

Advisory opinion

Advisory opinion No. 2016-600021

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The case of an advisory opinion for Japanese Patent No. 5277268 between the parties above is stated and concluded as follows.

Conclusion

The "flap-detachable mitten" shown in the Drawings of Article A and its instruction manual does not fall within the technical scope of the invention of Japanese Patent No. 5277268.

Reason

No. 1. Object of the demand

The request for the advisory opinion regarding the subject case demands an advisory opinion that a "flap-detachable mitten" shown in the Drawings of Article A and its instruction manual (hereinafter, referred to as "Article A") falls within the technical scope of the invention according to claim 1 of the patent 5277268 (hereinafter, referred

to as "the Patent Invention").

No. 2. The Patent Invention

1. History of the procedures

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| Feb. 22, 2011 | The present application |
| Jan. 29, 2013 | Notice of reasons for refusal |
| Mar. 26, 2013 | Written opinion and written amendment |
| Apr. 17, 2013 | Decision to grant a patent |
| May 24, 2013 | Registration of establishment |
| May 19, 2016 | Request for Advisory Opinion of the case |
| Jul. 14, 2016 | Written reply |
| Sep. 20, 2016 | Written refutation |

2. The Patent Invention

As viewed from the statements of the scope of claims, the description, and drawings, the Patent Invention is as follows, as specified by the matters described in claim 1 of the scope of claims.

When the constituent components of the Patent Invention (hereinafter, referred to as "the constituent component A" and the like) are separately described, they are as follows.

Meanwhile, although the following separate descriptions depend on the written request for Advisory Opinion by Demandant, they are presented here as is, because there is no dispute about it and it is recognized to be reasonable.

"[Claim 1]

F A pair of medical caregiving gloves,

A the pair of medical caregiving gloves comprising a glove body for housing a portion ahead of a wrist through an opening part; and a wristband provided in the outer surface of the glove body in a unified manner, the wristband being fixed to the wrist by being wound and fastened around the wrist on the outer surface of the glove body, so that a hand is held within the glove body,

B further comprising a band cover sandwiching and covering upper and lower surfaces of the wristband, the band cover detachably attached to outer surfaces of the glove body in the side of the back of the hand and/or in the side of the palmar area of the hand,

C the band cover having an upper flap for covering the upper surface side of the wristband; a lower flap for covering the under surface side of the wristband; and a fastening means by which each of the flaps is fastened in an overlapped state,

D further comprising an attaching means for detachably attaching the band cover to the glove body, the attaching means provided on facing surfaces of the glove body and the lower flap,

E wherein the band cover sandwiches and covers the upper and lower surfaces of the wristband by the upper flap and the lower flap, so that at least a fastened portion of the wristband is covered."

No. 3 Overview of the party's allegation

1. Outline of the demandant's allegation

Article A satisfies the constituent components A, B, C, E, and F of the Patent Invention.

Although Article A does not satisfy the constituent component D of the Patent Invention from a literal standpoint, it satisfies requirements for equivalence relating to the constituent component D, and thus it has the equivalent constitution as the constituent component D.

Therefore, Article A falls within the technical scope of the Patent Invention.

2. Outline of the demandee's allegation

Article A does not satisfy the constituent component B, D of the Patent Invention.

Article A does not satisfy the requirements for equivalence relating to the constituent component D.

Therefore, Article A does not fall within the technical scope of the Patent Invention.

No. 4. Article A

Regarding evidence, "Evidence A No. 1" will be abbreviated as "A1," hereinafter.

Although a "band cover" of the Drawings of Article A and a "flap" of the instruction manual of Article A have names different from each other, they indicate the

same component, and, therefore, each is referred to as "band cover" hereinafter using the name in the Drawings of Article A.

Likewise, a "wristband" of the Drawings of Article A and a "belt" of the instruction manual of Article A are each referred to as a "wristband," hereinafter.

According to the Drawings of Article A and its instruction manual, the following can be perceived

- (1) A flap-detachable mitten includes a glove body, a wristband, and a band cover. (The first page of the Drawings of Article A)
- (2) A hand enters the glove body. (Pages 1-2 of the Drawings of Article A)
- (3) It is obvious that the glove body has an opening part for inserting a hand to allow the hand to enter the glove body.
- (4) A wristband is provided in the outside of the glove body in a unified manner. (Page 4 of the Drawings of Article A)
- (5) An upper flap and a lower flap are provided in the band cover. (Page 6 of the Drawings of Article A)
- (6) The upper flap covers the upper surface side of the wristband. (The first page of the Drawings of Article A)
- (7) The lower flap covers the under surface side of the wristband. (Page 4 of the Drawings of Article A)
- (8) The band cover is arranged outside the surface of the glove body in the side of the back of the hand, and sandwiches and covers the upper and lower surfaces of the wristband with the upper flap and the lower flap. (Pages 1 and 4 of the Drawings of Article A)
- (9) The flap-detachable mitten is for mitigating burden of nursing care. ("The burden of nursing care will be mitigated" in the upper portion of the instruction manual of Article A)
- (10) The band cover is capable of being exchanged. ("The flap can be exchanged" in the right side center of the instruction manual of Article A)
- (11) The flap-detachable mitten is used in a manner that the portion ahead of a wrist is inserted into the glove body through the opening part, the wristband is wound around the wrist on the outer surface of the glove body, the tip of the wristband is attached to a hook and loop fastener of the wristband in the side of the back of the hand, and a hook and eye of the band cover is fastened. (The above-mentioned (3), and the attaching procedures 2 to 4 of the instruction manual of Article A)
- (12) By winding the wristband around the wrist on the outer surface of the glove body,

and attaching the tip of the wristband to a hook and loop fastener of the wristband in the side of the back of the hand, the glove body is fixed to the wrist. (The above-mentioned (11), and "it is possible to be fixed even without a flap" in the right side center of the instruction manual of Article A)

(13) In the band cover, a hook and eye that can fix the upper flap and the lower flap in an overlapped state is provided. (The attaching procedure 4 of the instruction manual of Article A)

(14) The band cover covers over a portion where the tip of the wristband is attached to the hook and loop fastener of the wristband in the side of the back of the hand. (Pages 1 and 3 of the Drawings of Article A, and the attaching procedures 3, 4 of the instruction manual of Article A)

(15) The band cover is attached to the wristband by an attaching means of the band cover and an attaching means of the wristband. (Pages 3-5 of the Drawings of Article A)

(16) In any of the Drawings of Article A and the instruction manual of Article A, it is not indicated that an attaching means for detachably attaching the band cover to the glove body, which is provided on the facing surfaces of the glove body and the lower flap.

(17) According to the above-mentioned (11) and (12), although it is used such that, in a state that the portion ahead of a wrist is inserted within the glove body, the glove body is fixed to the wrist, it is obvious that, in this state, the hand is held within the glove body.

(18) From the above-mentioned (7) and (8), the lower flap of the band cover is arranged between the under surface of the wristband and a surface of the glove body in the side of the back of the hand, and, from the above-mentioned (12), the glove body is fixed to the wrist by winding the wristband from outside the glove body, and, thus, it is obvious that the lower flap of the band cover is held between the under surface of the wristband and the surface of the glove body in the side of the back of the hand by winding the wristband.

In addition, in view of the product description (A3) issued by Demandee in which Article A is described, a flap-detachable mitten of Article A is a medical goods.

Therefore, when organizing Article A in a manner making it correspond to the constituent components A to F of the Patent Invention, it is recognized that Article A includes the following configurations (hereinafter, referred to as such as "the configuration A").

"F A pair of flap-detachable mittens that is a medical goods for mitigating burden of

nursing care, (the above-mentioned (9), and (A3))

A the pair of medical caregiving mittens including a glove body for inserting a portion ahead of a wrist through an opening part and a wristband provided outside the glove body in a unified manner, wherein the wristband is fixed to the wrist by winding the wristband around the wrist from outside the glove body, attaching the tip of the wristband to a hook and loop fastener of the wristband in the side of the back of the hand to make the hand be held within the glove body, (the above-mentioned (1)-(4), (9), (11), (12), (17), and (A3))

B between a surface of the glove body in the side of the back of the hand and an under surface of the wristband, a lower flap of a band cover sandwiching and covering upper and lower surfaces of the wristband is held by winding of the wristband, (the above-mentioned (8) and (18))

C the band cover having an upper flap for covering the upper surface of the wristband; the lower flap for covering the under surface of the wristband; and a hook and eye to fix each of the flaps in an overlapped state, (the above-mentioned (5)-(7), and (13))

D the band cover is attached to the wristband in an exchangeable manner, and, on facing surfaces of the glove body and the lower flap, an attaching means for detachably attaching the band cover to the glove body is not provided, (the above-mentioned (10), (15), and (16))

E the band cover covers, by sandwiching upper and lower surfaces of the wristband with the upper flap and the lower flap to cover the surfaces, a portion where the tip of the wristband is attached to a hook and loop fastener of the wristband in the side of the back of the hand (the above-mentioned (8), and (14))."

No. 5. Comparison, judgment

Whether or not Article A satisfies the constituent components A to F of the Patent Invention will be examined.

1. Regarding the constituent component A and the configuration A

"A glove body for inserting a portion ahead of a wrist" of Article A is "a glove body for housing a portion ahead a wrist" of the Patent Invention, and "outside the glove body" of Article A is the "outer surface of the glove body" of the Patent Invention.

Article A performs "fastened" by "attaching the tip of the wristband to a hook and loop fastener of the wristband in the side of the back of the hand."

"A pair of flap-detachable mittens that is a medical goods for mitigating burden

of nursing care" of Article A is "a pair of medical caregiving gloves" of the Patent Invention.

Therefore, the configuration A of Article A satisfies the constituent component A.

2. Regarding the constituent component B and the configuration B

"A surface of the glove body in the side of the back of the hand" of Article A is "an outer surface of the glove body in the side of the back of the hand" of the Patent Invention.

Since Article A is one in which, "between a surface of the glove body in the side of the back of the hand and an under surface of the wristband, a lower flap of the band cover sandwiching and covering upper and lower surfaces of the wristband is held by winding of the wristband," the band cover is attached on a surface of the glove body in the side of the back of the hand by winding of the wristband, and, by unwinding the wristband, the band cover departs from the surface of the glove body in the side of the back of the hand. Therefore, it is one in which, "a band cover sandwiching and covering upper and lower surfaces of the wristband, the band cover detachably attached to outer surfaces of the glove body in the side of the back of the hand"

Therefore, the configuration B of Article A satisfies the constituent component B.

Demandee alleges that, in the constituent component B, the band cover needs to be attached to an outer surface of the glove body in the side of the back of the hand and/or in the side of the palm of the hand directly and detachably, whereas the band cover of Article A is not one that is attached to an outer surface of the glove body in the side of the back of the hand and/or in the side of the palm of the hand directly and detachably, and, therefore, Article A does not satisfy the constituent component B (refer to the written reply, page 4, line 9 to page 5, line 4).

From this, it is understood that Demandee alleges that that "the band cover detachably attached" to an outer surface of the glove body in the side of the back of the hand and/or in the side of the palm of the hand means, as is the case with the example in the description of the Patent Invention (A1) in which a loop surface fastener 40b to which a hook surface fastener 40a provided in the band cover is fastened is provided on an outer surface of the glove body 10, "ones including an attaching means to which the band cover is attached detachably" on an outer surface of the glove body in the side of

the back of the hand and/or in the side of the palm of the hand.

However, there is no specification regarding an attaching means in the constituent component B, and thus the above-mentioned Demandee's allegation is not an allegation based on the statements of the scope of claims of the Patent.

In addition, in paragraph [0050] of the description of the Patent Invention (A1), there is a description that "In addition, although, it is made such that, in this example, the band cover 30 is attached to the glove body 10 by an attaching means 40 such as a hook and loop fastener, it is possible to cover the wristband 20 also by just inserting the wristband 20 in between the upper and lower flaps 31 and 32 of the band cover 30", and from that description, "the band cover detachably attached" of the constituent component B should be construed as containing, not only ones in which an attaching means such as a hook and loop fastener is provided on an outer surface of the glove body, but also ones in which an attaching means is not provided on an outer surface of the glove body.

Therefore, the above-mentioned Demandee's allegation is not reasonable.

3. Regarding the constituent component C and the configuration C

"A hook and eye to fix each of the flaps in an overlapped state" of Article A is "an fastening means by which each of the flaps is fastened in an overlapped state" of the Patent Invention.

Then, the configuration C of Article A satisfies the constituent component C.

4. Regarding the constituent component D and the configuration D

The Patent Invention is one in which, on facing surfaces of the glove body and the lower flap, an attaching means for detachably attaching the band over to the glove body is provided, whereas Article A is one in which, on facing surfaces of the glove body and the lower flap, an attaching means for detachably attaching the band cover to the glove body is not provided.

Then, the configuration D of Article A does not satisfy the constituent component D.

5. Regarding the constituent component E and the configuration E

"A portion where the tip of the wristband is attached to a hook and loop fastener of the wristband in the side of the back of the hand" of Article A is "a fastened portion of

the wristband."

Then, Article A is one that "covers a portion where the tip of the wristband is attached to a hook and loop fastener of the wristband in the side of the back of the hand," and, therefore, it is one that "covers at least a fastened portion of the wristband."

Therefore, the configuration E of Article A satisfies the constituent component E.

6. Regarding the constituent component F and the configuration F

"A pair of flap-detachable mittens that is a medical goods for mitigating burden of nursing care" of Article A is "a pair of medical caregiving gloves" of the Patent Invention.

Then, the configuration F of Article A satisfies the constituent component F.

7. Summary

Therefore, Article A does not satisfy the constituent component D, and, accordingly, Article A does not satisfy the constituent component of the Patent Invention.

No. 6. Determination on equivalence

Since Demandant has also alleged equivalence about the constituent component D, examination will be conducted, hereinafter.

1. Requirements for equivalence

Supreme Court decision, 1994 (Oh) No. 1083 (rendition of judgement on Feb. 24, 1998) held that, even if a portion that is different from a target product and the like exists within a constitution described in scope of claims, when all the following 5 requirements are satisfied, it is reasonable to understand that the target product and the like falls within the technical scope of the patent invention as one being equivalent to the constitution described in the scope of claims.

The first requirement: the different portion is not an essential part of the patent invention.

The second requirement: even if the different portion is replaced by the corresponding portion of the target product and the like, it is possible to achieve an object of the patent invention, and an identical effect is exerted.

The third requirement: a person skilled in the art could have easily conceived of substituting the different portion by the corresponding portion of the target product and the like at the time of such as manufacturing of the target product and the like.

The fourth requirement: the target product and the like is not one that is identical with a publicized prior art at the time of the patent application of the patent invention and is not one that could have been easily conceived of from the prior art by a person skilled in the art on the occasion of application.

The fifth requirement: there is no particular situation such as that the target product and the like falls under ones that were consciously excluded from the scope of claims for patent in the patent application procedure of the patent invention.

2. Regarding the fifth requirement

In consideration of the case, the fifth requirement will be examined, first.

In claim 1 at the time of the present application, there was no specification at all regarding an attaching means of the band cover, and an attaching means of the band cover that is specified as the constituent component D was a requirement specified by claim 2 at the time of the present application. Then, by the amendment according to the written amendment during the examination (B3), it was added to claim 1.

Therefore, although the invention according to claim 1 at the time of filing of the present application included ones including the constituent component D as well as ones not including the constituent component D, inclusion of the constituent component D is added by the above-mentioned amendment, and thus ones not including the constituent component D were excluded due to the above-mentioned amendment.

In addition, with regard to this amendment, Demandant alleges in the written opinion during the examination (A4) that "Then, according to the above-mentioned constitution, ... a special effect that <<by configuring the band cover by openable upper and lower flaps that sandwich the upper and lower surfaces of the wristband, and, in conjunction with this, by providing an attaching means on facing surfaces of the lower flap and the glove body, attaching and detaching between the band cover and the wristband and between the band cover and the glove body can be performed easily, and thus usability can be improved>> is exerted" (refer to page 2, lines 6 to line 17). Then, Demandant cited that, as one of the special effects of the Patent Invention, "attaching and detaching between the band cover and the glove body can be performed easily, and thus usability can be improved" by "providing an attaching means on facing surfaces of

the lower flap and the glove body" of the constituent component D.

From the above situation, the constituent component D is a component added to the scope of claims in the patent application procedure of the patent invention as a constituent component for exerting a special effect of the Patent Invention.

Then, Article A which does not include the constituent component D is one that was consciously excluded from the scope of claims for patent in the patent application procedure of the patent invention.

Accordingly, the fifth requirement is not satisfied.

Demandant alleges that "an attaching means for making the wristband and the band cover be detachable" that is an attaching means of the band cover of Article A is not described in any of the scope of claims and the description of the Patent Invention at all, and, therefore, just because an attaching and detaching means of the band cover of original claim 2 was added to original claim 1 that had not referred to an attaching means of the band cover at all, it does not mean consciously excluding the attaching means of the band cover of Article A, and, therefore, the fifth requirement is satisfied (refer to the written request, page 9, lines 25 to 27, and the written refutation page 9, line 1 to page 10, line 8).

However, as described above, original claim 1 not referring to an attaching means of the band cover at all includes ones not including an attaching means of the band cover of original claim 2 and also ones including it, and, therefore, it can be said that ones not including the attaching means of the band cover were excluded consciously because inclusion of an attaching means of the band cover of original claim 2 was added by the above-mentioned amendment.

Therefore, the above-mentioned Demandant's allegation is not reasonable.

3. Summary

Consequently, at least the above-mentioned fifth requirement is not satisfied, and, therefore, without examining other requirements, it cannot be said that the configuration D of Article A is equivalent to the constituent component D of the Patent Invention.

No. 7. Closing

As above, Article A does not satisfy the constituent component D of the Patent Invention, and, in addition, since it cannot be said that the configuration D of Article A

and the constituent component D are equivalent, Article A does not belong to the technical scope of the Patent Invention.

Therefore, the advisory opinion shall be made as described in the conclusion.

Oct. 26, 2016

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| Chief administrative judge: | KUBO, Katsuhiko |
| Administrative judge: | YAMADA, Yukiko |
| Administrative judge: | CHIBA, Shigenari |