

Trial decision

Invalidation No. 2015-800034

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The case of trial regarding the invalidation of Japanese Patent No. 5514962,

entitled "Brunnian link making device and kit" between the parties above has resulted in the following trial decision.

#### Conclusion

- 1 The correction shall be approved as request.
- 2 The appeal of the case was groundless.
- 3 The costs in connection with the trial shall be borne by the demandant.

#### Reason

##### No. 1 History of the procedures

June 23, 2011	International Patent Application of the case (Priority date November 5, 2010) (Japanese Patent Application No. 2013-537663)
April 4, 2014	registration of establishment of the patent right (Japanese Patent No. 5514962)
February 23, 2015	demand for invalidation trial of the case (Invalidation No. 2015-800034)
April 10, 2015	submission of written amendment of proceedings (hereinafter referred to as "written amendment") of the demandant
June 5, 2015	submission of written reply for the trial case (hereinafter referred to as "written reply") of the demandee
June 5, 2015	submission of written correction request of the demandee
July 16, 2015	submission of written refutation of a trial case (hereinafter referred to as "written refutation") of the demandant
As of August 18, 2015	notification of matters to be examined
September 24, 2015	submission of oral proceedings statement brief of the demandant
September 24, 2015	submission of oral proceedings statement brief of the demandee
As of September 25, 2015	notification of matters to be examined (2)
October 5, 2015	submission of oral proceedings statement brief (2) of the

	demandant
October 8, 2015	1st oral proceeding
November 9, 2015	submission of written statement of the demandee
November 24, 2015	submission of written statement of the demandant

In this case, when the location of the description is specified with rows, the number of rows does not include a blank row. When articles in the Patent Act are indicated, the description "the Patent Act" may be omitted.

No. 2 Regarding the correction request as of June 5, 2015

#### 1 The matters of correction

The correction request as of June 5, 2015 regarding a group of claims including Claims 1, 8, 9, and 10, a group of claims including Claims 2-4, Claim 5, a group of claims including Claims 6 and 7, and Claim 11 (hereinafter referred to as "Correction of the case") is described as follows (underlines indicate corrections).

(1) Corrections related to a group of claims including Claims 1, 8, 9, and 10

(1-1) Correction A

The description in Claim 1 of the scope of claims "a kit for creating an item consisting of a series of links, ... a base; and" is corrected to the description "a kit for creating an item consisting of a series of links, the links being Brunnian links, and the item being a Brunnian link item, ... a base; and".

(1-2) Correction B

The description in Claim 1 of the scope of claims "a plurality of pins each including a top flared portion" is corrected to the description "a plurality of pins arranged in a row and each including a top flared portion".

(1-3) Correction C

The description in Claim 1 of the scope of claims "an access groove on a front side of each of the plurality of pins" is corrected to the description "an access groove on a front side, in a pin row direction, of each of the plurality of pins".

(2) Corrections related to a group of claims including Claims 2-4

(2-1) Correction D

Regarding Claim 2 of the scope of claims, the description "The kit as recited in claim 1, wherein the pin bar and the base including corresponding mating features for

securing the pin bar to the base" is corrected to the description

"The kit for creating an item consisting of a series of links, including a base,

and at least one pin bar supported on the base, the pin bar including a plurality of pins each having a top flared portion for holding the links in a desired direction, and an access groove on a front side of each of the plurality of pins, the pin bar and the base including corresponding mating features for securing the pin bar to the base".

(3) Corrections related to Claim 5

(3-1) Correction E

Regarding Claim 5 of the scope of claims, the description "The kit as recited in claim 1, wherein each of the plurality of pins includes a bottom flared portion spaced apart from the top flared portion and a mid portion for holding a link" is corrected to the description

"The kit for creating an item consisting of a series of links, including a base,

and at least one pin bar supported on the base, the pin bar including a plurality of pins each having a top flared portion for holding the links in a desired direction, and an access groove on a front side of each of the plurality of pins, each of the plurality of pins including a bottom flared portion spaced apart from the top flared portion and a mid portion for holding a link".

(4) Corrections related to a group of claims including Claims 6 and 7

(4-1) Correction F

Regarding Claim 6 of the scope of claims, the description "The kit as recited in claim 1, wherein the base comprises a plurality of bases for securing a plurality of pin bars in a desired relative special orientation for forming the series of links in a desired pattern" is corrected to the description

"The kit for creating an item consisting of a series of links, including a base,

and at least one pin bar supported on the base, the pin bar including a plurality of pins each having a top flared portion for holding the links in a desired direction, and an access groove on a front side of each of the plurality of pins, the base comprising a plurality of bases for securing a plurality of pin bars in a desired relative special orientation for forming the series of links in a desired pattern".

(5) Correction related to Claim 11

(5-1) Correction G

Claim 11 of the scope of claims is deleted.

2 Judgment by the body on the correction request

(1) Correction A

Correction A corrects the "link" and the "item" in Claim 1 to the "Brunnian link" and the "Brunnian link item", respectively. The "link" is specified as the "Brunnian link", and the "item" is specified as the "Brunnian link item, thereby correcting obscure description, and making clear an original meaning. It falls under the clarification of an ambiguous description as prescribed in Article 134-2 (1) (iii) of the Patent Act.

Correction A is within the scope of the matters described in the Description, Claims, or Drawings attached to the application of the patent (hereinafter referred to as "Description and other materials of the patent") and does not substantially enlarge or modify the scope of claims of the patent, obviously.

(2) Correction B

Correction B corrects "a plurality of pins" to "a plurality of pins arranged in a row". In Claim 1 before correction, there is no specification on the arrangement of the pins, while the arrangement is specified to restrict the scope of claims. It falls under the restriction of the scope of claims in accordance with Article 134-2 (1) (i) of the Patent Act, obviously.

Correction B is within the scope of the matters described in the Description and other materials of the patent and does not substantially enlarge or modify the scope of claims of the patent, obviously.

(3) Correction C

Correction C corrects "an access groove on a front side of each of the plurality of pins" to "an access groove on a front side, in a pin row direction, of each of the plurality of pins". The "front side" is specified as the "front side in a pin row direction", thereby correcting obscure description, and making clear an original meaning. It falls under the clarification of an ambiguous description as prescribed in Article 134-2 (1) (iii) of the Patent Act.

Correction C is within the scope of the matters described in the Description and other materials of the patent and does not substantially enlarge or modify the scope of claims of the patent, obviously.

(4) Corrections D to F

Corrections D-F correct the descriptions in Claims 2, 5, 6 before correction, which have cited the description in Claim 1, to a description which does not cite Claim 1. They fall under the dissolution of a citation relation between claims prescribed in Article 134-2(1) (iv) of the Patent Act.

Corrections D-F are within the scope of the matters described in the Description and other materials of the patent and do not substantially enlarge or modify the scope of claims of the patent, obviously.

(5) Correction G

Correction G deletes Claim 11. It falls under the restriction of the scope of claims. The correction is within the scope of the matters described in the Description and other materials of the patent, and does not substantially enlarge or modify the scope of claims of the patent, obviously.

(6) Summary

The corrections fall under the proviso to Article 134-2(1) and the provisions of Article 126 (5) and (6) of the Patent Act which is applied mutatis mutandis pursuant to Article 134 (9) of the Patent Act. Therefore, the corrections shall be approved.

The demandant has not made any rebuttal statements on the allegation of the demandee on the correction (written refutation p.4 l. 12-1. 13).

No. 3 Corrected invention of the case

The correction of the scope of claims of the patent shall be approved. The inventions related to Claims 1-10, 12-18 of the patent after correction (hereinafter referred to as "Corrected invention 1", or the like, or may be represented as "Corrected invention" collectively) are recognized as follows, as described in Claims 1-10, and 12-18 of the scope of claims, on the basis of the description in the scope of claims corrected by the correction of the case and the Description and other materials of the patent.

Letters added to the Corrected inventions 1, and 8-10 represent constituent components separately described by the demandant.

"[Claim 1]

A A kit for creating an item consisting of a series of links,

A-1 the links being Brunnian links, and the item being a Brunnian link item,  
D comprising:  
B a base;  
C and at least one pin bar supported on the base, the pin bar including a plurality of pins arranged in a row and each having a top flared portion for holding the links in a desired direction, and an access groove on a front side, in a pin row direction, of each of the plurality of pins.

[Claim 2]

A kit for creating an item consisting of a series of links, comprising:  
a base;  
and at least one pin bar supported on the base, the pin bar including a plurality of pins each having a top flared portion for holding the links in a desired direction, and an access groove on a front side of each of the plurality of pins, the pin bar and the base including corresponding mating features for securing the pin bar to the base.

[Claim 3]

The kit as recited in Claim 2, wherein the base includes a plurality of mating structures receivable within a mounting opening defined within each of the plurality of pins with an interface between each of the mating structures and mounting openings defining an interference fit.

[Claim 4]

The kit as recited in claim 3, wherein each of the mating structures comprises upright extending cylinders and the mounting openings are round to receive a corresponding one of the cylinders.

[Claim 5]

A kit for creating an item consisting of a series of links, including:  
a base;  
and at least one pin bar supported on the base, the pin bar including a plurality of pins each having a top flared portion for holding the links in a desired direction, and an access groove on a front side of each of the plurality of pins,  
each of the plurality of pins including a bottom flared portion spaced apart from the top flared portion and a mid portion for holding a link.

[Claim 6]

A kit for creating an item consisting of a series of links, including  
a base;  
and at least one pin bar supported on the base, the pin bar including a plurality of

pins each having a top flared portion for holding the links in a desired direction, and an access groove on a front side of each of the plurality of pins,

the base including a plurality of bases for securing a plurality of pin bars in a desired relative special orientation for forming the series of links in a desired pattern.

[Claim 7]

The kit as recited in claim 6, wherein the base comprises a tab and each of the plurality of pin bars includes a corresponding slot for aligning each of the plurality of pin bars relative to the base and to others of the plurality of pin bars.

[Claim 8]

E The kit as recited in claim 1, including a hook adapted to extend into the access groove for capturing one end of a link.

[Claim 9]

F The kit as recited in claim 1, including a clip for securing ends of the series of links together.

[Claim 10]

G The kit as recited in claim 1, wherein the series of links comprise a series of elastic bands."

"[Claim 12]

A method of creating a linked item comprising the steps of:

supporting at least one pin bar including a plurality of pins to a base to define a desired relative special relationship between at least two adjacent pins;

assembling at least two elastic bands across adjacent pins;

capturing one end of an elastic band and pulling the end over and onto an adjacent pin while engaged with another elastic band; and

capturing and pulling subsequent ends over until a desired link length and configuration is obtained.

[Claim 13]

The method as recited in claim 12, wherein a second of the at least two elastic bands is placed atop one end of the first of the at least two elastic bands on a common pin.

[Claim 14]

The method as recited in claim 13, wherein capturing one end of the elastic band includes using a hook tool reaching into an access groove of the pin to extend below the top most elastic band and grasp a bottom elastic band with the hook tool.

[Claim 15]



The method as recited in claim 12, including assembling a plurality of pin bars to a base to provide parallel rows of pins.

[Claim 16]

The method as recited in claim 15, including the step of assembling the plurality of pin bars to a corresponding plurality of bases to define a desired pattern of pins.

[Claim 17]

The method as recited in claim 15, including assembling a plurality of elastic bands in a desired pattern to the plurality of pin bars including at least one elastic band that extends between pins of another pin bar.

[Claim 18]

The method as recited in claim 15, including the step of inserting ends of the elastic bands into a clip to form the linked item."

No. 4 The demandant's allegation

1 Gist

The object of the demand for trial alleged by the demandant is to request the body to approve that the patent for the corrected inventions 1, 8-10 shall be invalidated.

In short, the statements of the demand are as follows:

At the time of the demand for trial, the demandant alleged Reasons for invalidation 1 and 3 (lack of novelty), Reasons for invalidation 2 and 4 (lack of inventive step), and Reason for invalidation 5 (improper description). The demandant will drop the demand on Reasons for invalidations 1 and 3 if Correction of the case is approved (see 1st oral proceeding record [regarding Invalidation No. 2015-800034] Item on the side of the demandant "3"). The corrections are approved in the above No. 2. Therefore, it can be said that the statements of the demand alleged by the demandant are Reasons for invalidation 2, 4, and 5.

According to the descriptions in the written demand for trial (hereinafter referred to as "written demand"), the written amendment, the written refutation, and the oral proceedings statement briefs as of September 24, 2015 and October 5, 2015, the gist of the reasons for invalidation are as follows:

(1) Reason for invalidation 2 (lack of inventive step)

The corrected inventions 1, and 8-10 could be easily made by a person skilled in the art according to the invention described in Evidence A No. 1, the inventions

described in Evidences A No. 1 and No. 2, or the invention described in Evidence A No. 1 and well-known prior arts, and the Inventions cannot obtain a patent in accordance with the provisions of Article 29 (2) of the Patent Act. Thus, the patent falls under Article 123(1)(ii) of the Patent Act and should be invalidated.

(2) Reason for invalidation 4 (lack of inventive step)

The corrected inventions 1, and 8-10 could be easily made by a person skilled in the art according to the invention described in Evidence A No. 9, the inventions described in Evidences A No. 9 and No. 2, or the invention described in Evidence A No. 9 and well-known prior arts, and the Inventions cannot obtain a patent in accordance with the provisions of Article 29 (2) of the Patent Act. Thus, the patent falls under Article 123(1)(ii) of the Patent Act and should be invalidated.

(3) Reason for invalidation 5 (improper description)

The corrected invention is not recited in the detailed description of the invention of Description and other materials of the patent. The scope of claims thereof does not meet the requirement stipulated in Article 36(6)(i) of the Patent Act. The patent of the case falls under Article 123(1)(iv) and should be invalidated.

The description in the detailed description of the invention of Description and other materials of the patent is not clear and sufficient to enable a person of ordinary skilled in the art to carry out, and does not meet the requirement stipulated in Article 36(4)(i). The patent of the case falls under Article 123(iv) and should be invalidated.

2 Means of proof

The means of proof submitted by the demandant are as follows:

Evidence A No. 1	United Kingdom Patent Application Publication No. 2147918, and translation
Evidence A No. 2	U.S. Patent No. 5,231,742, and translation
Evidence A No. 3	U.S. Patent No. 5,426,788, and abridged translation
Evidence A No. 4	U.S. Design No. D592,537S, and abridged translation
Evidence A No. 5	U.S. Patent No. 1,994,659, and abridged translation

- Evidence A No. 6 U.S. Patent No. 7,040,120,  
and abridged translation
- Evidence A No. 7 Japanese Utility Model Registration No.  
3108472
- Evidence A No. 8 U.S. Patent No. 3,758,923
- Evidence A No. 9 Print-out of a web page entitled "Knitty: Spring 2007"  
  
(<http://www.knitty.com/ISSUESpring07/FEATloomknitting.html>), and  
abridged translation
- Evidence A No. 10 Patent publication of the case (Japanese Patent No.  
5514962)
- Evidence A No. 11 Shogakukan Progressive English-Japanese  
Dictionary, 4th Edition (p. 1117 and colophon)
- Evidence A No. 12 English-Japanese Dictionary for the General Reader,  
3rd Edition (p. 1386 and colophon)
- Evidence A No. 13 Pocket Shorter English-Japanese Dictionary  
5th Edition (p. 748 and colophon)
- Evidence A No. 14 U. S. Patent No. 8,485,565,  
and abridged translation
- Evidence A No. 15 Document entitled "DECISION Institution of Inter  
Partes Review" and translation
- Evidence A No. 16 Document entitled "JUDGMENT AND FINAL  
WRITTEN DECISION" and translation
- Evidence A No. 17 Written Explanation of Situation for Accelerated  
Examination on the case
- Evidence A No. 18 Report Concerning Accelerated Examination on the  
case
- Evidence A No. 19-1 Print-out of a web page showing a result of searching  
collection date of the address in Evidence A No. 9  
using Internet archive  
([http://web.archive.org/web/20070310205702\\*/  
http://knitty.com/ISSUESpring07/FEATloomknitting.html](http://web.archive.org/web/20070310205702*/http://knitty.com/ISSUESpring07/FEATloomknitting.html))
- Evidence A No. 19-2 Print-out of a screen displayed by clicking "March 10,  
2007" of the address collection date displayed in  
Evidence A No. 19-1
- Evidence A No. 20 U.S. Patent No. 7,578,146,

and abridged translation

Evidence A No. 21 U.S. Patent No. 7,506,524,  
and abridged translation

Evidence A No. 22 U.S. design No. D563,997S

Evidence A No. 23 Catalog published in 2007 by SIMM MARKETING  
GMBH (cover, p. 13, and spine)

Evidence A No. 24 Examination Guidelines for Patent and Utility  
Model (volume 2 chapter 2 "novelty and inventive  
step" pp. 1-8)

Evidence A No. 25 Shooting report of a knitting machine (product name  
"Wool Designer") alleged by the demandant to have the  
same shape as a knitting machine (product name "Wool  
Designer") disclosed in Evidence A No. 23

Evidence A No. 26 Product manual of Rainbow loom implemented by the  
demandee

Evidence A No. 27 CD-R (video) [Subject] making an accessory ""single"  
pattern rubber band link" including "Brunnian link"  
using the knitting machine in Evidence A No. 25  
[Shooting date] May 28,2015  
[Location] Head office of the demandant

Evidence A No. 28 "Rainbow loom official guide Easy and cute! Rainbow  
loom fashion accessory LESSON BOOK"  
(cover, p. 10, p. 11, pp. 34-37, pp. 76-79, and colohone)

Evidence A No. 29 CD-R (video) [Subject] making an accessory "fish tail"  
including "Brunnian link" using the knitting  
machine in Evidence A No. 25  
[Shooting date] May 28, 2015  
[Location] Head office of the demandant

Evidence A No. 30 CD-R (video) [Subject] making an accessory of  
complicated shapes including "Brunnian link" using  
the knitting machine in Evidence A No. 25  
[Shooting date] May 28, 2015  
[Location] Head office of the demandant

Evidence A No. 31 "Rainbow loom starter kit utility book" (cover, pp. 6-12,  
and colophon)

Evidence A No. 32 "Rainbow loom official guide Easy for even a

	beginner! Cute! Rainbow loom accessory" (cover, p. 14, pp. 42-45, pp. 62-65, and colophon)
Evidence A No. 33	PCT International Search and Preliminary Examination Guideline (Japanese tentative translation) (cover, pp. 148-157)
Evidence A No. 34	CD recorded by electronically copying a photographic image of the knitting machine in p. 2 of Evidence A No. 9
Evidence A No. 35	Print-out of a web page entitled "funloom plus" ( <a href="http://www.hanayamatoys.co.jp/product/category/hobby/funloom/fl/plus.html">http://www.hanayamatoys.co.jp/product/category/hobby/funloom/fl/plus.html</a> ) on a website of the demandant

Evidences A No. 1-No. 23 are attached to the written demand. Evidences A No. 24- No. 32 are attached to the written refutation. Evidences A No. 33-No. 35 are attached to Oral proceedings statement brief (2) as of October 5, 2015. The demandee denies validity of Evidence A No. 9. There is no dispute between the parties on the validity of the other evidences (see 1st oral proceeding record [regarding Invalidation No. 2015-800034] Item on the side of the demandee "2" and "3").

### 3 Summary of allegation

Summary of allegation of the demandant is as follows:

#### (1) Regarding Reason for invalidation 2

A "In Evidence A No. 1, a knitting machine is disclosed, which is configured to combine a support end plate 17, a base plate 19, a bar 1', and a plurality of hooks 5' at various tilt angles, in various directions, and with various distances, and has a technical idea of easily making various knitted products by use of the knitting machine." (written demand p. 24 l. 7-11, written amendment p. 25 l. 7-11)

(FIG formed by the demandant adding colors to FIG. 3 in Evidence A No. 3)

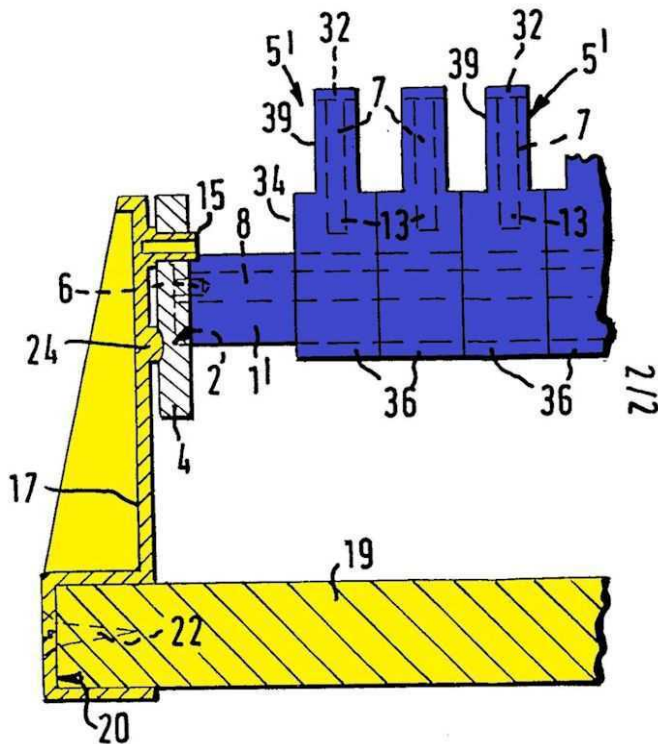


FIG. 3

B "In Evidence A No. 1, a hand-knitting machine is disclosed. The knitting machine is a kit for making a knitted product. The knitting machine corresponds to the "kit for creating an item consisting of a series of links" in the matters specifying the invention A.

The description "for creating an item consisting of a series of links" in the matters specifying the invention A only indicates a purpose of use of the "kit" of Patent invention 1, and does not indicate a configuration of the invention of product "kit".

The "link" is Japanese reading of a word "link", and means a "stitch" (Evidences A No. 11-No. 13). The "item consisting of a series of links" means an item consisting of a series of stitches, or a knitted product." (written demand p. 25 l.13-l. 22, and written amendment p. 26 l. 13-l. 22)

C "In Evidence A No. 2 (Note for the body: error of Evidence A No. 1), ... "a support end plate 17 and a base plate 19" (yellow portion in FIG. 3) for turnably supporting a bar 1' having a plurality of hooks 5' are disclosed, and correspond to a "base" in the matters specifying the invention B." (written demand p. 26 l. 3-l. 6,

written amendment p. 27 l. 3-l. 6)

D "In Evidence A No. 1, ... two "bars 1' having a plurality of hooks 5'" (blue portion in FIG. 3) supported on a support end plate 17 and a base plate 19, as a base, are disclosed, and correspond to a "pin bar" in the matters specifying the invention C.

The bar 1' and the hooks 5' described in Evidence A No. 1 include sections (erected sections) 39 extended upward. The erected section 39 includes a platy "protrusion 32" formed at its top end and suitable for retaining yarn on the hook 5', and corresponds to a "top flared portion" in the matters specifying the invention C.

Each of the hooks 5' described in Evidence A No. 1 includes a "groove 7" extended along the front surface of the erected section 39 for guiding a handheld crochet hook, and it corresponds to an "access groove" in the matters specifying the invention C." (written demand p. 26 l. 12-l. 22, written amendment p. 27 l. 12-l. 22)

E "In Evidence A No. 1, a knitting machine as the "kit" is disclosed. The knitting machine corresponds to the matters specifying the invention D." (written demand p. 26 l. 24- l. 25, written amendment p. 27 l. 24-l. 25)

F "A Corrected Patent Invention 1

... The demandee points out the following two points corresponding to Corrections A-C, regarding different features between Corrected Patent Invention 1 and Evidence A No. 1 (written reply p. 6 l. 22-l. 29).

(Different feature 1) Invention 1 is a kit for creating a Brunnian link item consisting of Brunnian links, while Evidence A No. 1 invention is a knitting machine for creating a knitted product made of yarn.

(Different feature 2) In Invention 1, each of a plurality of pins includes an access groove on a front side in a pin row direction, while in the Evidence A No. 1 invention, each of a plurality of pins includes an access groove on a side face in a pin row direction."

(written refutation p. 4, 4th line from the bottom-p. 5 l. 11)

G "(A) Regarding Different feature 1 alleged by the demandee

a. Correction A (Different feature 1 alleged by the demandee) does not correspond to the matters specifying the invention

The demandee alleges that Correction A corresponds to Different feature 1. However, Correction A is not the matters specifying the invention, thus it is not a different feature.

... The description "(kit) for creating a Brunnian link item" only indicates a purpose of use, and does not indicate a configuration of an invention of product "kit". Thus, Correction A is not the matters specifying the invention." (written refutation p. 5 l. 12-p. 6 l. 9)

H "In a Supreme Court decision as of June 5, 2015 (2012 (Ju) 1204, court HP), ... a manufacturing method of an invented object is described in the scope of claim, in addition to the descriptions on a structure or characteristics of the object. The same interpretation should be adopted in the case where a purpose of use of an invention of product is described in addition to the structure or characteristics of the product. Thus, even if the purpose of use is limited in the invention of the product, it cannot be interpreted as the matters specifying the invention.

Therefore, according to the comprehension of the Supreme Court decision, the limited purpose of use, which is for creating a Brunnian link item consisting of Brunnian links, is obviously not the matters specifying the invention of Corrected Patent invention 1." (written refutation p. 6, 3rd line from the bottom-p. 7 l. 17)

I "The structure of the knitting machine in the corrected patent invention cannot be recognized to be the most suitable for creating the "Brunnian link item", in consideration of the specification, drawings, and technical common sense upon filing the application. In this point, the limited purpose of use is obviously not the matters specifying the invention." (written refutation p. 7, 2nd line from the bottom-p. 8 l. 3)

J "Regarding the invention of manufacturing method, in the case of interpretation on a "tire of vehicle for children" described in the scope of claims, the Osaka District Court judged on October 31, 1980 that... the tire is not limited to the vehicle for children even if the description exists in the scope of claims. (1975 (Wa) 3925, court HP)

The corrected patent invention is an invention of a knitting machine having a unique structure, and is not an invention of a purpose of use which is unique to the invention. Thus, the description, for creating the "Brunnian link item", is obviously not the matters specifying the invention, according to the court precedent." (written refutation p. 8 l. 4-l. 15)

K "b. Brunnian link item can be easily created also in Evidence A No.1

...

"Brunnian link can be created by a knitting machine having the same structure as



Evidence A No. 1 in a direction of an access groove, or an accessory consisting of "Brunnian links" can be easily created, obviously. A user can freely decide what to make by use of the knitting machine. Therefore, Correction A is not a different feature from Evidence A No. 1, obviously. (written refutation p. 8 l. 16-p. 16 l. 6)

L "c. The demandee confesses that "Brunnian link" can be knitted by a knitting machine having the same structure as a knitting machine disclosed in Evidence A No. 1 in a direction of an access groove

... The demandee confesses that "Brunnian link" can be created by a knitting machine having exactly the same structure as Evidence A No. 1, or an accessory consisting of "Brunnian links" can be easily created. Correction A is not a different feature from Evidence A No. 1, obviously." (written refutation p. 16 l. 7-p. 17 l. 5)

M "(B) Regarding Different feature 2 alleged by the demandee

Different feature 2 alleged by the demandee, or Corrections B and C (each of a plurality of pins including an access groove on a front side in a pin row direction) is only a design matter.

...

a. Access grooves are not required to exist in the same direction as a direction of knitting an elastic band

... The corrected patent invention is a knitting machine including a plurality of pin bars (including one pin bar) with a plurality of pins, or a knitting machine including a plurality of pin bars, as shown in FIGS 1, 12, 13, and 17 of the patent publication of the case. A case where an elastic band is hooked on a pin in an adjacent row, a case where the elastic band is hooked on a pin in a diagonal direction, or the like are supposed. Various knitting directions are supposed, for example, a row direction pointed out by the demandee, a direction perpendicular to the row direction, or a diagonal direction...

b. Easy knitting is ensured even when the access groove exists in a direction perpendicular to a knitting direction of the elastic band

... An elastic band can be easily knitted even when the direction of the access groove is perpendicular to the knitting direction of the elastic band, obviously. In other words, the access groove can be formed in any directions, and the direction has no technical significance. The direction of the access groove is only a design matter.

...

c. The demandee's allegation is unreasonable

In this point, as described above, the demandee's allegations stated in the written reply p. 8 the last part-p. 9 supposes only a specific method of knitting an elastic band along a pin row direction, while as shown in FIGS. 13-15, the elastic band can be easily knitted along the pin row direction even if the access groove faces outward. As shown in FIGS. 1-11, there are infinite methods of creating an item consisting of Brunnian links, other than the method of knitting the elastic band along the pin row direction. In consideration of the purpose of the patent invention for creating unlimited variety of items consisting of Brunnian links, there is no need to design a structure of the knitting machine so as to conform to a specific knitting method, of substantially infinite knitting methods of Brunnian links." (written refutation p. 17 l. 6-p. 22 l. 2)

N "(C) Configuration (Correction A) relating to Different feature 1 is a configuration described in Evidence A No. 2 or well-known prior arts

... Different feature 1 alleged by the demandee is not a different feature, obviously. Even if it is assumed to be a different feature, the different feature could easily be conceived by a person skilled in the art, and has no inventive step, obviously.

The Tokyo High Court judged on August 27, 2003 that ... "finding a new property or a function of an object relating to a specific invention and using it in a purpose different from an original purpose can be evaluated as a different invention from the invention of the product, which is a use invention. However, when the property or the function, which is different from original property or function of the object relating to the specific invention, can be easily conceived by a person skilled in the art from conventional known techniques, or when they belong to well-known matters, there is no inventive step in the invention relating to the purpose, at least." (2002 (Gyo-ke) 376, court HP)

In this case, ... the invention cannot be evaluated as a use invention, obviously. Even if it can be so evaluated, a method of knitting Brunnian links by a knitting machine having a conventional structure (a method of knitting a closed loop, according to the demandee's allegation) can be easily conceived by a person skilled in the art, obviously, on the basis of a method of knitting a closed loop material by a knitting machine disclosed in Evidence A No. 2, as described below, or known prior arts (Evidences A No. 2 to No. 5). Thus, there is no inventive step." (written refutation p. 23 l. 8-p. 24 l. 12)

O "B Corrected Patent invention 8

As described in detail in the written demand for trial, in Evidences A No. 1 and

No. 2, the matters specifying the invention E of Corrected Patent invention 8 are disclosed." (written refutation p. 26, 5-7th lines from the bottom)

P "C Corrected Patent invention 9

... as described in detail in the written demand for trial, Evidence A No. 3 discloses "a connecting loop 24" (see FIG. 3 in Evidence A No. 3, 3rd column l. 42-l. 46) for retaining an end of a series of links, Evidence A No. 4 discloses a clip (see FIGS. 1-12 described in Evidence A No. 4, a clip is arranged at the top of a ring in the FIGS. for retaining both ends of a link of a rubber band), Evidence A No. 6 discloses a hook (see FIG. 1 described in Evidence A No. 6). Evidence A No. 7 discloses a U-shaped "elastic pole 14" (see FIG. 1 and FIG. 3 described in Evidence A No. 7) for retaining both ends of a link with an annular body joined thereto. The shape of the clip having both ends facing inward is disclosed in Evidence A No. 8, in addition to the "hook" in Evidence A No. 6 and the "elastic pole 14" in Evidence A No. 7, and is very common.

Therefore, the "clip" in the matters specifying the invention F is well-known prior arts before filing the patent application of Corrected Patent invention 9, obviously." (written refutation p. 27 l. 1-l. 15)

Q "D Corrected Patent invention 10

As described in detail in the written demand for trial, the matters specifying the invention G of Corrected Patent invention 10 is disclosed in Evidences A No. 2 - No. 4, and is well-known prior arts. Including an elastic band in at least a part of a series of links knitted by a knitting machine is well-known prior art." (written refutation p. 27, 3rd line from the bottom-p. 28 l. 2)

R "D corresponding U. S. patent is invalidated

Inter partes review was filed to the US Patent and Trademark Office on the corresponding U. S. patent No. 8,485,565 of the case (herein after referred to as "corresponding U. S. patent" Evidence A No. 14). The Board of Patent Appeals and Interferences approved the application (Evidence A No. 15: DECISION) on Claims 1, 5-8, 10, and 11 of the corresponding U. S. patent. The patent holder abandoned Claims 1, 5-8, 10, and 11 (Evidence A No. 16). Board of Patent Appeals and Interferences approved the application judges that there is no novelty in Claims 1, 5, and 8 (Anticipation) on the basis of Evidence A No. 1, and Claims 10 and 11 are obvious (Obviousness) on the basis of Evidences A No. 1, No. 2, and No. 4 or U. S. patent No. 8418434, and the patent shall be invalidated.

... the corresponding U. S. patent was judged to be invalidated on the basis of documents, such as Evidence A No. 1, as described above. It can be believed that the patent of the case shall be invalidated, according to the reasons described above." (written demand p. 40 5th line from the bottom-p. 41 6th line from the bottom, written amendment p. 41, 7th line from the bottom-p. 42, 8th line from the bottom)

(2) Regarding Reason for invalidation 4

A "When the Patent invention of the case includes an integrated structure formed of a "base" and a "pin bar", there is no inventive step." (written demand p. 52 first and second lines from the bottom, written amendment p. 48 l. 3-l. 4)

B "(A) Invention described in Evidence A No. 9

In a picture in Evidence A No. 9 p. 2 ... a knitting machine including a plurality of pegs arranged in two lines on a base is disclosed. In Evidence A No. 9 p. 2, 5th paragraph (l. 16-l. 32), the pegs arranged in two lines and facing each other are disclosed. Each of the pegs is erected upward from the base, and includes a groove formed on a front side along a peg erecting direction, and a top end section having a larger diameter than the other sections. A crochet hook can be inserted in the groove to hook a stitch on the peg. The top end section having a larger diameter than the other sections is configured to prevent the stitch from coming off from the peg. In Evidence A No. 9 p. 2 6th paragraph (l. 33-l. 36), a knitting tool (crochet hook) to be used for pulling up a loop from the peg to create a stitch is disclosed." (written demand p. 43 8th line from the bottom-p. 44 l. 3, written amendment p. 44 10th line from the bottom-p. 45 l.1)

C "Evidence A No. 9 discloses a hand-knitting machine. The knitting machine is a kit for creating a knitted product. The knitting machine corresponds to "a kit for creating an item consisting of a series of links" in the matters specifying the invention A.

The description "for creating an item consisting of a series of links" in the matters specifying the invention A only indicates a purpose of use of the "kit" in Patent invention 1, and does not indicate a configuration of the invented product "kit".

...

Evidence A No. 9 discloses a base with a plurality of pegs erected thereon, and it corresponds to the "base" in the matters specifying the invention B.

...

Evidence A No. 9 discloses a plurality of pegs erected on the base in straight line.

On the assumption that the base and the pin bar are integrated with each other, the pin bar on the base and the pegs arranged on the base have the same configuration. The pegs correspond to the "pin bar" in the matters specifying the invention C, accordingly.

Each of the pegs described in Evidence A No. 9 includes a top end section having a larger diameter than the other sections. The top end section retains a stitch on the peg, and corresponds to "a plurality of pins" in the matters specifying the invention C.

A groove is formed in each of a front face of the peg described in Evidence A No. 9, and corresponds to an "access groove" in the matters specifying the invention C.

...

Evidence A No. 9 discloses a knitting machine which is the "kit". The knitting machine corresponds to the matters specifying the invention D." (written demand p. 45 l.2-p. 46 l.8, written amendment p. 45 1st line from the bottom-p. 47 l. 6)

D "A Corrected Patent invention 1

... The demandee points out the following two points corresponding to Corrections A-C, regarding different features between Corrected Patent invention 1 and Evidence A No. 9 (written reply p. 13 l. 16-l. 26).

(Different feature 1) Invention 1 is a kit for creating a Brunnian link item consisting of Brunnian links, while Evidence A No. 9 invention is a knitting machine for creating a knitted product made of yarn.

(Different feature 2) In Invention 1, each of a plurality of pins includes an access groove on a front side in a pin row direction, while in the Evidence A No. 9 invention, no groove is formed in the peg." (written refutation p. 29 l. 1-l. 14)

E "(A) Regarding Different feature 1 alleged by the demandee

The demandee approves that Correction A corresponds to Different feature 1, however, ... the limitation described in Correction A 'the link is Brunnian link. The item is Brunnian link item' is a limitation on the purpose of use of the 'kit', and does not correspond to a configuration of Corrected Patent invention 1. Correction A is not a different feature from Evidence A No. 9. Brunnian link can be easily created in the knitting machine described in Evidence A No. 9. Therefore, it cannot be a different feature." (written refutation p. 29 l. 15-l. 22)

F "(B) Regarding Different feature 2 alleged by the demandee

Corrections B and C (each of a plurality of pins including an access groove on a

front side in a pin row direction) is only a design matter.

The demandee points out the absence of groove in the peg in Evidence A No. 9 invention, as Different feature 2, ... Evidence A No. 9 discloses an access groove. The demandee's allegation is wrong obviously.

... The direction of the access groove in Corrections B and C does not have any technical significance, and it is only a design matter. Thus, there is no reason for Corrected Patent invention 1 to eliminate the reason for invalidation on inventive step based on Evidence A No. 9, due to Different feature 2, the direction of the access groove." (written refutation p. 29 4th line from the bottom-p. 31 l. 1)

G "d A knitting machine having a 'base' and a 'pin bar' integrated with each other has been well-known before the priority date of the Patent application of the case

A knitting machine having a 'base' and a 'pin bar' integrated with each other, the pin bar including pins each comprising a top flared portion for holding a link in a desired orientation, and an access groove formed on a front side of each of the pins, is disclosed in Evidence A No. 9, and has been disclosed in many publications on sale before the priority date of the patent application. The knitting machine has a very common structure." (written amendment p. 50 l. 12-l. 19)

H "B Corrected Patent invention 8

As described in detail in the written demand for trial, in Evidences A No. 9 and No. 2, the matters specifying the invention E of Corrected Patent invention 8 are disclosed." (written refutation p. 31 l. 11-l. 13)

I "C Corrected Patent invention 9

As described in detail in the written demand for trial, the matters specifying the invention F of Corrected Patent invention 9 are disclosed in Evidences A No. 3, No. 4, and No. 6 - No. 8, and are well-known prior arts." (written refutation p. 31 5th-8th lines from the bottom)

J "D Corrected Patent invention 10

As described in detail in the written demand for trial, the matters specifying the invention G of Corrected Patent invention 10 are disclosed in Evidences A No. 2 - No. 4, and are well-known prior arts. An elastic band included in at least a part of a series of links knitted by a knitting machine is well-known prior arts." (written refutation p. 32 l. 1-l. 5)

K "Wayback Machine is a service provided by the Internet Archive, a non-profit organization, which archives various digital information represented by web information all over the world, and collects and archives web pages and provides the collected webpages for browsing. ... Websites stored in the past by the Internet Archive are employed as evidences generally on procedures of a civil case..., 'PCT International Search and Preliminary Examination Guideline" (Evidence A No. 33: p. 154) as of July 1, 2014 prepared by World Intellectual Property Organization introduces web page information acquired by use of the Wayback Machine, as available technical means for obtaining a release date of a website. Past web page information obtained by use of Wayback Machine is certified generally in practice of international search and international preliminary examination.

...Evidences A No. 19-1 and 2 reinforce the fact that Evidence A No. 9 has been published around March 2007, and, 'Kinitty: Spring 2007' is printed in Evidence A No. 9, as described above. Therefore, it can be recognized that Evidence A No. 9 has been formed and published in spring 2007." (oral proceedings statement brief (2) as of October 5, 2015 p. 3 l. 10-p. 4 l. 11)

### (3) Regarding Reason for invalidation 5

A "When the patent invention includes a 'base' and a 'pin bar' integrated with each other, description requirements of patent application stipulated in Article 36 of the Patent Act are not met." (written demand p. 57 l. 13-l. 15, written amendment p. 59 l. 2-l. 4)

B "The patent invention includes a 'base' and a 'pin bar' placed on the "base" as components, and they are separate from each other, obviously.

As described in [Summary] of the specification of the patent, 'The base and pin bars may be assembled in various combination and orientations to provide endless variation of completed link orientations' (paragraph [0005]), the patent invention provides a knitting machine including a base and a pin bar which can be assembled in various combinations and orientations, to easily create endless variation of knitted products. The 'base' and the 'pin bar' are separate from each other, and are configured to be assembled to each other in various orientations, essentially.

Claim 2 of the patent includes the description, '... for securing the pin bar to the base'. The 'base' and the 'pin bar' are independent components.

In the specification and drawings of the patent, only separate structure of the 'base' and the 'pin bar' is described, while there is no description on integrated structure

of the 'base' and the 'pin bar'. The specification of the patent includes the descriptions, 'several pin bars 14 are mounted on several bases 12' (paragraph [0011]), and 'additional cylinders 28 provided by the larger example base 12' provide for mounting of additional pin bars 14 with the same number of bases 12' (paragraph [0018]). The 'pin bar' is not integrated with the 'base', and is mounted on the 'base'.

... In the descriptions, there is the assumption that the 'base' and the 'pin bar' are separate from each other, and are configured to be assembled to each other, while there is no description for allowing the 'base' and the 'pin bar' to be integrated with each other, in the specification of the patent." (written demand p. 41 4th line from the bottom-p. 43 l. 2, written amendment p. 42 6th line from the bottom-p. 43 the last line)

C "A Invalidation due to violation of support requirements

... The invention including a 'base' and a 'pin bar' integrated with each other is not the one described in the detailed description of the invention of Description of the patent (Evidence A No. 10)." (written demand p. 57 1st to 4th lines from the bottom, written amendment p. 59 l. 10-l. 13)

D "B Invalidation due to violation of implementable requirements

The invention including a 'base' and a 'pin bar' integrated with each other is not described at all in the detailed description of the invention of Description of the patent. There is no description on concrete embodiments or examples of the inventions including a 'base' and a 'pin bar' integrated with each other, in the detailed description of the invention of Description of the patent." (written demand p. 58 l. 3-l. 7, written amendment p. 59 5th to 9th lines from the bottom)

No. 5 Demande's allegation

1 Gist and Means of proof

The demandee requests the trial decision that the demand for trial of the case is groundless, and that the costs in connection with the trial shall be borne by the demandant, on the basis of the following reasons and means of proof.

Evidence B No. 1 Shogakukan Random House English-Japanese  
Dictionary, 2nd edition, p. 210 "band", cover and



colophon

- Evidence B No. 2 Dale Rolfsen, "Knots and links", AMS Chelsea Publishing, Reprinted with corrections by American Mathematical Society, 2003, inside cover, back of inside cover, p. 67
- Evidence B No. 3 1990 (Wa) No. 2886, 1991 (Wa) No. 9996 decisions
- Evidence B No. 4 "funloom instruction manual" included in demandee's product "funloom"
- Evidence B No. 5 "instructions" included in another demandee's product "monster tail"

The above means of proof were attached to the oral proceedings statement brief as of September 24, 2015. There is no dispute between the parties on establishment of the means of proof (see 1st oral proceeding record [regarding Invalidation No. 2015-800034] Item on the side of the demandant "2").

2 Summary of allegation

Summary of allegation of the demandee is as follows:

(1) Arguments against Reason for invalidation 2

A "(3) Comparison between Invention 1 and Evidence A No. 1 invention

a Corresponding features and Different features

Invention 1 and Evidence A No. 1 invention correspond to each other as a kit for equipment including a pin bar with pins arranged in line and having a groove and a flared portion, and a base supporting the pin bar, while they are different from each other in the following points:

(Different feature 1) Invention 1 is a kit for creating a Brunnian link item consisting of Brunnian links, while Evidence A No. 1 invention is a knitting machine for creating a knitted product made of yarn. Evidence A No. 1 includes no description or suggestion on Brunnian link.

(Different feature 2) In Invention 1, each of the pins includes an access groove on a front side in a pin row direction, while, in Evidence A No. 1 invention, each of the pins includes an access groove on a side face in the pin row direction." (written reply p. 6 6th to 17th lines from the bottom)

B "b Regarding Different feature 1

...

Invention 1 is a use invention which is limited in purpose of use. The purpose of use in Invention 1 does not indicate only utility of the kit but also a shape and structure especially suitable for the purpose of use, as described in the specific configuration in Claim 1. Thus, the purpose of use has substantial significance as a configuration for specifying Invention 1, obviously." (written reply p. 6 4th line from the bottom-p. 7 7th line from the bottom)

C "Regarding Different feature 1, as described above, Evidence A No. 1 includes no description or suggestion on Brunnian link. In addition, it is unpractical to create Brunnian link described in the specification by use of Evidence A No. 1 invention.

...

Even if Brunnian link can be created with difficulty by use of a knitting machine, Evidence A No. 1 invention, it is very obvious that it does not correspond to a product "which can be easily used by people having specific kinds of disabilities", which is the problem of the Evidence A No. 1 invention.

Therefore, it is not intended and impossible to employ Evidence A No. 1 invention for creating a Brunnian link item, obviously. It can be said that there is a disincentive for a person skilled in the art, while no motive exists." (written reply p. 8 4th line from the bottom-p. 9 7th line from the bottom)

D "Regarding Different feature 2, in Evidence A No. 1 invention, it is a necessary configuration for solving the problem of Evidence A No. 1 invention to form a groove on a side face of a pin, as specified in Claim 1 of Evidence A No. 1.

Therefore, Evidence A No. 1 invention is an invention of providing an introduction guide so that a user, including a physically impaired person having difficulty enhancing motion of a hand, may properly place a crochet hook in a groove of each pin to easily fix a stitch. In order to solve the problems, specifically, a groove 13 leading to a pin groove 7 is formed, to allow a user to place a crochet hook in the pin groove 7 (Claim 1).

Thus, it is obvious that, in Evidence A No. 1 invention having the groove 13 as an essential configuration, it is impossible to form the groove 7 leading to the groove 13 on a front side of the pin, like Invention 1." (written reply p. 10 l. 14-l. 25)

E "Each of Inventions 8-10 is an invention having all configurations of Invention 1, and it is not an invention which can be easily achieved by a person skilled in the art, as

with Invention 1." (written reply p. 10 4th to 5th line from the bottom)

F "It is a fact that IPR has been filed to corresponding U. S. patent in the U.S., and Claim 1 or the like has been deleted. However, the trial of infringement lawsuit on the patent of the case in U. S was interrupted, due to the request of IPR, and a written opinion was sent from Trial and Appeal Department. When the plaintiff of the case, who is a right holder of the case, is asked the opinion, the plaintiff remarked a decision that important Claims other than Claim 1 are valid, and deleted Claim 1 or the like without conflicting against the opinion, in order to advance the infringement lawsuit in the U.S. Therefore, it is not abandonment of the invention in Claim 1 or the like with an agreement to negative opinions from Trial and Appeal Department.

The reason of the negative opinions of U. S. Trial and Appeal Department on Claim 1 or the like is a result of extreme abstract interpretation of constituent features of Claim 1, without considering the descriptions in the detailed description of the invention of Description at all. The judgment of U.S. Trial and Appeal Department is incorrect." (written reply p. 11 10th line from the bottom-p. 12 l.2)

(2) Arguments against Reason for invalidation 4

A "The demandant is attempting to prove the publicity of Evidence A No. 9 with Evidence An No. 19-1 and 19-2. However, Wayback Machine is not guaranteed in its accuracy, and it cannot be recognized that Evidence A No. 9 has been browsed from around March, 2007 with Evidence A No. 19-1 and 19-2 (2006 (Gyo-Ke) 10358, a request to revoke the trial decision, Court HP)." (Oral proceedings statement brief as of September 24, 2015 p. 2. L.5-l. 10)

B "(3) Comparison between Invention 1 and Evidence A No. 9 invention  
a Corresponding features and Different features

Invention 1 and Evidence A No. 9 invention correspond to each other as a kit for equipment including a pin bar with pins arranged in line and having a flared portion, and a base supporting the pin bar, while they are different from each other in the following points.

(Different feature 1) Invention 1 is a kit for creating a Brunnian link item consisting of Brunnian links, while Evidence A No. 9 invention is a knitting machine for creating a knitted product made of yarn. Evidence A No. 9 includes no description or suggestion on Brunnian link.

(Different feature 2) In Invention 1, each of the pins includes an access groove on a

front side in a pin row direction, while, in Evidence A No. 9 invention, no groove is formed in a peg." (written reply p. 13 l. 15-l. 25)

C "Regarding Different feature 1, Evidence A No. 9 includes no description or suggestion on Brunnian link, and it is unpractical to create Brunnian link by use of Evidence A No. 9 invention. As described above, in creating Brunnian links, an elastic band on a pin is removed and stretched over an adjacent pin repeatedly. The peg has no groove, and the elastic band cannot be removed without a groove.

Even if there is a groove alleged by the demandant in the peg in Evidence A No. 9 invention, it is located on a side face of the peg. As with the description in the comparison with Evidence A No. 1 invention, it is difficult to create Brunnian links, and it is far from practicality.

Thus, it is not intended and is impossible to employ the Evidence A No. 9 invention for creating a Brunnian link item, obviously. It can be said that there is a disincentive for a person skilled in the art, while no motive exists." (written reply p. 14 2nd to 13th lines from the bottom)

D "Regarding the above Different feature 2, Evidence A No. 9 includes no description on a groove of a peg, and a concrete method of making knit, which is 'very interesting', using a knitting machine called a 'knitting board', is unclear. There is only a description 'a stitch can be created by stretching yarn from one side of the board onto the other side', and it is assumed that the same knitting method as described in FIGS. 1 and 2 of Evidence A No. 21 is used. Therefore, the groove is not a necessary configuration." (written reply p. 15 l. 13-l. 18)

E "Each of Inventions 8-10 is an invention having all configurations of Invention 1, and it is not an invention which can be easily achieved by a person skilled in the art, as with Invention 1." (written reply p. 15 7th to 8th line from the bottom)

(3) Arguments against Reason for invalidation 5

A "Whether or not the invention complies with the support requirement should be determined by examining whether or not the invention described in the scope of claims is the invention described in the detailed description of the invention, and whether or not it can be acknowledged that a person skilled in the art could solve the problems of the invention based on the detailed description of the invention by means of comparing the description in the scope of claims with the description in the detailed description of

the invention, and whether or not a person skilled in the art could solve the problems of the invention by means of referring to the technical common sense upon filing the application even in the absence of the descriptions or the suggestions.

According to the problems of the invention described in Description and a method of creating Brunnian links, as prescribed in Invention 1, it is obvious that the pin bar needs only be supported on a base. A person skilled in the art recognizes that, on the basis of the detailed description of the invention in Description, the problems of the invention, easily creating Brunnian links, can be solved, regardless of whether the 'base' and the 'pin bar' are integrated with each other or separated from each other. Whether the base and the pin bar are integrated or not, is independent of a technical idea and nature". (written reply p. 16 l. 13-l. 26)

B "The enablement requirements demand that the detailed description of the invention should be described so that a person skilled in the art can implement the invention concerning Claims on the basis of the matters described in Description, Drawings, and the technical common sense upon filing the application. However, the reason why the person skilled in the art cannot manufacture and use a kit as shown in Description, including the base and the pin bar integrated with each other, even based on the technical common sense, is unclear." (written reply p. 17 l.4-l. 9)

No. 6 Judgment by the body on Reason for invalidation 5

In view of the case, before examining Reasons for invalidation 2 and 4, Reason for invalidation 5 is examined.

1 Regarding violation of Article 36(6)(i) (support requirements) of the Patent Act  
(1) Assumption

Whether or not the description in the scope of claims complies with the support requirement stipulated in Article 36(6)(i) should be determined by examining whether or not the invention described in the scope of claims is the invention described in the detailed description of the invention, and whether or not it can be acknowledged that a person skilled in the art could solve the problems of the invention based on the detailed description of the invention by means of comparing the description in the scope of claims with the description in the detailed description of the invention, and whether or not a person skilled in the art could solve the problems of the invention by means of referring to the technical common sense upon filing the application even in the absence

of the descriptions or the suggestions (the determination 2005 (Gyo-Ke) 10042 by Intellectual Property High Court Special Department, No.5 2(3)).

(2) Detailed description of the invention in the Description and other materials of the patent

The detailed description of the invention in the Description and other materials of the patent includes the following descriptions. The underlines are applied by the body for comprehension.

A"[Background]  
[0003]

Kits that include materials for making a uniquely colored bracelet or necklace have always enjoyed some popularity. However, such kits usually just include the raw materials such as different colored threads and beads and rely on the individual's skill and talent to construct a usable and desirable item. Accordingly there is a need and desire for a kit that provides not only the materials for creating a unique wearable item, but also that simplifies construction to make it easy for people of many skill and artistic levels to successfully create a desirable and durable wearable item."

B"[Summary of the invention]  
[0004]

A Brunnian link is a link formed from a closed loop doubled over itself to capture another closed loop to form a chain. Elastic bands can be utilized to form such links in a desired manner. The example kit and device provide for creation of Brunnian link articles of complex configurations. Moreover, the example kit provides for the successful creation of unique wearable articles using Brunnian link assembly techniques."

C"[0005]

The example kit includes several pin bars that are supported in a desired spatial orientation by at least one base. The desired spatial orientation is dependent on the desired link configuration of the completed article. The base and pin bars may be assembled in various combinations and orientations to provide endless variation of completed link orientations. Moreover, additional bases and pin bars can be added to further expand possible completed article creation."

D"[0006]

Each of the pin bars includes a flanged top portion for holding elastic bands in place and a front access groove. The front access groove provides for a hook to be inserted below a topmost elastic band such that a lower band can be grasped and pulled over an adjacent band to form the Brunnian link. The disclosed kit provides for many possible orientations of adjacent pins, and therefore different orientations of and designs for a completed linked article."

E"[Embodiments of the invention]

[0009]

Referring to FIG. 1, an example kit is indicated at 10 for creating Brunnian link items such as bracelets, necklaces, and other wearable or decorative items shown in FIG. 2."

F"[0010]

Referring to FIG. 3, a Brunnian link 20 is formed from a continuous looped structure without forming an actual knot. Several links are formed in a chain to form a circular structure. The ends are then secured and a durable wearable item is created. In this example three closed looped elastic items 20 such as rubber bands are shown forming a single chain. Each link is formed by capturing ends 22 of one loop structure with a mid portion 24 of another loop structure in series. Each link depends on the previous and subsequent links to maintain the desired shape and integrity. Removing one link 20 results in all of the links becoming loose from each other. "

G"[0011]

Referring to FIG. 1, the example kit 10 includes a base 12 that supports pin bars 14, each of which includes a plurality of pins 26. A hook tool 16 is included for grasping and moving bands from one pin 26 to another. A clip 18 receives ends of the completed links to complete and secure the linked item. One or several pin bars 14 are mounted to several bases 12 as shown to support the pin bars 14 and the corresponding pins 26 in a desired alignment. In this example, a center pin bar 14 is incremented one up from the two outermost pin bars 14. This alignment provides for creation of a desired linked item. In this example three bases 12 are utilized to support the pin bars 14 in a desired relative orientation."

H"[0014]

The pin bar 14 is an integral structure having the plurality of pins 26 defined in a single row. Each of the pins 26 are spaced an equal distance A apart. Each of the pins 26 includes a flanged top 38 and a front access groove 40.

[0015]

Referring to FIGS. 6, 7, 8, and 9, each pin 26 extends upward from a bar portion 42 and includes features for holding and spacing rubber bands. Each pin 26 includes the flanged top 38 that is flared outward to prevent errant release of a rubber band during creation of a link. The access groove 40 is a longitudinal groove that extends inward toward a center of the pin 26. The access groove 40 extends from the bar portion 42 to an open end with the flanged top 38. The groove 40 provides a clearance for insertion of the hook tool 16 (FIG. 1) utilized for moving ends of a rubber band between pins 26.

I"[0020]

Referring to FIGS. 14A-C, a method of forming a Brunnian link as provided by the example kit includes the initial step of loading elastic bands onto adjacent pins 26. In this example, beginning at the rightmost ends, each rubber band is stretched over adjacent pins and held at the mid portion. A first elastic band 52 is placed between a first pair of adjacent pins 26. A second elastic band 54 is then placed over one end of the previously assembled first elastic band 52, and then a third elastic band 56 and so on until the desired number of rubber bands have been placed on corresponding pin bars 14. Note that in these example only three elastic bands 52, 54, and 56 are shown for explanation purposes; however, in practice, many elastic bands would be utilized to provide the desired length of a completed article.

[0021]

Once the elastic bands 52, 54, and 56 are placed on each of the pins 26, the hook 16 is inserted into the access groove 40 and moved downward past the topmost elastic bands 56. The hook 16 is then moved outward from the groove in a direction indicated by arrow 58 a sufficient distance to allow for one end of the elastic band 54 to be caught in the hook end. Further lifting pulls the captured end of the second elastic band 54 in the direction indicated by 60 up through the end of the third elastic band 56 for assembly on to another adjacent pin 26 as is shown in FIG. 14B. The captured end is pulled up and over the flanged top 38 and pulled back onto the adjacent pin to form a single link. The captured end of the elastic band 54 is then released to engage the adjacent pin 26. This process is repeated until a chain of links of a desired length is obtained."



J"[0022]

The example illustrated in FIGS. 14A, 14B and 14C illustrate a chain formed from a single row of links. The example base template 12 can be arranged to support many pin bars 14, and therefore links can be formed longitudinally and laterally across adjacent pin bars 14 to form a wide variety of link configurations and combinations."

K"[0027]

Accordingly, the example kit and method provide for the creation of many different combinations and configurations of Brunnian links for the creation of bracelets, necklaces, and other wearable items. Moreover, the example kit is expandable to further create and expand the capabilities of potential Brunnian link creations. Further, the example kit provides for the creation of such links and items in an easy manner allowing persons of varying skill levels to be successful in creating unique wearable items."

(3) Review

Description A describes that, as background, a kit for creating unique wearable items, such as bracelets or necklaces, has included only raw materials of an item, and has relied on the individual's skill and talent create an item and, that there is a need for a kit for enabling people of various skill levels to easily create unique wearable items, without depending on personal skills.

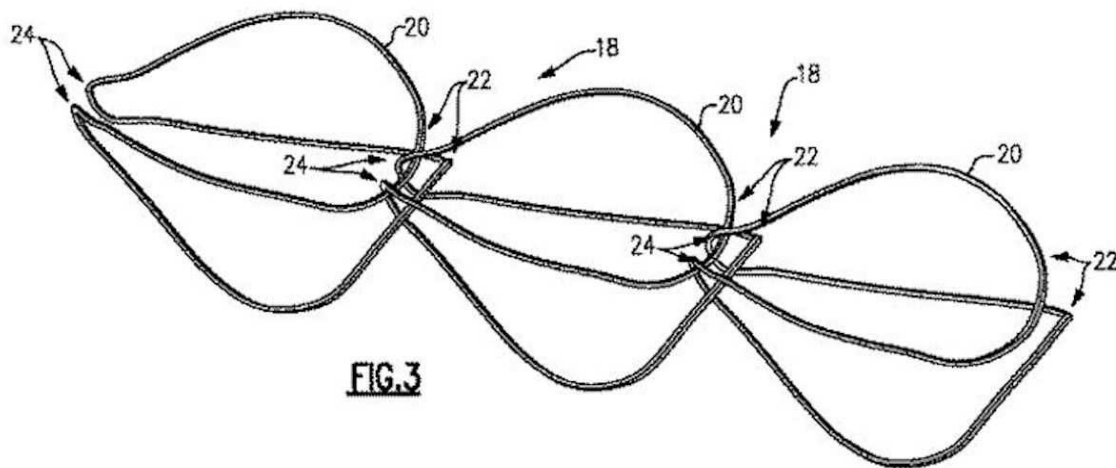
According to Descriptions B, E, and K, the background is recognized to correspond to a kit for creating a "Brunnian link item", which is an item consisting of "Brunnian links". The kit for creating the "Brunnian link item" has included an elastic band as a raw material of an item without including a device for creating the item, so that the "Brunnian link item" has been created depending on the individual's skill.

Thus, in the corrected invention of the case, the object of the invention for the "kit" is to solve the above problem and to provide a kit that allows individuals each having a different level of skill to easily create the "Brunnian link item" without depending on the individual's skill (hereinafter referred to as "Problem of the case").

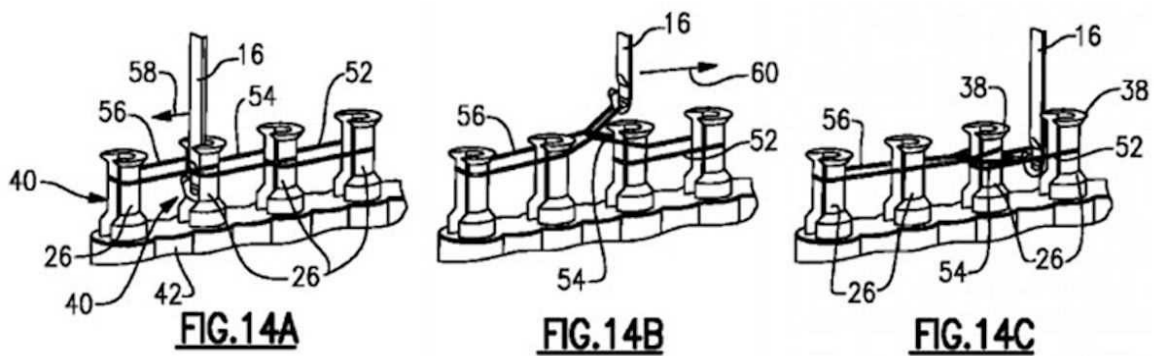
According to Descriptions B and F, the "Brunnian link" means "a link formed from a closed loop doubled over itself to capture another closed loop to form a chain" (Description B). "Each link is formed by capturing ends 22 of one loop structure with a mid portion 24 of another loop structure in series" (Description F). "Each link depends on the previous and subsequent links to maintain the desired shape and integrity," and

"removing one link 20 results in all of the links becoming loose from each other" (Description F). According to the contents of meaning of the "Brunnian link" and "a method of forming a Brunnian link" in Description I, the "Brunnian link" corresponds to "a chain formed from a single row of links" (Description J an example of three closed loops is shown in FIG. 3). Only products of variations corresponding to the number of closed loops are included in "Brunnian link".

In mathematical topology, "Brunnian link" is a known term meaning a link which is tangled as a whole, while consisting of non-tangled simple loops, and configured to be separated from each other by cutting an arbitrary one of the loops (Evidence B No. 2).



Regarding the invention of the "kit" in the inventions described in detailed description of the invention in the Description and other materials of the patent, according to the descriptions "the example kit provides for the successful creation of unique wearable articles using Brunnian link assembly techniques" (Description B) and "the example kit provides for the creation of such links and items in an easy manner allowing persons of varying skill levels to be successful in creating unique wearable items" (Description K), there is the nature in "providing" a method of creating "Brunnian link" which does not rely on the individual's skill, in order to solve the Problem of the case. Concrete contents of the method of creating "Brunnian link" are as described in Description I and FIGS. 14A-C (hereinafter referred to as "Creation method of the case").



In the detailed description of the invention in the Description and other materials of the patent, the product included in a kit for creating a "Brunnian link item" and disclosed as a device for "providing" the Creation method of the case includes a "base", "several pin bars that are supported in a desired spatial orientation by at least one base" (Description C), "a plurality of pins" included in a "pin bar" (Description G), and "a flanged top portion for holding elastic bands in place and a front access groove" (Description D). The invention of the "kit" having the configuration is the Corrected invention.

The Corrected invention is the invention described in the detailed description of the invention, and it can be acknowledged that a person skilled in the art could solve the problems of the invention based on the detailed description of the invention. Therefore, the description in the scope of claims concerning the Corrected invention complies with the support requirement stipulated in Article 36(6)(i).

The demandant alleges that the base and the pin bar must be separated from each other obviously, in the Corrected invention, and that the support requirement is not met when an integrated structure formed of the base and the pin bar is included, on the basis of the following matters: (a) the problem of the Corrected invention is providing a knitting machine for assembling the base and the pin bar in various combinations and orientations, thereby easily creating endless variation of knitted products; and (b) the Description describes only about a structure having a base and a pin bar separated from each other (see No. 4 3(3) A-C).

However, regarding the problem of the Corrected invention, even if the problem indicated by the demandant is existed according to the description of "The base and pin bars may be assembled in various combinations and orientations to provide endless

variation of completed link orientations" (Description C), it is clear that the indicated problem is not the only one, in reference to the Problem of the case. The argument that the base and the pin bar must be separated from each other is wrong in the assumption. It is obvious that a judgment on the support requirement does not depend on whether the base and the pin bar are integrated with or separated from each other, on the basis of the above review. Therefore, the argument of the demandant is groundless.

## 2 Regarding violation of Article 36(4)(i) (enablement requirements) of the Patent Act

Regarding the Corrected invention having "at least one pin bar supported on the base," in order to solve the Problem of the case, as described in 1 (3), there is the nature in "providing" a method of creating "Brunnian link" which does not rely on the individual's skill. The method of creating "Brunnian link", or the Creation method of the case, is described in Description I and FIGS. 14A-C clearly and sufficiently to enable a person skilled in the art to carry out. Configurations of the device for "providing" the Creation method of the case, such as a base or a pin bar, are described in the Description and other materials of the patent clearly and sufficiently to enable a person skilled in the art to carry out.

A product having a structure which "supports" a pin bar on a base, other than a separate structure of the base and the pin bar, which is indicated by the demandant, can be also carried out by a person skilled in the art based on the description in the Description and other materials of the patent and the technical common sense. Therefore, the description of the detailed description of the invention in the Description and other materials of the patent complies with the enablement requirements stipulated in Article 36(4)(i).

The demandant alleges that the enablement requirements are not met, on the basis of the fact that the Description and other materials of the patent does not include any description on concrete embodiments or examples of the invention having a base and a pin bar integrated with each other (No. 4 3 (3) A-B, and D). However, even if there is no description on the concrete embodiments or examples, the invention is enable to work based on the technical common sense. Thus, the argument of the demandant is groundless.

## 3 Summary

As described above, the patent concerning the Corrected invention cannot be

invalidated, on the basis of Reason for invalidation 5.

No. 7 Judgment by the body on Reasons for invalidation 2 and 4

1 Descriptions in Evidence A

Evidences A No. 1-No. 9 submitted by the demandant include the following inventions or matters. The underlines are applied by the body for comprehension.

(1) Evidence A No. 1

A Matters described in Evidence A No. 1

Evidence A No. 1 includes drawings and the following matters on "Knitting apparatus".

(A) Summary

"An apparatus for hand knitting comprises hooked pins 5 arranged in two spaced parallel rows on a frame 1 with a slot 3 between the rows for the passage of knitted material. The pins 5 are formed with grooves 7 to receive a knitting hook, and to facilitate the entry of the latter into the grooves, sloping surfaces 11 of the frame are formed with lead-in grooves 3. In an alternative embodiment the pins which comprise base members forming the lead-in grooves are independently and detachably clipped onto longitudinal bars of the frame. The frame may have selectable detent positions round pivots 15."

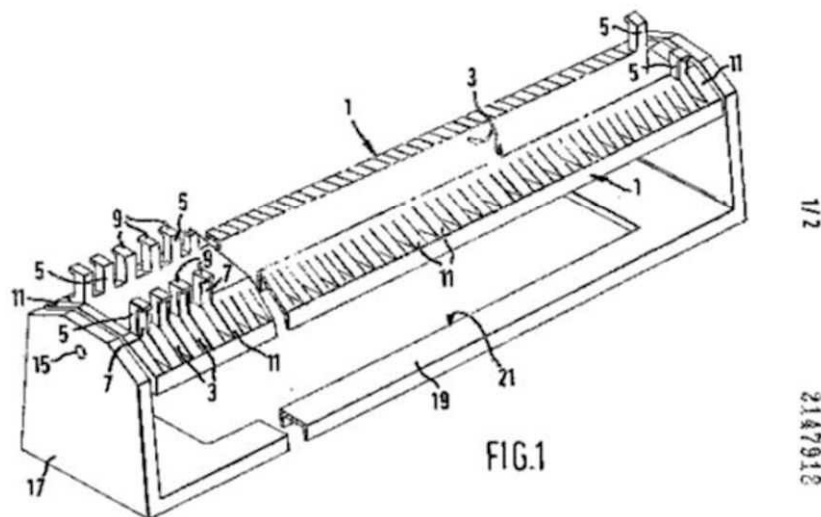
(B) p. 1 l. 5-1. 7

"This invention is concerned with a knitting apparatus, particularly an apparatus for knitting by hand."

(C) p. 2 l. 11-1. 29

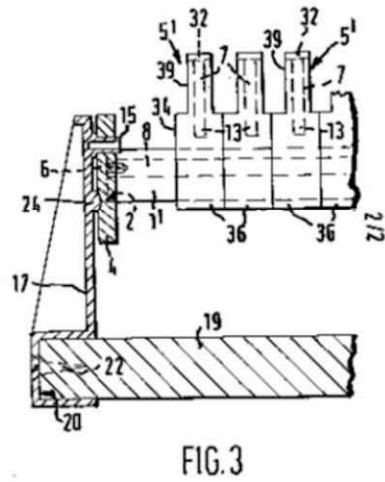
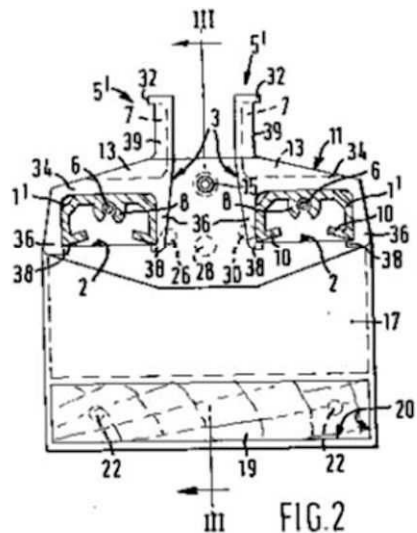
"As will be seen in Figure 1, the apparatus comprises an elongate frame member 1, preferably of die-cast aluminium, having a slot 3 extending lengthwise of the frame member, the groove extending completely through the frame member. Upstanding from the frame member, at opposite sides of the slot 3, are two rows of spaced pins 5 having grooves 7 extending lengthwise of the pins (i.e. heightwise) at outwardly facing sides thereof. The pins are hooked as shown in the drawing, the hooked formation being provided by small plate-like portions 9 which cap the upper ends of the grooves 7. The frame member 1 is provided with sloping upper surfaces 11 (i.e., the depth, or thickness,

of the frame member increases from its outside edges to the slot 3) in which are formed grooves 13 leading into the corresponding grooves 7 in the pins 5."



(D) p. 2 l. 53-l. 75

"The apparatus shown in Figures 2 and 3 comprises a plurality of upstanding pins (in the form of teeth 5' hereinafter described) which correspond to the pins 5 referred to previously and are arranged in two spaced parallel rows to provide a slot 3 between the rows through which slot the knitted material passes during a knitting operation. In the illustrative apparatus the teeth 5' are detachably supported on a pair of spaced bars 1'. The bars 1' are cut from an extruded aluminium hollow profile having a generally rectangular cross section as shown in Figure 2 to provide a rigid but light construction. Opposite end portions of the bars 1' are received in rectangular recesses or housings 2 (commensurate with the cross sectional dimensions of the bar so as to provide a tight fit therefor) formed in end plates 4, to which the bars are firmly secured by self-tapping screws 6 extending through bores in the end plates into a split-cylindrical bead 8 provided within each bar 1'."



(E) p. 2 l. 80-l. 99

"The end-plates 4 are pivotally supported on pivots 15 extending from a pair of support end plates 17, these plates being secured to opposite end portions of a wooden base-plate 19, which end portions are received within housings 20 formed in the support end plates 17 and secured by screws 22. The tooth-supporting frame, comprising the bars 1' and the end-plates 4, may be located in a selected one of three possible positions of tilt about the pivots 15, by means of a poppet 24 (Figure 3) extending from one support end plate 17 into one of three detents 26, 28, 30 formed in the adjacent end plate 4 (Figure 2). The spacing between the support end plates 17 and the end plates 4 of the tooth-supporting frame is arranged to be such as to allow slight endwise movement of the frame relatively to the pivots 15 to allow disengagement of the poppet 24 for the detents 26, 28, 30."

(F) p. 2 l. 114-l. 127

"As will be clear from Figures 2 and 3, each hook 5' comprises an upwardly extending portion 39 terminating in an upper plate-like overhanging portion 32 providing the hook proper for retaining the wool on the hooks until lifted thereof during the knitting operation by manipulation of a hand-held knitting hook (not shown). For guiding the

latter, each hook 5' is provided with a groove 7 extending along the upstanding portion 39, while a base portion 34 of each hook has a lead-in guide groove 13 which leads into the groove 7 for the purpose described above in relation to Figure 1."

(G) p. 1 l. 116-l. 123

"Sets of teeth of different pitch may be provided to provide for different sized stitches in knitted articles made on the apparatus. The teeth may be clipped on to the two supporting bars either in staggered or opposed relationship. Gaps may be left between adjacent teeth if required, to readily provide for different stitch patterns."

B Invention described in Evidence A No. 1

According to the above matters (A)-(G) summarized based on Corrected invention 1, it is recognized that Evidence A No. 1 describes the following invention (hereinafter referred to as "Evidence A No. 1 invention"), based on the technical common sense in reference to the drawings.

"A knitting apparatus for knitting by hand, which makes knitted articles including:

a base-plate 19 and support end plates 17;

and two bars 1' pivotally supported via end-plates 4 with respect to the base plate 19 and the support end plates 17, and including a plurality of hooks 5' each having an upper plate-like overhanging portion 32 proper for retaining the wool on the hooks 5' and a groove 7 formed on outwardly facing sides of the hooks 5' for guiding a hand-held knitting hook."

(2) Evidence A No. 2

A Matters described in Evidence A No. 2

Evidence A No. 2 includes drawings and the following matters on "Hand twining looms".

(A) Summary

"An apparatus and method for twining or weaving. The apparatus includes a plurality of elongated loom fingers and a loom. Each of the loom fingers is elongated, has first and second symmetrical tapered ends, and has an elongated groove running the entire length thereof. The loom includes: a first support that includes at least one plate-like member having a plurality of through holes therein which loosely support the loom fingers in a substantially parallel manner; a second support that has a finger engagement surface



which, in the assembled form, is adopted to engage one of the ends of each loom finger being used; and a structure for detachably supporting the plate-like member altitudinally with respect to the second support. In operation, to disengage the loom fingers, the plate-like member is moved relative to the second support and, then, the plate-like member is moved toward the end of the loom fingers which had previously been in contact with the finger engagement surface."

(B) 1st column l. 5-l. 7

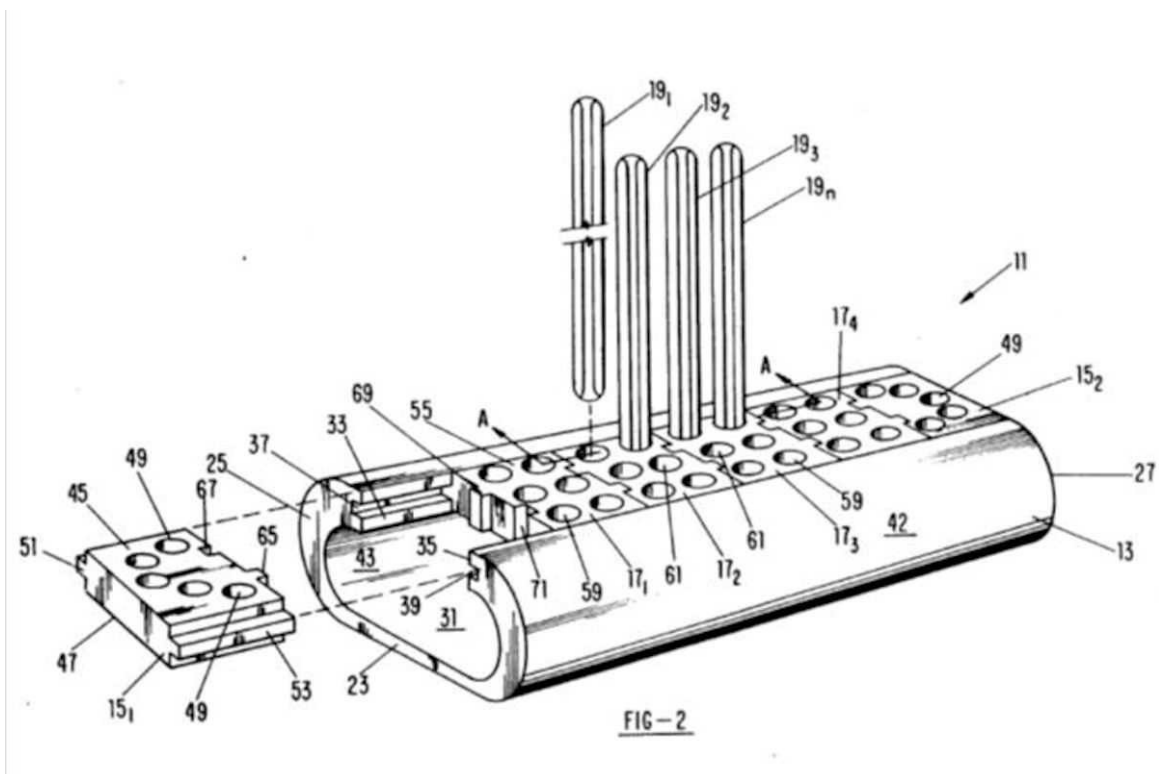
"The present invention relates generally to devices for performing handicraft activities, and more particularly to hand weaving looms."

(C) 3rd column l. 21-l. 24

"The invention also contemplates the use of closed loop material as the weft, wherein the finger on which one loop ends is the same finger for starting the next loop."

(D) 3rd column l. 59-l. 62

"With reference to FIGS. 1-3, the loom 11 includes a base 13, two loom finger positioning end plates 151-2, intermediate loom finger positioning plates 171-4, and a plurality of loom fingers 191,2,3...n."



(E) 4th column l. 48-l. 52

"As is evident from FIGS. 2 and 3, each loom finger 19 has symmetrical ends 731 and 732, symmetrical tapered portions 751, 752, and an elongated groove 77 running the entire length thereof, which results in a C-shaped cross-section."

(F) 5th column l. 24-l. 27

"it is preferred to use closed loop material made from fabric which has some elasticity, such as closed loops made from T-shirt type material."

(G) 5th column l. 28-l. 45

"With reference to FIGS. 7A, 7B, 7C, and 7D, the preferred and what is believed to be a unique weaving technique is illustrated. As illustrated in FIGS. 7A and 7B, the closed loop weft 1011 is simultaneously wrapped around opposite sides of each loom finger 191,2. When the user reaches the end of a row, Weft 1011 is double turned around loom finger 193, as illustrated in FIG. 7C. Weaving or twining of weft 1011 can proceed from left-to-right and then back (i.e., from right-to-left), which encourages the user to use opposite hands. Alternately, the position of the loom 11 can be rotated 180°, as illustrated in FIG. 7C. The ending of weft 1011 is illustrated in FIG. 7D, as is the starting of a second weft 1012. The first loop of the second weft 1012 always goes on the same loom finger 193 as the previous weft 1011 ended on. This procedure

eliminates two of the major chores of conventional weaving: knotting and burying ends."

(H) 5th column l. 62-6th column l. 4

"With reference to FIG. 8, after removal of loom fingers 191-n from plates 15 and/or 17, a warp thread 103 or other suitable material is inserted in the weft formation by attaching such warp to a conventional hook 105 which is passed through channels 77 of the loom fingers 19. Preferably the hook portion 107 of hook 105 faces the inside of channel 77. After the warp has been added, each loom finger 19 can quickly and easily be removed on an individual basis, rather than trying to remove all loom fingers simultaneously, as required by Bacheller, U.S. Pat. No. 2,065,498."

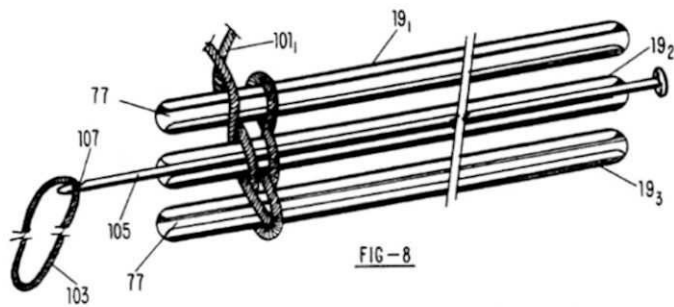


FIG-8

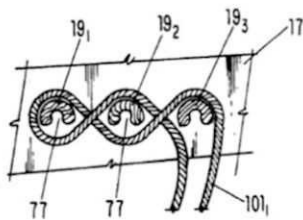


FIG-7A

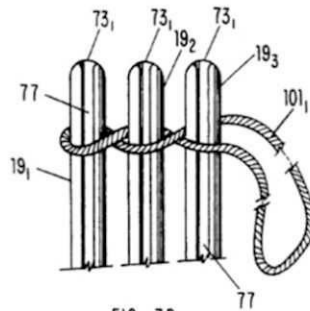


FIG-7B

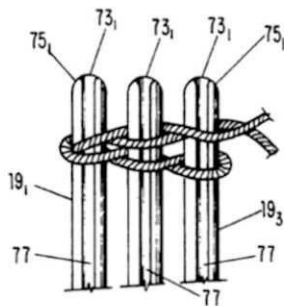


FIG-7C

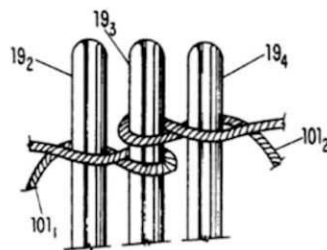


FIG-7D

B Invention described in Evidence A No. 2

According to the above matters (A)-(H) summarized based on the technical common sense in reference to the drawings, it is recognized that Evidence A No. 2 describes the following invention (hereinafter referred to as "Evidence A No. 2 invention").

"A hand weaving loom performing handicraft activities, such as knitting, including a plurality of loom fingers 191, 2, 3, ...n, endplates 151, 2, 171-4 for detachably supporting the loom fingers 191, 2, 3, ...n, each including a groove 77 running the entire length thereof, and knitting a material including a closed loop by use of the loom fingers 191, 2, 3, ...n."

(3) Evidence A No. 3

Evidence A No. 3 includes drawings and the following matters on "Ring-like headwear ornament".

(A) "ABSTRACT"

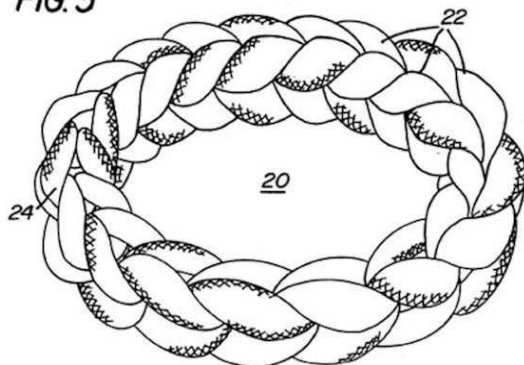
"An ornament, e.g., a hair band, headband, hat band, etc., and method of making the ornament. The ornament comprises a plurality of looped links, and a looped connecting member. Each of the looped links is formed of a flexible, somewhat elastic, e.g., knitted, material in the nominal shape of a toroidal loop, but bent into a shape having a bridging midsection and a pair of openings on each side of the bridging midsection. The looped connecting member is in the form of a loop of the same material and has a central opening. The looped links are interconnected with one another so that the bridging midsection of one looped link extends through the openings in the immediately adjacent looped link to form an elongated chain-link strip having a pair of ends. One of the ends of the chain-linked strip comprises the looped connecting member and the other end comprises the looped link forming that end. The looped connecting member is extended through the open ends of the looped link forming the other end of the chain-linked strip and is folded back over itself and secured, e.g, glued, to a portion of it to convert the chain-link strip into a ring. The looped connecting member simulates the shape of the other looped links of the ring."

(B) p. 6 3rd column l. 42-l. 46

"The looped links 22A-22H are interconnected, as will be described later, to form a chain-linked strip, having a pair of ends which are connected together by the connecting

loop 24 to close the ring."

**FIG. 3**



(4) Evidence A No. 4

Evidence A No. 4 includes drawings and the following matters on "Bracelet".

(A) "CLAIM"

"I claim the ornamental design for a bracelet, as shown and described."

(B) "DESCRIPTION" l. 17

"The bracelet comprises linked rubber bands."

(C) FIG. 7 illustrates a clip for retaining both ends of a link of a rubber band.

**FIG. 7**

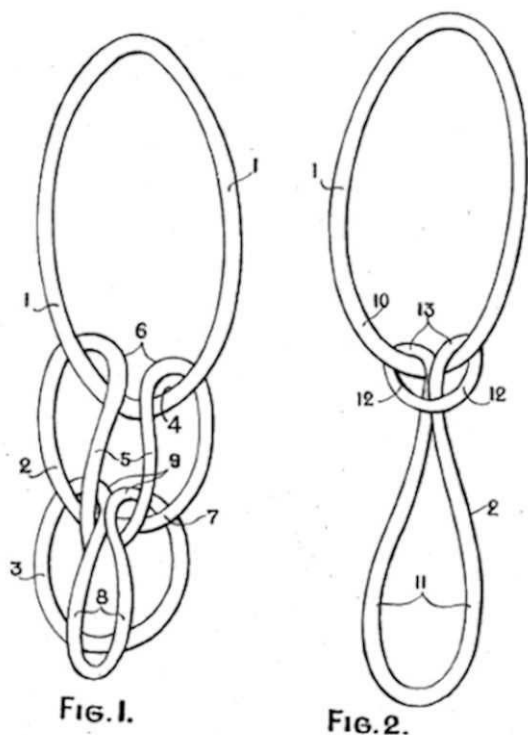


(5) Evidence A No. 5

Evidence A No. 5 includes drawings and the following matters on "CARPET MADE OF THE CLIPPINGS OF A KNITTED TEXTURE".

(A) 1st column l. 27-1. 39

"As will be seen from Fig. 1, the strand or chain for the carpet texture is obtained by passing a ring 2 through the lower portion 4 of a ring 1, then bringing forward and downward the portion 5 of said ring 2, so that this ring will form a double link 6, which secures the ring 2 to the ring 1. Through the lower portion 7 of ring 2, there is inserted a ring 3, the portion 8 of which is then brought forward and downward. This portion 8 also forms a double link 9 to secure the ring 3 to the ring 2 and this operation is repeated until a suitable chain is formed required for the size of the carpet to be woven."



(6) Evidence A No. 6

Evidence A No. 6 includes drawings and the following matters on "Flexible piece of jewelry".

(A) "ABSTRACT"

"A flexible piece of jewelry, such as a charm bracelet or necklace, that utilizes non-continuous chain links that constitute a continuous chain of the piece of jewelry. This

link design allows more non-continuous links to be added to the bracelet as the child grows and the need for a larger piece of jewelry evolves, and minimizes damage to the piece of jewelry caused by the addition of additional charms or links."

(7) Evidence A No. 7

Evidence A No. 7 includes drawings and the following matters on "eyeglass holder to be used as a necklace".

(A) "[0012]

An eyeglass holding member 6 arranged at each of ends of a necklace cord accessory 1 includes a ring-shaped insertion section 12 which detachably holds a temple 11 of eyeglasses 10 inserted therethrough and a connecting ring section 9 for connecting to a joint member 5 of the necklace cord accessory 1, by tightening the middle of an elastic cord 7 made of synthetic rubber or the like, as shown in FIG. 3, with a tightening ring 8 made of metal or synthetic resin.

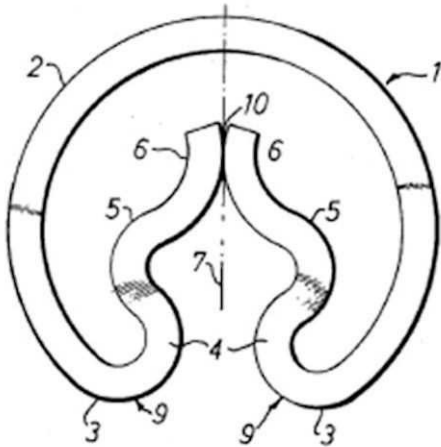
[0013]

A coupling tool 13 for detachably connecting the eyeglass holding members 6 includes an elastic bar 14 formed of metal or synthetic resin, and spherical stoppers 15 integrally connected to both ends of the elastic bar 14, as shown in FIG. 3. The elastic bar 14 is bent in an arc shape. A small gap 16 is formed between the spherical stoppers 15. The elastic bar 14 and the spherical stoppers 15 are integrally formed from metal or synthetic resin."

(8) Evidence A No. 8

FIG. 1 in Evidence A No. 8 discloses "circlip".

—FIG. 1.—



(9) Evidence A No. 9

Evidence A No. 9 is a print-out of a web page entitled "Knitty: Spring 2007", (<http://www.knitty.com/ISSUESpring07/FEATloomknitting.html>), and includes a drawing and the following matters on "How to knit needle-free".

The descriptions are specified by the print-out of the web page, submitted as Evidence A No. 9.

A Matters described in Evidence A No. 9

(A) p. 1 2nd paragraph from the bottom

"The term "knitting loom" is a broad name that covers the three types of looms available: rounds, single-sided rakes, and knitting boards."

(B) p. 2 4th paragraph

"However, you will also find Single Sided Rakes as part of the loom knitting world: It is a single bed of pegs, used specifically to make flat panels."

(C) p. 2 5th paragraph

"The Knitting Board is part of the family but it creates a fascinating fabric. This loom has a double bed of pegs facing each other; picture two Single Sided Rakes in front of each other with a small center gap that allows the knitting to pass through. Knitting boards are known by different names: double sided rakes, knitting frames, or just frames. They produce a fabric that is double sided: no wrong side. Stitches are made by



weaving the yarn from one side of the board to the other."

(D) p. 2 6th paragraph

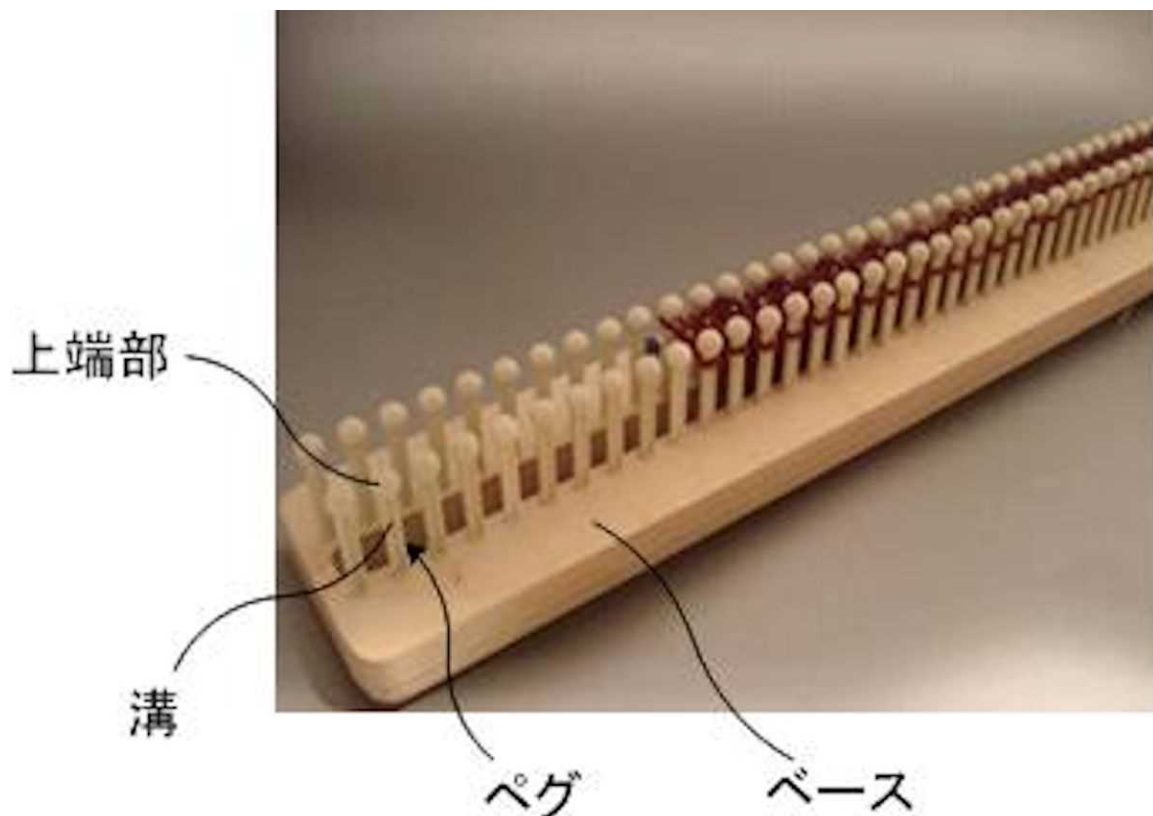
"Knitting Tool: a knitting tool is used to lift off the loops off the pegs to create stitches. It is a long piece of metal with an angled tip similar to a crochet hook."

(E) p. 2 2nd picture (hereinafter referred to as "Evidence A No. 9 Picture")

Evidence A No. 9 Picture is recognized as an image obtained by imaging a loom of "Knitting Board". Evidence A No. 9 shows a loom with a plurality of pegs arranged on a base in two lines with a gap. Each of the pegs is erected upward, and includes a top end section having a larger diameter than the other sections.

Evidence A No. 34 (CD storing an electronic copy of an image of Evidence A No. 9 Picture) shows indirectly that at least each of several pegs on the left side of the pegs arranged in two lines and located in a front row has a groove formed along a peg erecting direction, on a surface of the peg opposite the gap of the base, which is not shown in the Evidence A No. 9 Picture.

(FIG. with the names of components added to Evidence A No. 9 picture by the demandant)



上端部 Top end

溝 Groove

ペグ Peg

ベース Base

(F) According to the described matters (C) and (D) and the technical common sense, it can be recognized that a crochet hook can be inserted into the "groove" in the acknowledged matter (E) to hook a stitch stretched on a peg, and that the "top end" in the acknowledged matter (E) can prevent the stitch from coming off from the peg.

B Invention described in Evidence A No. 9

According to the above matters (A)-(D), the acknowledged matters (E) and (F) based on Corrected invention 1, it is recognized that Evidence A No. 9 describes the following invention (hereinafter referred to as "Evidence A No. 9 invention"), based on the technical common sense in reference to the drawings.

"A loom for making a knitted product including  
a base,

and a plurality of pegs arranged on the base in two lines, each of the pegs being erected upward from the base and having a top end with a diameter larger than the other sections for preventing a stitch from coming off from the peg, and a groove formed along a peg erecting direction on a surface of the peg opposite a gap of the base, while allowing a crochet hook to be inserted to hook a stitch stretched on the peg."

2 Regarding Reason for invalidation 2

(1) Corrected invention 1

A Comparison

Corrected invention 1 is compared with the Evidence A No. 1 invention.

As for the "knitted product" in the Evidence A No. 1 invention, the "link" is Japanese reading of a word "link", and means a "stitch" (Evidences A No. 11-No. 13), and the "item consisting of a series of links" means the "knitted product", so that the "knitted product" corresponds to an "item consisting of a series of links" in Corrected invention 1. On the assumption that the "knitting apparatus" in Evidence A No. 1 invention includes a set of a "knitting hook" and "yarn", the "knitting apparatus for knitting by hand, which makes knitted articles" corresponds to the "kit for creating an item consisting of a series of links" in the Evidence A No. 1 invention.

"A base plate 19 and an end plate 17", "a hook 5", "two bars 1' having a plurality of hooks 5", "an upper plate-like overhanging portion 32", and "a groove 7 for guiding a handheld crochet hook" in Evidence A No. 1 invention correspond to "a base", "a pin", "at least one pin bar", "a top flared portion", and "an access groove" in Corrected invention 1, respectively.

The description "pivotally supported via end-plates 4 with respect to the base plate 19 and the support end plates 17" in the Evidence A No. 1 invention corresponds to the description "supported on the base" in Corrected invention 1. In the same way, the description "proper for retaining the wool on the hooks 5" corresponds to the description "for holding the links in a desired direction", and the word "having" corresponds to the word "including".

It is obvious that "a plurality of hooks 5" in Evidence A No. 1 invention are "arranged in line" as with "a plurality of pins" in Corrected invention 1. It is obvious that "a bar 1" in Evidence A No. 1 invention includes "a groove 7" as with "a pin bar"

in Corrected invention 1.

Therefore, Corrected invention 1 and the Evidence A No. 1 invention correspond to each other in the following points.

<Corresponding features>

"A kit for creating an item consisting of a series of links including a base, and at least one pin bar supported on the base, each of the pin bars including a plurality of pins arranged in line and including a top flared portion for holding links in a desired direction, and an access groove of each of the pins."

Corrected invention 1 and Evidence A No. 1 invention are different from each other formally in the following points.

<Different feature 1>

Corrected invention 1 is a kit for creating a "Brunnian link item" consisting of "Brunnian links", while the Evidence A No. 1 invention is a knitting apparatus for knitting by hand, which makes knitted articles".

<Different feature 2>

An access groove in Corrected invention 1 is formed on a front side in a pin row direction, while a groove 7 in the Evidence A No. 1 invention is formed on an outwardly facing side of the hook 5'.

B Judgment by the body on the different features

(A) Regarding technical significance of Corrected invention 1

In view of the case, technical significance of the matters specifying the invention of Corrected invention 1 concerning the different features 1 and 2 is examined.

There is the nature in "providing" the Creation method of the case, which is a method of creating a "Brunnian link" which does not rely on the individual's skill, in order to solve the Problem of the case, as described in No. 6 1 (3).

A relationship between Creation method of the case and a structure of the "kit" in Corrected invention 1 is examined in detail. The Creation method of the case (see

FIGS. 14A-C) includes, roughly, sequentially (from the right side as shown in FIG. 14A, for example) loading rubber bands on a plurality of pins arranged in line and having a fixed relationship, and disengaging the rubber bands sequentially (from the second band from the left in FIG. 14), each to be stretched over an adjacent pin on the right.

In the Creation method of the case, throughout a creation process, the one which "holds" (Description H) a rubber band, as a material of "Brunnian link" is a "pin", the ones which "hold" (Corrected invention 1) a plurality of rubber bands or links in "a desired direction" or "a pin row direction" are "a plurality of pins arranged in line", and the one which "supports" "a plurality of pins arranged in line" "in a desired orientation" (Description G) so as to achieve the function of the plurality of pins is a "pin bar" "supported on a base" or the "base".

In a step of pulling up the rubber band "held" in the "pin row direction" and pulling it back, the one which "prevents errant release" (Description H) of the rubber band is a "top flared portion", and the one which "provides a clearance for insertion" (Description H) of a hook for moving ends of the rubber band is "an access groove on a front side, in a pin row direction, of each of the plurality of pins.

The technical significance of Corrected invention 1 is to provide a "kit" including a device having all configurations of "pins arranged in line", "a base", "a pin bar" "supported on a base", "a top flared portion", and "an access groove on a front side, in a pin row direction, of each of the plurality of pins", as means for achieving the Creation method of the case, which is a method of creating a "Brunnian link" without relying on the individual's skill.

"An access groove on a front side in a pin row direction" is examined further.

As described above, the "access groove on a front side in a pin row direction" is the one which "provides a clearance for insertion" of a hook for moving ends of a rubber band, in creating a "Brunnian link" in the Creation method of the case.

Rational reasons why the access groove is formed "on a front side in a pin row direction" are as follows.

In a step (FIG. 14A) of pulling up a rubber band "held" in "a pin row direction" and pulling it back, in a part of a surface of a pin on the side of "a front side in a pin row direction", only a rubber band to be pulled up, of two rubber bands, is located (FIG. 14A). In the step, in inserting a hook in a clearance of an access groove, the access

groove formed on "a front side in a pin row direction" prevents errant "release" of a rubber band, which is not to be pulled up, thereby enabling an unskilled person to easily create "Brunnian links".

The direction of the "access groove" in Different feature 2 is optimal for solving the Problem of the case to provide a kit for enabling people of various skill levels to easily create a "Brunnian link item" without relying on the individual's skill.

(B) Regarding the presence of Different feature 1

The demandant alleges, regarding Different feature 1, that a part limiting the use (hereinafter referred to as "Use limitation of the case") in Corrected invention 1, "for creating a Brunnian link item from Brunnian links" does not correspond to substantial matters specifying the invention, and does not correspond to a different feature from Evidence A No. 1 invention (No. 4 3 (1) G-L). Therefore, this point will be examined.

Regarding the matters specifying the invention concerning use limitation, when a product with use limitation is recognized to mean a product especially suitable for the purpose of use, as with the case where use limitation is recognized to mean a shape, structure, composition, or the like (hereinafter referred to as "structure or the like") especially suitable for the purpose of use, in consideration of the specification, drawings, and technical common sense upon filing the application, the product should be recognized as a product having a structure or the like corresponding to use limitation.

In examining the above demandant's allegation, on the above assumption, as described in (A), the "kit" including a device having all configurations of "pins arranged in line", "a base", "a pin bar" "supported on a base", "a top flared portion", and "an access groove on a front side, in a pin row direction, of each of the plurality of pins" "provides" the Creation method of the case, or a method of creating a "Brunnian link", without relying on the individual's skill. The "kit" is recognized as a product suitable for the purpose of use, "to create a Brunnian link item", and "a product having a structure or the like of use limitation". The Use limitation of the case is recognized as substantial matters specifying the invention.

Evidence A No. 1 invention is an invention of a knitting apparatus for creating a knitted product. Evidence A No. 1 includes no description or suggestion on a Brunnian link, as described in 1 (1) A. No means of proof is presented for showing that not only the Creation method of the case, but also the method of creating "Brunnian link"

without relying on the individual's skill and solving the Problem of the case using the device for creating a "Brunnian link" were technical common sense upon the priority of the case. Therefore, it cannot be said that the "kit for creating a Brunnian link item consisting of Brunnian links" corresponds to equivalent to the description in Evidence A No. 1.

Thus, there is Different feature 1 substantially between Corrected invention 1 and the Evidence A No. 1 invention.

The demandant alleges that the Use limitation of the case does not correspond to matters specifying the invention, based on the Supreme Court decision on June 5, 2015 (No. 4 3 (1) H). However, the Supreme Court decision covers an interpretation of product-by-process claim naturally, while, according to the content of judgment, it cannot be said that an interpretation of an invention of a product with use limitation is covered immediately. The demandant's allegation is groundless.

The demandant alleges also that the Use limitation of the case does not correspond to the matters specifying the invention, based on the Osaka District Court decision on October 31, 1980 (No. 4 3 (1) J). However, the decision shows that it is improper to interpret only the purpose of use, on an invention featured by tire manufacturing means and not featured by the purpose of use. The decision is different in background from the case featured by the purpose of use and a structure of the kit, and does not affect the judgment of the body.

The demandant submitted Evidences A 25-30 to prove that Evidence A No. 1 invention can also create a "Brunnian link", and submitted Evidence A No. 31 to prove that the demandee acknowledges that a "Brunnian link" can be created with a knitting apparatus having the same structure as Evidence A No. 1 invention. The demandant alleges that there is no different feature from Evidence A No. 1 invention (No. 4 3 (1) K-L). However, as described above, the Evidences A do not indicate the technical common sense upon the priority date of the case on the method of creating a "Brunnian link", and the judgment of the body is not affected.

(C) Regarding the inventive step in Different features 1 and 2

As is obvious from the examination in the above (A), Different features 1 and 2 have technical correlation. Therefore, the inventive step of the Different features 1 and

2 is examined gathering these different features.

In Evidence A No. 1, as described in (B), there is no description or suggestion on a "Brunnian link", and no suggestion of optimizing the direction of the groove 7 in the Evidence A No. 1 invention, or forming it "on a front side in a pin row direction", in order to solve the Problem of the case, or the problem of providing a kit for enabling people of various skill levels to easily create a "Brunnian link item". Therefore, Evidence A No. 1 includes no motive for the matters specifying the invention of Corrected invention 1 concerning Different features 1 and 2. It cannot be said that the matters specifying the invention of Corrected invention 1 concerning Different features 1 and 2 could have been easily arrived at, on the basis of the Evidence A No. 1 invention.

Evidences A No. 2-5 are examined, next.

The demandant alleges that the configuration concerning Different feature 1 is a configuration described in Evidence A No. 2 or well-known prior arts, and presents Evidences A No. 2-5 as evidences disclosing the well-known arts (No. 4 3 (1) N).

Evidence A No. 2 describes the Evidence A No. 2 invention, as shown in 1 (2) B, while including no description that a knitted product made of "closed loops" using a knitting apparatus of the Evidence A No. 2 invention is a "Brunnian link item". According to knitting procedures illustrated in FIGS. 7A-7D, 8 in Evidence A No. 2, and related descriptions, a product made by the Evidence A No. 2 invention is recognized as a "woven fabric" formed of weft and warp. It is totally different from the "Brunnian link item", not the same.

In further examining Evidence A No. 2, loom fingers 191, 2, 3, ...n of the Evidence A No. 2 invention each includes a groove 77 running the entire length thereof. Even if the groove 77 where a crochet hook 105 with a warp 103 is inserted corresponds to the "access groove" in Corrected invention 1, the crochet hook 105 is inserted in the groove 77 after removing the loom fingers 191, 2, 3, ...n from plates 15, 17 (recognized to be the same as endplates 151, 2, 171-4) (1 (2) A Description (H)). It cannot be said that the groove 77 is formed "on a front side in a pin row direction" of the loom finger 191-n, at least.

There is no suggestion of optimizing the direction of the groove 7 in Evidence A No. 2 invention, or forming it "on a front side in a pin row direction", in order to solve



the Problem of the case, or the problem of providing a kit for enabling people of various skill levels to easily create a "Brunnian link item". Thus, it cannot be said that Evidence A No. 2 discloses the matters specifying the invention of Corrected invention 1 concerning Different feature 2, or includes a motive.

Evidence A No. 3 includes descriptions on a chain link strip formed by interconnecting a plurality of looped links 22A-22H, and an accessory formed by connecting a pair of ends of the chain link strip with a connecting loop 24. According to the description in FIG. 3 or the like, the former corresponds to a "Brunnian link", and the latter corresponds to a "Brunnian link item". However, Evidence A No. 3 does not disclose that the Problem of the case is solved by a device for creating a "Brunnian link", or the Creation method of the case.

Evidence A No. 4 includes descriptions on a bracelet formed of connected rubber bands. According to the description in FIG. 7 or the like, the bracelet corresponds to a "Brunnian link item". However, Evidence A No. 4 does not disclose that the Problem of the case is solved by a device for creating "Brunnian link", or the Creation method of the case.

Evidence A No. 5 includes descriptions on a carpet chain formed by fixing adjacent links with a double connecting section. According to the description of FIG. 1, the chain corresponds to a "Brunnian link". However, Evidence A No. 5 does not disclose that the Problem of the case is solved by a device for creating "Brunnian link", or the Creation method of the case.

According to the above descriptions, Evidences A No. 3-5 disclose a "Brunnian link" or a "Brunnian link item", while Evidences A No. 2-5 do not disclose a "kit for creating a "Brunnian link item" consisting of Brunnian links". According to Evidences A No. 2-5, it cannot be said that the kit is well-known prior arts. Evidence A No. 2 describes the groove 77 of the loom finger, while Evidences A No. 2-5 do not disclose the "access groove on a front side in a pin row direction".

Evidences A No. 2-5 do not disclose the matter specifying the invention of Corrected invention 1 concerning Different features 1 and 2, and do not include a motive. It cannot be said that the matters specifying the invention of Corrected invention 1 concerning Different features 1 and 2 could have been easily arrived by

combining Evidence A No. 1 invention with the descriptions in Evidences A No. 2-5.

The demandant alleges that the position of the access groove has no technical significance, and it is only a design matter (No. 4 3 (1) M). However, as described in (A), the direction of the access groove has a technical significance in a relationship with the Problem of the case. Thus, the demandant's allegation is groundless.

As ground of the above allegation, the demandant alleges further that there is no need to form the access groove in the same direction as a direction of knitting an elastic band, that the elastic band can be easily knitted even if the access groove exists in a direction perpendicular to the knitting direction of the elastic band, and that the allegation on the assumption of only a specific method of knitting the elastic band in a pin row direction is improper (No. 4 3 (1) M), and presents Evidences A No. 28, 30-32.

In fact, as is alleged by the demandant, a "Brunnian link" can be knitted even if the access groove exists in a direction perpendicular to the knitting direction of the elastic band. Therefore, the allegation that there is no need to form the access groove in the same direction as the knitting direction of the elastic band for knitting "Brunnian link" is worthy of consideration as one analysis result on the method of creating a "Brunnian link".

However, when the location of the access groove is changed from "a front side in a pin row direction", it cannot be said that "only a rubber band to be pulled up is located" in the position of the access groove and everyone can create a "Brunnian link" easily regardless of the individual's skill level. The abovementioned knowledge obtained after filing the application of the patent conflicts with the judgment on inventive step. Thus, the demandant's allegation is groundless.

The demandant alleges that the configuration concerning Different feature 1 includes no inventive step obviously, based on the Tokyo High Court decision on August 27, 2003 (No. 4 3 (1) N). However, the decision is a judgment on inventive step of the purpose of use, regarding a case having no different feature in configuration of a wave-absorbing structure and having a different feature in the purpose of use thereof. The decision is different in background from the case having a different feature in the purpose of use and configuration of a kit, and does not affect the judgment of the body.

Relating to Reason for invalidation 2, the demandant alleges that the corresponding U. S. patent was invalidated (No. 4 3 (1) R). However, even if the Trial and Appeal Department of US Patent and Trademark Office judged to deny patentability of the corresponding U. S. patent, on the basis of a document corresponding to Evidence A No. 1 (Evidence A No. 15 p. 22 4th line from the bottom-p. 23 l. 4), the judgment does not affect the judgment of the body.

Corrected invention 1 employs the matters specifying the invention of Corrected invention 1 concerning Different features 1 and 2, to exert a function and effect that "the example kit provides for the creation of such links and items in an easy manner allowing persons of varying skill levels to be successful in creating unique wearable items" (Description K).

#### C Summary

It cannot be said that Corrected invention 1 could be invented easily by a person skilled in the art, on the basis of the Evidence A No. 1 invention, the Evidence A No. 1 invention and the Evidence A No. 2 invention, or the Evidence A No. 1 invention and well-known prior art.

#### (2) Corrected inventions 8-10

Each of Corrected inventions 8-10 directly cites Corrected invention 1. The patent concerning Corrected invention 1 cannot be invalidated by Reason for invalidation 2, as described in (1). Therefore, the patents concerning Corrected inventions 8-10 citing Corrected invention 1 cannot be invalidated by Reason for invalidation 2.

#### (3) Summary

According to the above descriptions, it cannot be said that Corrected inventions 1, and 8-10 could be invented easily by a person skilled in the art, on the basis of the Evidence A No. 1 invention, the Evidence A No. 1 invention and the Evidence A No. 2 invention, or the Evidence A No. 1 invention and well-known prior art. The patents concerning Corrected inventions 1, and 8-10 cannot be invalidated by Reason for invalidation 2.

### 3 Regarding reason for invalidation 4

#### (1) Regarding publicity of Evidence A No. 9

Publicity of Evidence A No. 9 argued by the demandee is examined. Evidence A No. 9 is a print-out of a webpage entitled "Knitty Spring: 2007" (<http://www.knitty.com/ISSUESpring07/FEATloomknitting.html>). According to the title of Evidence A No. 9 and Evidences A No. 19-1 and 19-2, which are corroborating evidences on Wayback Machine, the webpage indicated in Evidence A No. 9 is recognized to be disclosed on the Internet from around March, 2007.

The demandee alleges that Wayback Machine is not certified, and it cannot be accepted that Evidence A No. 9 has been disclosed from around March, 2007, on the basis of Evidences A No. 19-1 and 19-2, based on 2006 (Gyo-Ke) 10358, case of seeking revocation of the trial decision (No. 5-2 (2) A).

However, past webpage information obtained by use of Wayback Machine is certified generally in the practice of international search and international preliminary examination (Evidence A No. 33 p. 154). The decision presented by the demandee shows, regarding Wayback Machine, that "terms of use show no guarantee of accuracy of data", while the time when the website could be browsed is determined by integrating other background information. It cannot be considered that credibility of Wayback machine is totally rejected. Except for the case where the data in Wayback Machine includes data different from the fact regarding the webpage to be argued in publicity, there is no evidence for proving such a circumstance regarding Evidence A No. 9. Thus, the demandee's allegation cannot be accepted.

On the assumption that the webpage indicated by Evidence A No. 9 had been available publicly through an electric communication line before the priority date of the case, the following are examined.

## (2) Corrected invention 1

### A Comparison

Corrected invention 1 is compared with the Evidence A No. 9 invention.

As for the "knitted product" in the Evidence A No. 9 invention, the "link" is Japanese reading of a word "link", and means a "stitch" (Evidences A No. 11-No. 13), and the "item consisting of a series of links" means the "knitted product", so that the "knitted product" corresponds to an "item consisting of a series of links" in Corrected invention 1. On the assumption that the "knitting apparatus" in the Evidence A No. 9

invention includes a set of a "knitting hook" and "yarn", the "knitting apparatus" in the Evidence A No. 9 invention corresponds to the "kit" in Corrected invention 1. The "knitting apparatus for creating a knitted product" in the Evidence A No. 9 invention corresponds to the "kit for creating an item consisting of a series of links" in Corrected invention 1.

"A base", "pegs" "erected upward from the base", "a top end with a diameter larger than the other sections", and a "groove formed along a peg erecting direction and allowing a crochet hook to be inserted to hook a stitch stretched on the peg" in the Evidence A No. 9 invention correspond to "a base", "pins", "a top flared portion", and "an access groove" in Corrected invention 1, respectively.

"Pegs arranged in two lines" in the Evidence A No. 9 invention correspond to "pins arranged in line" in Corrected invention 1, and may correspond to two integrated structures each having pegs arranged in a single line apparently. Thus they correspond also to "at least one pin bar" in Corrected invention 1, and are recognized to "be supported on the base".

The description, "to prevent the stitch from coming off from the peg" in the Evidence A No. 9 invention corresponds to the description, "for holding the links in a desired direction" in Corrected invention 1, and the word "having" corresponds to the word "including".

Therefore, Corrected invention 1 and the Evidence A No. 9 invention correspond to each other in the following points.

<Corresponding features>

"A kit for creating an item consisting of a series of links including a base,  
and at least one pin bar supported on the base, the pin bar including a plurality of pins arranged in line and each having a top flared portion for holding the links in a desired direction, and an access groove of each of the plurality of pins."

Corrected invention 1 and the Evidence A No. 9 invention are different from each other formally in the following points.

<Different feature 3>

Corrected invention 1 is a kit for creating a "Brunnian link item" consisting of "Brunnian links", while the Evidence A No. 9 invention is a knitting apparatus for creating a knitted product.

<Different feature 4>

An access groove in Corrected invention 1 is formed on a front side in a pin row direction, while a groove in the Evidence A No. 9 invention is formed on a surface of a peg opposite a gap of a base.

B Judgment on the different features

Different features 3 and 4 are substantially the same as Different features 1 and 2 examined in 2 (1). For the same reason, Different features 3 and 4 could not be easily arrived at. Regarding the decision on the different feature indicated in 2 (1) B and relating to the description in Evidence A No. 1, the description in Evidence A No. 9 is examined below in the same way. Regarding Reason for invalidation 4, additional demandant's allegation is also examined.

Regarding Different feature 3, the demandant alleges that Different feature 3 is not a different feature from Evidence A No. 9 (No. 4 3 (2) E). As with Evidence A No. 1, Evidence A No. 9 includes no description or suggestion on "Brunnian link", as described in 1 (9) A. As with Evidence A No. 1, it cannot be said that the "kit for creating a Brunnian link item consisting of Brunnian links" does not correspond to equivalent to the description in Evidence A No. 9. The demandant's allegation is groundless.

Regarding inventive step of Different features 3 and 4, Evidence A No. 9 includes no description or suggestion on "Brunnian link", as with Evidence A No. 1, and includes no suggestion of changing the direction of a groove in the Evidence A No. 9 invention. Therefore, Evidence A No. 9 includes no motive for the matters specifying the invention of Corrected invention 1 concerning Different features 3 and 4. It cannot be said that Different features 3 and 4 could have been easily arrived at, on the basis of the Evidence A No. 9 invention.

The demandant alleges, regarding Reason for invalidation 4, that a knitting apparatus having a base and a pin bar integrated with each other had been well known

before the priority date of the case (No. 4 3 (2) G), and presents Evidences A No. 20-23. However, even if the demandant's allegation is correct, the background which is directly irrelevant to Different Features 3 and 4 does not affect the judgment of the body.

#### C Summary

Therefore, it cannot be said that Corrected invention 1 could be invented easily by a person skilled in the art, on the basis of the Evidence A No. 9 invention, the Evidence A No. 9 invention and the Evidence A No. 2 invention, or the Evidence A No. 1 invention and well-known prior art.

#### (3) Corrected inventions 8-10

Each of Corrected inventions 8-10 directly cites Corrected invention 1. The patent concerning Corrected invention 1 cannot be invalidated by Reason for invalidation 4, as described in (2). The patents concerning Corrected inventions 8-10 citing Corrected invention 1 cannot be invalidated by Reason for invalidation 4.

#### (4) Summary

According to the above descriptions, it cannot be said that Corrected inventions 1, and 8-10 could be invented easily by a person skilled in the art, on the basis of the Evidence A No. 9 invention, the Evidence A No. 9 invention, and the Evidence A No. 2 invention, or the Evidence A No. 9 invention and well-known prior art. The patents concerning Corrected inventions 1, and 8-10 cannot be invalidated by Reason for invalidation 4.

#### No. 8 Closing

As described above, the patents concerning Corrected inventions 1, and 8-10 cannot be invalidated by the reason and means of proof alleged by the demandant.

The costs in connection with the trial shall be borne by the demandant under the provisions of Article 61 of the Code of Civil Procedure which is applied mutatis mutandis in the provisions of Article 169(2) of the Patent Act.

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

December 28, 2015

Chief administrative judge: NAGAYA, Yojiro  
Administrative judge: HIRASE Tomoaki  
Administrative judge: TAKESHITA, Kazushi