

Trial decision

Correction No. 2015-390056

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The case of trial for correction of Japanese Patent No. 5429353 has resulted in the following trial decision.

Conclusion

It shall be approved to correct the scope of claims of Japanese Patent No. 5429353 as described in the corrected scope of claims for patent attached to the written request for trial of the case.

Reason

1. Gist of request

The request for trial of the case is to correct the scope of claims of Patent No. 5429353 (patent application filed on December 28, 2012; establishment of the patent right registered on December 13, 2013) as described in the corrected scope of claims attached to the written request for trial of the case, which is summarized as (1) below.

(1) The matter of correction: Correct dependency of claim4 “on claim5” for “on claim3”.

2. Judgment by the body

Below, the matter of correction is examined.

(1) Requirements for purpose of correction

(a) Claim 4 of the "scope of claims for patent" in the specifications recites "The compressor of claim 5, ... characterized in that", whereas Claim 5 of the "scope of claims for patent" recites "The compressor of any one of claims 1 to 4, ... characterized

in that". It is recognized that there is inconsistency in dependency relation between them, and thus one of them has an error.

(b) The "scope of claims for patent" in the specifications recites:

"3. The compressor of claim 1 or 2,

characterized in that the fixed side member (45) is provided with a chamfered portion (56) along an entire periphery of the outlet end (52) of the discharge port (50).

4. The compressor of claim 5,

characterized in that a height H of the chamfered portion (56) in an axial direction of the discharge port (50) and a width W of the chamfered portion (56) in a direction orthogonal to the axial direction of the discharge port (50) satisfy a relationship of $0 < H/W < 0.5$.

5. The compressor of any one of claims 1 to 4,

characterized in that a cross sectional shape of the discharge port (50) is oblong or an ellipse".

On the other hand, the "detailed description of the invention" in the specifications recites:

"[0016] The third invention is that, in the first or second invention, the fixed member (45) is provided with a chamfered portion (56) along an entire periphery of the outlet end (52) of the discharge port (50)",

"[0018] The fourth invention is that, in the third invention, a height H of the chamfered portion (56) in an axial direction of the discharge port (50) and a width W of the chamfered portion (56) in a direction orthogonal to the axial direction of the discharge port (50) satisfy a relationship of $0 < H/W < 0.5$ ", and

"[0021] The fifth invention is that, in any one of the first to fourth inventions, a cross sectional shape of the discharge port (50) is an oblong or an ellipse".

Considering that these recitations in the "detailed description of the invention" correspond to those claims except dependency relation, and have no inconsistency in dependency relation, it is recognized that the recitation "The compressor of claim 5" of Claim 4 of the "scope of claims for patent" is an error and that the correct recitation is "The compressor of claim 3".

Therefore, the purpose of the matter of correction is to correct an error.

(2) Regarding whether the matter of correction remains within the scope of the matters disclosed in the description, scope of claims, or drawings originally attached to the application

The description originally attached to the application recites:

"[0018] The fourth invention is that, in any one of the first to third inventions, the fixed member (45) is provided with a chamfered portion (56) along an entire periphery of the outlet end (52) of the discharge port (50)",

"[0020] The fifth invention is that, in the fourth invention, a height H of the chamfered portion (56) in an axial direction of the discharge port (50) and a width W of the chamfered portion (56) in a direction orthogonal to the axial direction of the discharge port (50) satisfy a relationship of $0 < H/W < 0.5$ ", and

"[0023] The sixth invention is that, in any one of the first to fifth inventions, a cross sectional shape of the discharge port (50) is an oblong or an ellipse".

In addition, the correspondence between the claims of the scope of claims for patent of the case and the claims of the scope of claims for patent originally included in the application of the patent of the case are as described in the written request for trial, under "6. Reason of request" at "(4) Cause of correction". Since there exist descriptions that are similar to the descriptions which are indicated in above "(1) Requirements for purpose of correction" at "(b)" and which "have no inconsistency in dependency relation", the matter of correction remains within the scope of the matters disclosed in the description, scope of claims, or drawings originally attached to the application.

(3) Regarding whether the correction substantially enlarges or alters the scope of claims

The matter of correction is to correct an erroneous description the correct description of which is obvious, and does not substantially enlarge or alter the scope of claims.

(4) Regarding whether the correction satisfy the requirement stipulated in Article 126(7) of the Patent Act that reads "an invention constituted by the matters described in the corrected scope of claims must be one which could have been patented independently at the time of the patent application"

Since the matter of correction is to correct an error, the inventions constituted by the matters described in the corrected scope of claims must be those which could have been patented independently at the time of the patent application. In this case, no reasons for refusal was found for the inventions constituted by the matters described in the corrected Claims 4 and 5 of the scope of claims, and thus the inventions constituted by the matters described in the corrected scope of claims are not those which could not have been patented independently at the time of filing of the patent application.

3. Conclusion

The correction of the trial of the case is for the purpose as provided in Article 126(1)(ii) of the Patent Act, and complies with the provisions of Article 126(3) to 126(7) of the Patent Act.

Therefore, the trial decision shall be made as described in the conclusion.

July 14, 2015

Chief administrative judge:	NIINOMI, Takeshi
Administrative judge:	NAKAGAWA, Shinichi
Administrative judge:	FUJII, Noboru