAMA, Jun