

Trial decision

Correction No. 2015-390076

Tokyo, Japan

Demandant

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The case of trial for correction of Japanese Patent No. 3361778 has resulted in the following trial decision:

Conclusion

The correction of the Description of Japanese Patent No. 3361778 shall be approved as the Corrected Description attached to the written demand for trial of the case.

Reason

No. 1 History of the procedures

Relating to the Invention of Japanese Patent No. 3361778 (hereinafter referred to as "the Patent"), the application was filed on July 9, 1999 (Japanese Patent Application No. H11-195969), a notice of reasons for refusal was issued on February 27, 2002, a written opinion was submitted on May 1, 2002, an Examiner's decision to the effect that a patent is to be granted was rendered on September 6, 2002, and the establishment of patent right was registered on October 18, 2002.

Thereafter, trial for correction of the case was demanded on July 9, 2015.

No. 2 Object of claim in trial for correction of the case

Object of claim in trial for correction of the case is to demand correction of the Description of the Patent to the Corrected Description attached to the written demand for trial of the case; specifically, to demand the approval of the following Correction matters A to C (hereinafter referred to as "Correction of the case").

Underlines provided by the Demandant indicate correction parts.

(1) Correction A

In Claim 1, and Claims 2 to 7 being dependent claims thereof, of the scope of claims, all of the recitations "a domestic animal" should be corrected to read as "a cow."

(2) Correction B

In Claim 1 of the scope of claims, the recitation "said tube being pushed forward from the rear end of said outer pipe, thereby paying out said tube forward from the front end of said outer pipe to send said nozzle body to a deep portion of a cornu uteri" should be corrected to read as "said tube being pushed forward from the rear end of said outer pipe, thereby paying out said tube forward from the front end of said outer pipe and curving the paid-out tube downward with gravity of the nozzle head to send said nozzle body to a deep portion of a cornu uteri."

(3) Correction C

In paragraph [0015] of the Description, the recitation "an injector of sperm for

artificial insemination or a fertilized ovum for transplantation of a domestic animal of the present invention comprises an outer pipe for insertion into a cornu uteri of a domestic animal, a flexible tube inserted and placed inside of the outer pipe to be freely pushed out, a nozzle body mounted integrally to a front end of the tube, the nozzle body having a closed front end which is formed in a shape of a spherical surface and having a rear end connected to the tube, the nozzle body further having in a side of the nozzle a perforated hole connected to the tube, the nozzle body being capable of blocking a front end of the pipe with close contact with the front end of the pipe, and a pushing means adapted to be connected with a rear end of the tube for sending forward the sperm or ovum, the tube being pushed forward from the rear end of the outer pipe after insertion of the outer pipe into a corpus uteri of the domestic animal, thereby paying out the tube forward from the front end of the outer pipe to send the nozzle body to a deep portion of a cornu uteri and thereafter to discharge the sperm or ovum from the perforated hole of the nozzle body into the deep portion of the cornu uteri through inside of the tube by the pushing means." should be corrected to read as "an injector of sperm for artificial insemination or a fertilized ovum for transplantation of a cow of the present invention comprises an outer pipe for insertion into a cornu uteri of a cow, a flexible tube inserted and placed inside of the outer pipe to be freely pushed out, a nozzle body mounted integrally to a front end of the tube, the nozzle body having a closed front end which is formed in a shape of a spherical surface and having a rear end connected to the tube, the nozzle body further having in a side of the nozzle a perforated hole connected to the tube, the nozzle body being capable of blocking a front end of the pipe with close contact with the front end of the pipe, and a pushing means adapted to be connected with a rear end of the tube for sending forward the sperm or ovum, the tube being pushed forward from the rear end of the outer pipe after insertion of the outer pipe into a corpus uteri of the domestic animal, thereby paying out the tube forward from the front end of the outer pipe and curving the paid-out tube downward with gravity of the nozzle head to send the nozzle body to a deep portion of a cornu uteri and thereafter to discharge the sperm or ovum from the perforated hole of the nozzle body into the deep portion of the cornu uteri through inside of the tube by the pushing means."

No. 3 Judgment on the body

1 Propriety of purpose of correction, and presence or absence of new matter

(1) Correction A

A Purpose of correction

Since the Correction A is to limit "a domestic animal" before the Correction to "a cow" being a more specific concept thereof, the purpose of the Correction A is restriction of the scope of claims in accordance with item (i) of the proviso to Article 126(1) of the Patent Act.

B Presence or absence of new matter

With respect to the Correction A, since it is described in paragraph [0022] of the Description attached to the application that "Referring now to the accompanying drawings, preferred embodiments of the present invention are described in detail. FIG. 1 and FIG. 2 show a whole structure of an injector of sperm of an ox for an artificial insemination of the present invention," and there is obvious description that a preferred embodiment of the patent invention is an injector for a cow, the above Correction A is within the matters described in the Description or drawings attached to the application (hereinafter referred to as "Description, etc. of the patent") and falls under the provisions of Article 126(5) of the Patent Act.

(2) Correction B

A Purpose of correction

Since the Correction B is to add the matters specifying the invention of "curving the paid-out tube downward with gravity of the nozzle head" to send, with respect to a manner of "paying out the tube" in "the tube being pushed forward from the rear end of the outer pipe, thereby paying out the tube forward from the front end of the outer pipe" before the Correction, the purpose of the Correction B is restriction of the scope of claims in accordance with item (i) of the proviso to Article 126(1) of the Patent Act.

B Presence or absence of new matter

With respect to the Correction B, it is described in paragraph [0050] of the Description, etc. of the Patent that "since the flexible tube paid out forward from the outer pipe bends downward owing to the weight of the nozzle body of its front end, it goes surely into a cornu uteri and thereafter is inserted into the deep portion of the cornu uteri along a curve of the cornu uteri," and there is obvious description of "curving the tube downward with gravity of the nozzle head," the Correction B is within the matters described in the Description, etc. of the Patent, and the Correction B falls under the provisions of Article 126(5) of the Patent Act.

(3) Correction C

A Purpose of correction

Since the Correction C is to correct the description of paragraph [0015] of the detailed description of the invention so as to maintain consistency between the description of the scope of claims and the detailed description of the invention, in accordance with the Correction with the Corrections A and B, the purpose of the Correction C is clarification of an ambiguous statement in accordance with item (iii) of the proviso to Article 126(1) of the Patent Act.

B Presence or absence of new matter

With the reason same as that of the Corrections A and B, it is obvious that the Correction C is within the scope of matters described in the Description of the Patent, and falls under the provisions of Article 126(5) of the Patent Act.

2 Presence or absence of enlargement or alteration of the scope of claims

It is obvious that none of the Corrections A to C substantially expand or change the scope of claims, and the Corrections A to C fall under the provisions of Article 126(6) of the Patent Act.

3 independent requirements for patentability

As indicated in Section 1 above, purposes of the Corrections A and B are restriction of the scope of claims. We will consider whether or not each invention described in the scope of claims after the Correction is an invention which could have been patented independently at the time of filing of the patent application; that is, consider independent requirements for patentability stipulated in Article 126(7) of the Patent Act.

(1) Corrected invention of the case

It is recognized that Inventions according to Claims 1 to 7 after the Correction with the Corrections A and B (hereinafter referred to as "Corrected invention 1 of the case", for example) are specified by the matters described in Claims 1 to 7 described in the Corrected Description.

(2) Publication

Publication cited in the examination of the case is the microfilm of Japanese Model Application No. S60-202071 (Japanese Unexamined Utility Model Application Publication No. S62-107819).

(3) Judgment

A Corrected invention 1 of the case

In the Publication, there is no description or indication of the following matters

(a) and (b) of Corrected invention 1 of the case:

(a) comprising a nozzle body mounted integrally to a front end of the tube, the nozzle body having a closed front end which is formed in a shape of a spherical surface and having a rear end connected to the tube, the nozzle body further having in a side of the nozzle a perforated hole connected to the tube; and

(b) curving the paid-out tube downward with gravity of the nozzle head to send the nozzle body to a deep portion of a cornu uteri.

Corrected invention 1 of the case would not have been easily made by a person skilled in the art on the basis of the Invention described in the Publication.

B Corrected inventions 2 to 7 of the case

Since Corrected inventions 2 to 7 of the case are in accordance with dependent claims of Corrected invention 1 of the case, in the same manner as for Corrected invention 1 of the case, Corrected inventions 2 to 7 of the case would not have been easily made by a person skilled in the art on the basis of the Invention described in the Publication.

(4) Summary

As described above, since the inventions according to Claims 1 to 7 after the Correction are not the inventions which would not have been patented independently at the time of filing of the patent application, the Corrections A and B fall under the provisions of Article 126(7) of the Patent Act.

No. 4 Conclusion

Consequently, the purpose of Correction of the case is a matter provided in Article 126(1)(i) or (iii) of the Patent Act, and falls under the provisions of Article 126(5) to (7) of the Patent Act, and the correction shall be approved.

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

August 4, 2015

Chief administrative judge: YAMAGUCHI, Naoshi

Administrative judge: NAGAYA, Yojiro
Administrative judge: HIRASE Tomoaki