

## Trial decision

Invalidation No. 2016-800046

Fukuoka, Japan Demandant	AERLAND CO., LTD.
Fukuoka, Japan Patent Attorney	KATO, Hisashi
Fukuoka, Japan Patent Attorney	TOHSAKA, Keita
Fukuoka, Japan Patent Attorney	MORI, Hiroshi
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Osaka, Japan Demandee	TOP SANGYO CO., LTD
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The case of trial regarding the invalidation of Japanese Patent No. 5835786, entitled "Disposable Filter for Drum-type Washing Machine" between the parties above, has resulted in the following trial decision.

### Conclusion

The correction of the description and the scope of claims of Japanese Patent No. 5835786, regarding Claims [1 to 4] after correction, shall be approved as the corrected description and the scope of claims attached to the written demand for correction.

The patent for the inventions according to Claims 1 and 4 of Japanese Patent No. 5835786 shall be invalidated.

The demand for trial of the case regarding Claims 2 and 3 of Japanese Patent No. 5835786 shall be dismissed.

The costs in connection with the trial shall be borne by the demandee.

## Reason

### No. 1 History of the procedures

The application of the inventions relating to Claims 1 to 4 of Japanese Patent No. 5835786 (hereinafter, referred to as "Application") was a patent application changed on June 10, 2015 from Japanese Utility Model Registration No. 3195843 (registration date: January 14, 2015) for which a application was filed on November 26, 2014 and a proving document for exceptions to lack of novelty was submitted on December 2, 2014 (received on December 4), and the establishment of patent right (the number of Claims is 4) was registered on November 13, 2015.

The outline of history of the subsequent procedures is as follows.

April 6, 2016	Written request for trial
July 15, 2016	Written reply of the trial case
September 28, 2016	Notification of trial examination
October 27, 2016	Oral proceedings statement brief (the demandant)
November 14, 2016	Oral proceedings statement brief (the demandee)
November 16, 2016	Notification of trial examination
November 28, 2016	Oral proceedings statement brief (the demandant)
November 28, 2016	Oral proceedings statement brief (2) (the demandee)
November 28, 2016	First oral proceeding
December 5, 2016	Written statement (the demandee)
December 12, 2016	Written statement (the demandant)
February 22, 2017	Advance notice of a trial decision
May 1, 2017	Written correction request
June 9, 2017	Written refutation of the trial case
June 27, 2017	Inquiry
July 10, 2017	Written reply of the trial case (the demandant)
July 20, 2017	Decision on acceptance or non-acceptance of amendment and notification
August 25, 2017	Written reply of the trial case (2)

### No. 2 Regarding the Correction

#### 1 Contents of correction

The correction relating to the written correction request dated May 1, 2017 (hereinafter referred to as the "correction of the case") requested to correct the description and scope of claims of the case, regarding Claims 1 to 4 after correction, as the corrected description and the scope of claims attached to the written demand for correction, and details of the matters of correction are as follows.

##### (1) Correction A

"A rectangular water permeability sheet" of Claim 1 before correction is corrected to "a rectangular polyester monofilament nonwoven fabric water permeability sheet having a basis weight of 60 g/m<sup>2</sup>" (the underlined parts show the corrected parts; the same applies hereafter).

##### (2) Correction B

Claim 2 before correction is deleted.

(3) Correction C

Claim 3 before correction is deleted.

(4) Correction D

"According to Claims 1, 2, or 3" in Claim 4 before correction is corrected to "according to Claim 1."

(5) Correction E

"A rectangular water permeability sheet" of [0009] in the detailed description of the invention of the patent description is corrected to "a rectangular polyester monofilament nonwoven fabric water permeability sheet having a basis weight of 60 g/m<sup>2</sup>."

(6) Correction F

[0010] in the detailed description of the invention of the patent description is deleted.

(7) Correction G

[0011] in the detailed description of the invention of the patent description is deleted.

## 2 Suitability of correction

### (1) Regarding Correction A

The correction of the case relating to Correction A is related to "a water permeability sheet," specifically limits a configuration and material thereof, and is aiming at restriction of the scope of claims.

Then, there are descriptions "the disposable filter for drum type washing machines according to Claim 1, wherein a water permeability sheet consists of a nonwoven fabric sheet made of a synthetic resin" in Claim 2 before correction, and "the disposable filter for drum type washing machines according to Claim 2, wherein a nonwoven fabric sheet consists of a nonwoven fabric sheet made from polyesters monofilaments" in Claim 3. Also, in the patent description, it is described that "although the nonwoven fabric sheet made of a synthetic resin which constitutes the disposable filter 1, as long as it is capable of maintaining uniform and good water permeability over a long period of time, can use various kinds of nonwoven fabric sheets, it can preferably use a nonwoven fabric sheet made from a polyester resin, especially polyesters monofilaments, which is excellent in chemical resistance, has bulkiness and elasticity, is excellent in heat setting properties and shape stability, and has almost no water absorbability.

A nonwoven fabric sheet which has a basis weight of about 60-100 g/m<sup>2</sup>, preferably a basis weight of about 80 g/m<sup>2</sup>, and a thickness of about 3-5 mm, preferably about 4 mm, can be preferably used so that the water permeability of the lint filter 24 may not be deteriorated while being installed along the inner surface of the lint filter 24." ([0022]), so that the correction of the case relating to Correction A is within the matters described in the description and the scope of claims of the case, and does not

substantially enlarge or alter the scope of claims of the patent.

(2) Regarding Corrections B and C

The correction of the case relating to Corrections B and C deletes Claims 2 and 3, so that it is for the purpose of restriction of the scope of claims, and does not substantially enlarge or alter the scope of claims of the patent.

(3) Regarding Correction D

The correction of the case relating to Correction D limits claims to be cited, so that it is for the purpose of restriction of the scope of claims, and does not substantially enlarge or alter the scope of claims of the patent.

(4) Regarding Corrections E to G

The correction of the case relating to Corrections E to G is intended to make the description of the scope of claims consistent with the description of the detailed description of the invention of the patent description, in accordance with the correction of the case relating to Corrections A to C, so that it is intended to achieve clarification of an ambiguous description, and does not substantially enlarge or alter the scope of claims of the patent.

(5) Claims 2 to 4 before correction, cite Claim 1 before correction, so that the correction of the case was demanded to a group of Claims 1 to 4.

### 3 Closing

Therefore, since the correction of the case aims at matters in accordance with items (i) and (iii) of the proviso to Article 134-2(1) of the Patent Act, and falls under the provisions of Article 134 (3), Articles 126(5) and (6) of the Patent Act which are applied mutatis mutandis pursuant to Article 134 (9) of the Patent Act, the correction of Claims [1 to 4] after correction shall be approved.

### No. 3 The invention relating to the Patent

As described in No. 2, the correction of the case is approved, so that the invention relating to the Patent is as follows, as described in Claims 1 to 4 of the corrected scope of claims. Hereinafter, the invention relating to each claim is referred to as "Invention 1" and the like according to claim number, and such inventions are collectively referred to as "the Invention."

[Claim 1]

A disposal filter for drum-type washing machines, which is used by being installed to a lint filter formed in a lattice shape of a drum type washing machine, comprising a body part which consists of a rectangular polyester monofilament nonwoven fabric water permeability sheet having a basis weight of 60 g/m<sup>2</sup> that is installed along an inner surface of the lint filter, wherein the body part is formed with plural rows of slits intermittent in a longitudinal direction of the body part, in a width direction of the body part.

[Claim 2]

(Deleted)

[Claim 3]

(Deleted)

[Claim 4]

The disposal filter for drum-type washing machines according to Claim 1, integrally equipped with a grip portion at an end portion in the longitudinal direction of the body part.

No. 4 Overview of the party's allegation regarding the reason for invalidation

1 The demandant's allegation

(1) Reasons for invalidation 1

The Invention is an invention relating to "593 Hair dust filter for washing machines" (hereinafter, "593 Hair dust filter for washing machines" is referred to as "the filter of the case.") sold by Consumer's Co-Operative Union GREEN CO-OP Union (Headquarters: Hakata Daihakudori Building 3F, 1-5-1 Hakataekimae, Hakata-ku, Fukuoka, Fukuoka prefecture, Representative Director TANAKA Yuko, hereinafter, referred to as "GREEN CO-OP union") in Japan before the application thereof, and falls under the provisions of Article 29 (1)(ii) of the Patent Act. Thus, the demandee should not be granted a patent for the Invention, and the patent of the case falls under Article 123(1)(ii) of the Patent Act and should be invalidated.

(2) Reasons for invalidation 2 (approved according to the decision on acceptance or non-acceptance of amendment)

A polyester monofilament having a basis weight of 60 g/m<sup>2</sup> was well-known before the application of the patent of the case, and such numerical limitation has no critical meaning, so that the Invention could have been easily made by a person skilled in the art based on "the filter of the case," violates Article 29 (2) of the Patent Act, and thus the demandee should not be granted a patent for the Invention. Therefore, the patent of the case falls under Article 123 (1)(ii) of the Patent Act, and should be invalidated.

<Means of proof>

Evidence A No. 1-1: The photograph and drawing of the filter of the case purchased from GREEN CO-OP Union on October 10, 2014

Evidence A No. 1-2: Explanatory document enclosed in the packaging bag of the filter of the case

Evidence A No. 1-3: Delivery note when the filter of the case was purchased from GREEN CO-OP Union

Evidence A No. 1-4: Leaflet on which the filter of the case is posted issued by GREEN CO-OP Union

Evidence A No. 2: Leaflet "Pallet" issued before July 21, 2014 (on July 14) from Consumer's Co-Operative Union CO-OP Kyushu Business Union

Evidence A No. 3: Leaflet "Recommend Best" issued on November 17, 2014 from Consumer's Co-Operative Union CO-OP Chugoku-Shikoku Business Union

Evidence A No. 4: Leaflet "Life Partner" issued on September 15, 2014 from Consumer's Co-Operative Union CO-OP Kinki Business Union

Evidence A No. 5: "Written statement" of Mr. ENOKI Akihito who is an employee of AERLAND Co., Ltd. (the demandant)

Evidence A No. 6: Japanese Patent No. 583578 (Patent publication of the case)

Evidence A No. 7: [Document Name] Request for patent (the application of the patent of the case) of "[Patent] 2015-117617 [Date of acceptance] June 10, 2015"

Evidence A No. 8: Written submission of Proving Document for Exceptions to Lack of Novelty

Evidence A No. 9: Proving Document for seeking Application of Provision of Exceptions to Lack of Novelty of Device

Evidence A No. 10: Printed matter from the web page "Japanese Consumers' Co-operative Union read deeply with a keyword" of Japanese Consumers' Co-operative Union, October 17, 2016, <URL:<http://jccu.coop/jccu/keyword/#anc02>>

Evidence A No. 11: Printed matter from the web page "CO-OP/Commodities of CO-OP" of Japanese Consumers' Co-operative Union, October 17, 2016, <URL:<https://www.coop-takuhai.jp/takuhai/product>>

Evidence A No. 12: Printed matter from the web page "About CO-OP" of Japanese Consumers' Co-operative Union, October 25, 2016, <URL:<http://jccu.coop/about/question/coop/#anc03>>

Evidence A No. 13: The CO-OP plan decision guidance list produced by AERLAND Co., Ltd. (the demandant)

Evidence A No. 13-1: "Adoption consultation document/Estimated number" about CO-OP CS net, June 8, 2016

Evidence A No. 13-2: "Plan decision guidance" about CO-OP net, May 16, 2016

Evidence A No. 14: A "report" produced by Mr. ENOKI Akihito who is an employee of AERLAND Co., Ltd. (the demandant)

Evidence A No. 15: Japanese Unexamined Patent Application Publication No. 2011-58135

## 2 The demandee's allegation

### (1) Reasons for invalidation 1

The publicly worked matters which are alleged by the demandant are secured by procedures for seeking Application of Provision of Exceptions to Lack of Novelty of Invention carried out in a process in the utility model registration application procedure of Japanese Utility Model Registration No. 3195843 as a basis of the application of the patent of the case by the demandee, and the Invention is regarded as not falling under Article 29 (1)(ii) of the Patent Act.

### (2) Reasons for invalidation 2

The Invention does not violate the provision of Article 29 (2) of the Patent Act.

#### <Means of proof>

Evidence B No. 1-1: Printed matter from the web page "TOPPUBU page" of Japanese Consumers' Co-operative Union, July 14, 2016, <URL:<http://jccu.coop/>>

Evidence B No. 1-2: Printed matter from the web page "Nearby CO-OP" of Japanese Consumers' Co-operative Union, July 14, 2016, <URL:<http://jccu.coop/coopmap/>>

Evidence B No. 1-3: Printed matter from the web page "CO-OP which can be used in Tokyo" of Japanese Consumers' Co-operative Union, July 14, 2016, <URL:<http://jccu.coop/coopmap/tokyo>>

Evidence B No. 1-4: Printed matter from the web page "CO-OP which can be

used in Fukuoka" of Japanese Consumers' Co-operative Union, July 14, 2016,  
<URL:<http://jccu.coop/coopmap/fukuoka>>

Evidence B No. 1-5: Printed matter from Page 2 of Evidence B No. 1-2  
"Member List of Japanese Consumers' Co-operative Union"

Evidence B No. 2: "Handling commodities confirmation" exchanged between  
TOP SANGYO Co., Ltd (the demandee) and GREEN CO-OP Union

Evidence B No. 3: "Bill" from GREEN CO-OP Union to TOP SANGYO Co.,  
Ltd (the demandee)

Evidence B No. 4: Commodity Catalog "coop ME-MU" created by Consumer's  
Co-Operative Union CO-OP Kobe

Evidence B No. 5: Commodity Catalog "Pallet" created by Consumer's Co-  
Operative Union CO-OP Kyushu Business Union

Evidence B No. 6-1: Other CO-OP hit commodity information created by TOP  
SANGYO Co., Ltd (the demandee)

Evidence B No. 6-2: Other CO-OP hit commodity information (result) created  
by TOP SANGYO Co., Ltd (the demandee)

Evidence B No. 7: Sales Slip of TOP SANGYO Co., Ltd relating to the leaflet  
"Attachment good articles" 4<sup>th</sup> week in June, 2014 created by TOP SANGYO Co., Ltd  
(the demandee)

Evidence B No. 8: Business negotiation content confirmation to GREEN CO-OP  
Union created by TOP SANGYO Co., Ltd (the demandee)

No. 5 Each piece of evidence and contents thereof  
[Evidence A No. 1-1]

The photograph of "593 Hair dust filter for washing machines" (the filter of the  
case), and the drawing for clarifying a slit formed on the filter are shown.

[Evidence A No. 1-2]

It is an explanatory document enclosed in the filter of the case, in which there are  
the description of "593," and under that, the descriptions of "Hair dust filter for drum-  
type washing machines," "when garbage and hair scraps are full, please replace them."  
"please attach the convex part of the filter to the handle side of the foreign matter filter."  
in the column of "how to use," "if the filter is used for a long time with dirty condition,  
the filter may be clogged and water may overflow, so please check the filter each time  
you use it...If an error is displayed on the washing machine, please stop using it." in the  
column of "caution," and "<Material> Polyester <Size> 8 cm × 21 cm <Contents  
amount> 10 sheets," and the drawing of [the article], the drawing of [the foreign matter  
filter], and the drawing of [the cross-sectional view] are shown.

[Evidence A No. 1-3]

It is a delivery note when the filter of the case was purchased from GREEN CO-  
OP Union, in which the logotype written as "GREEN CO-OP," "a delivery statement  
October 10 delivery item," "depo 07 Kokura-minami," "Union Member 13810869  
AERLAND Co., Ltd. Mr. Matsumoto," "593 Hair dust filter for washing machines,"  
"No. 27 reception," and "GREEN CO-OP is ... Catalog GREEN No. 30 Page 28 is a  
special feature of soap!" are described, and furthermore, it is shown that "the base price"  
of "593 Hair dust filter for washing machines" is "448 yen."

[Evidence A No. 1-4]

It is a leaflet on which the filter of the case is posted issued by GREEN CO-OP Union. On Page 1 thereof, there are descriptions of "GREEN," the logotype written as "GREEN CO-OP" on an upper right side, "2014. 10," and "No. 27." On Page 2, there are descriptions of "Hair dust filter for drum-type washing machines," "448 yen (tax included price 483.84 yen)," "10 sheets," "material / polyester size (approx) / 8 x 21 cm," and the photograph of the product is posted adjacent to the descriptions. Also, in the leaflet, the photograph of the commodity is posted together with the description of "just pinch and throw it away!"

[Evidence A No. 2]

It is a leaflet "Pallet" issued before July 21, 2014 (on July 14) from Consumer's Co-Operative Union CO-OP Kyushu Business Union, in which the description of "the hair dust filter for drum-type washing machines" and the photograph of the commodity adjacent thereto are posted.

[Evidence A No. 3]

It is a leaflet "Recommend Best" issued on November 17, 2014 from Consumer's Co-Operative Union CO-OP Chugoku-Shikoku Business Union, in which the description of "Hair dust filter for drum-type washing machines" and the photograph of the commodity adjacent thereto are posted.

[Evidence A No. 4]

It is a leaflet "Life Partner" issued on September 15, 2014 from Consumer's Co-Operative Union CO-OP Kinki Business Union, in which the description of "Hair dust filter for drum-type washing machines" and the photograph of the commodity adjacent thereto are posted.

[Evidence A No. 5]

It is a written statement of Mr. ENOKI Akihito who is an employee of AERLAND Co., Ltd. (the demandant), stating that "regarding the 'hair dust filter of washing machines' (the filter of the case) which has become a problem this time, leaflets of To-to consumers' co-operative to which the exception provision to lack of novelty was applied were distributed on June 2, 2014, and then CO-OP Kyushu Pallet July issue in which the same filter of the case was distributed in the 5th week of July of the same year, and GREEN CO-OP No. 27, which is Evidence A No. 1-3, was distributed in September of the same year, and in addition, since our company also manufactures and sells many filter related products, this filter remained in the eye.

Then, in order to investigate the filter of the case posted on these leaflets, I ordered one set containing 10 filters of the case from GREEN CO-OP under the name of the demandant on September 26, 2014. The base price was 448 yen.

The commodity receipt date was October 10, 2014 as stated in the delivery note of Evidence A No. 1-4. The filter of the case described in Evidence A No. 1-1 was purchased at this time and there is no doubt that the explanatory document of Evidence A No. 1-2 was also enclosed.

Since when I tried to actually use the obtained product at the home of an



employee, it turned out that there were various points to be improved and it is necessary to clarify the difference with this filter as a generic manufacturer, despite my hardships, I have repeated trial and error about size, protrusion, slit shape, etc., and after about 2 months our product was completed."

[Evidence A No. 6]

It is Japanese Patent No. 5835786, and the Patent Gazette listing the same.

[Evidence A No. 7]

It is [Document Name] Request for patent of "[Patent] 2015-117617 [Date of acceptance] June 10, 2015," in which there is the description of [Application Number] Japanese Utility Model Application No. 2014-6265 in the column [Based Utility Model Registration and Indication of application for Utility Model Registration]

[Evidence A No. 8]

It is a written submission of a proving document for exceptions to lack of novelty, in which there is the description of [Application Number] Japanese Utility Model Application No. 2014-6265 in the column [Indication of the case].

[Evidence A No. 9]

It is a proving document for seeking the application of provision of exceptions to lack of novelty of the invention, in which there are the descriptions of "sales start date (leaflet distribution start date) June 2, 2014," "sales place To-to consumers' co-operative " "publisher TOP SANGYO Co., Ltd," "the contents of the published Invention TOP SANGYO Co., Ltd sold 'the disposable filter for drum-type washing machines (Commodity Name: Hair dust filter for drum-type washing machines)' posted on the attached leaflet, to general consumers". On the attached leaflet, the descriptions of "To-to consumers' co-operative," "Attachment good articles," "June, 2014," and "4 times," the description of "Hair dust filter for drum-type washing machines," and the photograph of the commodity adjacent thereto are posted.

[Evidence A No. 10]

It is a printed matter from the web page "Japanese Consumers' Co-operative Union read deeply with a keyword" of Japanese Consumers' Co-operative Union, in which there is the description of "nationwide CO-OPs conduct business and activities as separate corporations. The themes and the contents of the business/activities cherished by each CO-OP reflect the wishes of the members of the respective CO-OPs and it depends on the CO-OPs. Japanese Consumers' Co-operative Union is a nationwide union to which CO-OPs in various places join. Japanese Consumers' Co-operative Union and member CO-OPs do not have a relationship of headquarters-branches."

[Evidence A No. 11]

It is a printed matter from the web page "CO-OP/Commodities of CO-OP" of Japanese Consumers' Co-operative Union, in which there is the description of "Commodities are different in each CO-OP/ Consumers' Co-operative."

[Evidence A No. 12]

It is a printed matter from the web page "About CO-OP" of Japanese Consumers' Co-operative Union, in which there is the description of "each co-op is established by people in the area and the workplace together and is an independent organization with different history and characteristics. Therefore, the handling of commodities, a point system and the like are also different according to CO-OP. "

[Evidence A No. 13]

It is the CO-OP plan decision guidance list produced by AERLAND Co., Ltd. (the demandant), which shows a list of CO-OPs in which the commodity of a dust removal filter for fans was planned and decided in 2016 and a list in which that was not planned and decided.

[Evidence A No. 13-1]

It is an "adoption consultation document/Estimated number" about CO-OP CS net, which indicates that the dust removal filter for fans was planned and decided by CO-OP net.

[Evidence A No. 13-2]

It is "plan decision guidance" about CO-OP net, which indicates that the dust removal filter for fans was planned and decided by CO-OP net.

[Evidence A No. 14]

It is a "report" produced by Mr. ENOKI Akihito who is an employee of AERLAND Co.,Ltd. (the demandant), in which there is the description of "when measuring the weight of 10 sheets of the same commodities as the filter shown in Evidence A No. 1, as shown in the attached photograph, it weighs 8.8 g, and the weight of one piece is 0.88 g.

An area of one sheet    a rectangular portion  $0.17 \text{ m} \times 0.08 \text{ m} = 0.0136 \text{ m}^2$   
   a grip portion  $(0.02 + 0.04) \times 0.04 \div 2 = 0.0012 \text{ m}^2$

total     $0.0136 + 0.0012 = 0.0148 \text{ m}^2$ .

Therefore, weight (basis weight) per  $1 \text{ m}^2$  is  $0.88 \div 0.0148 = 59.459... \approx 60 \text{ g/m}^2$ ."

[Evidence A No. 15]

It is Japanese Unexamined Patent Application Publication No. 2011-58135, which is a publication distributed before the filing of the patent of the case, which describes the following.

"[Claim 1]

Polyesters monofilaments which are monofilaments made from polyester, comprising stratified nano particles which consists of a divalent metal and phosphorus compounds, and has a length of one side of 5 to 100 nm and an interlayer spacing of 1 to 5 nm."

"[0001]

The present invention relates to polyester monofilaments and a fiber structure consisting thereof, and more specifically relates to polyester monofilaments which have few defects such as fibrils and are excellent in strength, and a fiber structure consisting thereof."

"[0002]

Since polyesters monofilaments have the excellent physical characteristics and chemical characteristics, various kinds of them are used for paper making fabrics, filters, screen gauze, and also for clothing. However, as compared with ordinary thin polyester fibers, monofilaments have large fineness, and it is difficult to uniformly cool and solidify the polymers after melt discharge, so that it has therefore been difficult to improve physical properties.

"[0047]

Also, the fiber structure which is another embodiment of the present invention is a structure consisting of the polyester monofilaments of the present invention mentioned above. Although as a form of the fiber structure, any one such as a woven fabric, a knitted fabric, a nonwoven fabric or the like can be adopted, from the viewpoint of strength and balance between the warp and weft directions, it is most preferable that it is a woven fabric. In the case of a woven fabric, it is preferably a woven fabric using the polyester monofilaments of the present invention for at least a part of warp yarns and/or weft yarns. In the case of such a woven fabric, in addition to being used as a single yarn, the polyester monofilaments can be used for at least a part of warp yarns and/or warp yarns constituting the woven fabric, such as a combination of a plurality of the monofilaments, and a plurality of single yarns twisted. As a weave of the fabric, it is preferable to use woven fabrics of a single weave such as a plain weave or twill weave, or a double weave, or triple weave. For example, in the case of plain weave, the woven density is preferably 15 to 200 fibers/inch, more preferably 20 to 170 fibers/inch. As basis weight, it is preferably in the range of 30 to 300 g/m<sup>2</sup>."

[Evidence B No. 1-1]

It is a printed matter from the web page "TOPPUBU page" of Japanese Consumers' Co-operative Union.

[Evidence B No. 1-2]

It is a printed matter from the web page "Nearby CO-OP" of Japanese Consumers' Co-operative Union., which indicates that "CO-OP Kyushu Business Union," "CO-OP Chugoku-Shikoku Business Union," and "CO-OP Kinki Business Union" are included in Business Union.

[Evidence B No. 1-3]

It is a printed matter from the web page "CO-OPs which can be used in Tokyo" of Japanese Consumers' Co-operative Union, which indicates that "To-to consumers' co-operative" is included in CO-OPs which can be used in Tokyo.

[Evidence B No. 1-4]

It is a printed matter from the web page "CO-OPs which can be used in Fukuoka" of Japanese Consumers' Co-operative Union, which indicates that "GREEN CO-OP Consumers' Co-operative Fukuoka" is included in CO-OPs which can be used in Fukuoka.

[Evidence B No. 1-5]

It is a printed mater from Page 2 of Evidence B No. 1-2 "Member List of

Japanese Consumers' Co-operative Union", which indicates that "To-to consumers' co-operative," "Consumer's Co-Operative Union GREEN CO-OP Union," "Consumer's Co-Operative Union CO-OP Kyushu Business Union," "Consumer's Co-Operative Union CO-OP Chugoku-Shikoku Business Union," and "Consumer's Co-Operative Union CO-OP Kinki Business Union" are included in the member list of Japanese Consumers' Co-operative Union.

[Evidence B No. 2]

It is "Handling commodities confirmation" exchanged between TOP SANGYO Co., Ltd (the demandee) and GREEN CO-OP Union, which indicates that "TOP SANGYO Co., Ltd" and "Consumer's Co-Operative Union GREEN CO-OP Union" confirm the order date/the delivery date and the delivery place and the like about "GREEN of Life No. 201427," regarding "Hair dust filter for drum-type washing machines."

[Evidence B No. 3]

It is a bill from GREEN CO-OP Union to TOP SANGYO Co., Ltd (the demandee), which indicates that it is a bill relating to special plan catalog publication fee September Next issue No. 27.

[Evidence B No. 4]

It is the Commodity Catalog "coop ME-MU," in which there is the description of "518,296 pieces (total of 2 kinds) were purchased in nationwide CO-OP" regarding "Hair dust filter for drum-type washing machines."

[Evidence B No. 5]

It is the Commodity Catalog "Pallet," on which the description of "Hair dust filter for drum-type washing machines" and the photograph of the commodity adjacent thereto are posted.

[Evidence B No. 6-1]

It is other CO-OP hit commodity information, which indicates sales information at To-to CO-OP, regarding the hair dust filter for drum-type washing machines.

[Evidence B No. 6-2]

It is another CO-OP hit commodity information (result), which indicates sales information at CO-OP Kinki Business Union, regarding the hair dust filter for drum-type washing machines.

[Evidence B No. 7]

It is the sales slip between the demandee relating to the leaflet "Attachment good articles" 4<sup>th</sup> week in June, 2014 and To-to consumers' co-operative, which indicates the distribution date and number of leaflets with a customer To-to CO-OP, the valuation, delivered value, and the like of the hair dust filter for drum-type washing machines.

[Evidence B No. 8]

It is the business negotiation content confirmation to GREEN CO-OP Union, in

which "to GREEN CO-OP Union" and "July 25, 2014" are respectively described in the client name column and the business negotiation date column, and "the hair dust filter is newly planned" is described in the business negotiation/confirmation column.

## No. 6 Judgment by the body

### 1 Regarding Cited Invention

Cited Invention alleged by the demandant is the invention relating to the filter of the case which was publicly sold by GREEN CO-OP Union before the filing of the patent of the case.

#### (1) Findings

##### A Regarding the history of the filter of the case

(A) Evidence A No. 1-2 is the explanatory document enclosed in the packaging bag of the filter of the case, in which there are the description of "593," and the descriptions of "Hair dust filter for drum-type washing machines" under that.

Then, in Evidence A No. 1-3, there is the description of "593 Hair dust filter for washing machines," so that it is recognized as the delivery note of the filter of the case. Furthermore, in Evidence A No. 1-3, there are the logotype written as "GREEN CO-OP," "No. 27 reception," and the description that the "basic price" of "593 Hair dust filter for washing machines" is "448 yen," and on the leaflet of Evidence A No. 1-4, there are the description of "2017.10 27 issue" issued by GREEN CO-OP and the description that the price of "Hair dust filter for drum-type washing machines" is "448 yen (tax included price 483.84 yen)," so that it is understood that the filter of the case was sold through the leaflet of Evidence A No. 1-4.

Then, in Evidence A No. 1-3, there are the description of "a delivery statement October 10 delivery item," and in Evidence A No. 1-4, there is the description of "2014. 10," so that it is understood that the filter of the case was sold from GREEN CO-OP Union on October 10, 2014.

Also, in a written statement of Evidence A No. 5, Mr. ENOKI Akihito who is an employee of AERLAND Co., Ltd. (the demandant) states that he ordered the filter of the case under the name of the demandant on September 26, 2014, and purchased that from GREEN CO-OP Union on October 10, 2014.

Evidence B No. 2 indicates that TOP SANGYO Co., Ltd and GREEN CO-OP Union confirm the order date/the delivery date and the delivery place and the like about "GREEN of Life No. 201427," regarding commodities including the hair dust filter for drum-type washing machines, and although in the leaflet of Evidence A No. 1-4, the name of TOP SANGYO Co., Ltd is not described, it is understood that TOP SANGYO Co., Ltd delivers the filter of the case to GREEN CO-OP Union.

(B) From the above (A), the following can be seen.

a At the latest by September 26, 2014, GREEN CO-OP Union publicly distributed the leaflets on which the filter of the case was posted (Leaflet of Evidence A No. 1-4, Delivery statement of Evidence A No. 1-3, and Written statement of Evidence A No. 1-5).

b On October 10, 2014, GREEN CO-OP Union delivered the filter of the case to the demandant (Delivery statement of Evidence A No. 1-3).

c On November 26, 2014, the original applicant of the case (the demandee) filed the original application of the case (Japanese Utility Model Application No. 2014-6265) (Evidence A No. 7).

B Regarding the configuration of the filter of the case

(A) It is recognized that Evidence A No. 1-1, Evidence A No. 1-2, and Evidence A No. 1-4 relate to the filter of the case.

(B) In the explanatory document of Evidence A No. 1-2, according to the drawing of [the article], the drawing of [the foreign matter filter], and the description of "please attach the convex part of the filter to the handle side of the foreign matter filter," it can be seen that the filter of the case has a rectangular body part and a convex part, and according to the drawing of [the article], it can be seen that rectangular body part is formed with plural rows of slits intermittent in a longitudinal direction in a width direction of the body part.

(C) According to the drawing of [the foreign matter filter], the drawing of [the cross-sectional view], and the description of "please attach the convex part of the filter to the handle side of the foreign matter filter" in the explanatory document of Evidence A No. 1-2, it can be said that the filter of the case is installed along an inner surface of "the foreign matter filter," and also, according to the drawing of [the foreign matter filter] and the photograph of the commodity on the leaflet of Evidence A No. 1-4, it can be seen that "the foreign matter filter" is formed in a lattice shape.

(D) According to the description of "Hair dust filter for drum-type washing machines" in the explanatory document of Evidence A No.1-2, the description of "when garbage and hair scraps are full, please replace." in the column of "how to use" in the explanatory document of Evidence A No. 1-2, and the description of "just pinch and throw it away!" on the leaflet and the photograph of the commodity of Evidence A No. 1-4, it can be said that the filter of the case is a disposal filter for drum-type washing machines.

(E) According to the description of "if the filter is used for a long time with dirty condition, the filter may be clogged and water may overflow, so please check the filter each time you use it." in the column of "caution" in the explanatory document of Evidence A No. 1-2, it can be said that the body part of the filter of the case consists of a water permeability sheet.

(F) In the explanatory document of Evidence A No. 1-2, it is described that the material is polyester, and according to this description and the photograph of Evidence A No. 1-1, it is recognized that the filter of the case consists of a nonwoven fabric sheet made from polyester monofilaments.

(G) According to the drawing of [the foreign matter filter] and the description of "please attach the convex part of the filter to the handle side of the foreign matter filter" in the explanatory document of Evidence A No. 1-2, and the description of "just pinch and throw it away!" on the leaflet and the photograph of the commodity of Evidence A No. 1-4, it is recognized that the filter of the case is to be thrown away by pinching its convex part.

## (2) Judgment

A Whether or not the invention relating to the filter of the case was publicly worked prior to filing of the application of the case

According to (1) A above, it is recognized that the filter of the case was publicly sold at the latest by October 10, 2014.

Therefore, it is recognized that the invention relating to the filter of the case was

publicly worked prior to the filing of the application of the case.

B The invention relating to the filter of the case

According to (1) B above, it is recognized that the filter of the case is a disposable filter which is used by being installed to the foreign matter filter formed in a lattice shape of a drum type washing machine, comprising the body part consisting of a rectangular water permeable sheet installed along an inner surface of the foreign matter filter, the body part being formed with plural rows of slits intermittent in a longitudinal direction of the body part, in a width direction of the body part.

Also, it is recognized that the filter of the case has the water permeable sheet consisting of a nonwoven fabric sheet made of a synthetic resin, and it is recognized that the nonwoven fabric sheet consists of polyester monofilaments.

Then, it is recognized that the filter of the case is integrally equipped with a convex part at an end portion in a longitudinal direction of the body part.

Accordingly, the invention relating to the filter of the case is recognized as follows.

"A disposal filter for drum-type washing machines, which is used by being installed to a foreign matter filter formed in a lattice shape of a drum type washing machine, comprising a body part which consists of a rectangular polyester monofilament nonwoven fabric water permeability sheet that is installed along an inner surface of the foreign matter filter, wherein the body part is formed with plural rows of slits intermittent in a longitudinal direction of the body part, in a width direction of the body part, and wherein a convex part is integrally provided at an end portion in the longitudinal direction of the body part."

## 2 Propriety of the application of Article 30(2) of the Patent Act

Against this, the demandee alleges that Cited Invention can correspond to the provisions of Article 30(2) of the Patent Act. Thus, the following is examined.

### (1) Findings

A On June 2, 2014, To-to consumers' co-operative started the selling of "Hair dust filter for drum-type washing machines" (Evidence A No. 9).

B On September 25, 2014, GREEN CO-OP Union ordered the filter of the case from the demandee, and on October 1, 2014, the demandee delivered the filter of the case to GREEN CO-OP Union (Evidence B No. 2).

C At the latest by September 26, 2014, GREEN CO-OP Union publicly distributed the leaflets of Evidence A No. 1-4 on which the filter of the case was posted (Leaflet of Evidence A No. 1-4, Delivery statement of Evidence A No. 1-3, and Written statement of Evidence A No. 1-5), on October 10, 2014, GREEN CO-OP Union delivered the filter of the case to the demandant (Delivery note of Evidence A No. 1-3).

D On November 26, 2014, the applicant of the case (the demandee) filed the original application of the case (Japanese Utility Model Application No. 2014-6265) (Evidence A No. 7).

E On December 2, 2014, the applicant of the case, for the original application,

submitted the proving document for seeking the application of provision of exceptions to lack of novelty (hereinafter, referred to as "the proving document of the case." Evidence A No. 9) (Evidence A No. 8). Also, it is considered that the proving document of the case was submitted at the same time as the patent application under the provisions of Article 44(4) of the Patent Act.

In the proving document of the case, as the disclosed facts, it is described that 1) the sales start date is June 2, 2014, 2) the sales place is To-to consumers' co-operative, 3) the publisher is TOP SANGYO Co., Ltd, 4) the content of the disclosed idea is that "TOP SANGYO Co., Ltd sold 'a disposable filter for drum-type washing machines (commodity name: Hair dust filter for drum-type washing machines)' posted on the attached leaflet, to general consumers.", and 5) TOP SANGYO Co., Ltd sold a disposable filter for drum-type washing machines (commodity name: Hair dust filter for drum-type washing machines) posted on the attached leaflet, to general consumers, and as a document to prove these, the leaflet referred to as "Attachment good articles" (hereinafter, referred to as "the leaflet attached with the proving document of the case") is attached (Evidence A No. 9).

## (2) Judgment

In order to receive the application of the provisions of Article 30(2) of the Patent Act, the applicant, for A) "the invention comes to fall under one of the items of Article 29(1) of the Patent Act resulting from an action of a person who has a right to obtain a patent," has to submit B) "a document for proving that the invention can receive the application of the provisions of Articles 30(2) of the Patent Act" to the Commissioner of the Japan Patent Office (Articles 30(3) of the Patent Act).

Then, we will examine A) whether or not it can be said that Cited Invention is "the invention comes to fall under one of the items of Article 29(1) of the Patent Act resulting from an action of a person who has a right to obtain a patent," and B) whether or not it can be said that the applicant of the case (the demandee) submitted "a document for proving that Cited Invention can receive the application of the provisions of Article 30(2) of the Patent Act."

A Whether or not it can be said that, in relation to the Cited Invention, "the invention comes to fall under one of the items of Article 29(1) of the Patent Act resulting from an action of a person who has a right to obtain a patent."

Although Cited Invention is the invention relating to the filter of the case which GREEN CO-OP Union publicly transferred at the latest by October 10, 2014, according to (1) B, and 1(2) above, it is recognized that the public transfer was made resulting from the action that the demandee delivered the filter of the case to GREEN CO-OP Union.

Therefore, it can be said that Cited Invention is an invention which comes to fall under Article 29(1)(ii) of the Patent Act resulting from an action of a person who has a right to obtain a patent.

B Whether or not it can be said that the applicant of the case submitted "a document for proving that Cited Invention can receive the application of the provisions of Article 30(2) of the Patent Act"

The document which the applicant of the case regard to be submitted as a



proving document of the provisions of Article 30(3) of the Patent Act is not allowed other than the proving document of the case. Then, it becomes a problem whether or not it can be said that the proving document of the case is a document proving that Cited Invention can receive the application of Article 30(2) of the Patent Act, and more specifically, it becomes a problem whether or not the proving document of the case specifies Cited Invention as "the invention comes to fall under one of the items of Article 29(1) of the Patent Act" under the provisions of Article 30(3) of the Patent Act.

Then, in this case, since (ii) becomes a subject of "one of the items of Article 29(1)," it is determined which invention the proving document of the case specifies, based on concrete matter corresponding to "publicly work."

(A) When examining the invention specified by the proving document of the case, as described in (1) E above, in the proving document of the case, it is described that the publisher is TOP SANGYO Co., Ltd and the published invention is "the disposable filter for drum-type washing machines (Commodity Name: Hair dust filter for drum-type washing machines)" posted on the leaflet attached to the proving document of the case, which TOP SANGYO Co., Ltd sold to general consumers. On the other hand, as a published place, To-to consumers' co-operative is specified, and according to the leaflet attached to the proving document of the case, there is no description indicating TOP SANGYO Co., Ltd as a seller, and it is obvious that To-to consumers' co-operative is a distributor from its appearance.

Then, it is understood that the description "...TOP SANGYO Co., Ltd sold... the hair dust filter for drum-type washing machines...to general consumers..." of the proving document of the case means that To-to consumers' co-operative sold the filter resulting from the action such as the delivery of the filter of TOP SANGYO Co., Ltd to To-to consumers' co-operative.

Therefore, it is reasonable to recognize that the invention specified and proved by the proving document of the case is "the disposable filter for drum-type washing machines (Commodity Name: Hair dust filter for drum-type washing machines)" sold by To-to consumers' co-operative.

(B) Therefore, as described in (1) C above, although the concrete matter corresponding to "publicly work" of Cited Invention is a publicly transfer action of the filter of the case which made by GREEN CO-OP Union at the latest by October 10, 2014, GREEN CO-OP and To-to consumers' co-operative differ in legal personality (Evidence A No. 10 to Evidence A No. 12), sales areas thereof are different (Evidence B No. 1-3, and Evidence B No. 1-4), and there is no evidence which indicates that the publicly transfer action by GREEN CO-OP Union and the sales by To-to consumers' co-operative can be regarded as sales by the same entity, so that it cannot be recognized that the proving document of the case describes the concrete matter indicating the sales of the filter of the case by GREEN CO-OP Union.

Therefore, it cannot be recognized that the proving document of the case specifies also Cited Invention as "the invention comes to fall under one of the items of Article 29(1) of the Patent Act" under the provisions of Article 30(3) of the Patent Act.

(C) As described above, it cannot be said that the applicant of the case submitted "a document for proving that Cited Invention can receive the application of the provisions of Articles 30(2) of the Patent Act."

## C The demandee's allegation

The demandee alleges that a separate certification about Cited Invention is not required, since both GREEN CO-OP Union and To-to consumers' co-operative are under the umbrella of Japanese Consumers' Co-operative Union (Evidence B No. 1-1 to Evidence B No. 1-5) and the delivery action to To-to consumers' co-operative and the delivery action to GREEN CO-OP Union are closely associated with each other as a delivery action in a single distribution group; that is, Japanese Consumers' Co-operative Union.

However, in the proving document of the case and the leaflet attached to the proving document of the case, there is no description about Japanese Consumers' Co-operative Union, and there is no evidence indicating that the commodity sold by the union under the umbrella of Japanese Consumers' Co-operative Union is also sold in other unions. On the contrary, even if it is sold in some unions, it is recognized that a separate contract is required when it is sold in another union (Evidence B No. 2, Evidence B No. 7, Evidence B No. 6-1, and Evidence B No. 6-2), so that it cannot be recognized that there is some relevance such as making the distribution route the same between the sales action in To-to consumers' co-operative specified by the proving document of the case and the publicly transfer action of the filter of the case by GREEN CO-OP Union, and it cannot be said that such relevance is objectively indicated in the proving document of the case.

Also, as described above, since the sales by To-to consumers' co-operative and the sales by GREEN CO-OP Union are based on the separate contract and delivery action, it cannot be said be cruel even if the submission of the proving document under the provisions of Article 30(3) of the Patent Act is separately required for each sales action.

As examined above, in light of the gist of Article 30 of the Patent Act, it cannot be said that the submission of the proving document of Article 30(3) of the Patent Act is not required for Cited Invention, and therefore, the allegation of the demandee cannot be accepted.

#### D Summary

Therefore, Cited Invention cannot receive the application of Article 30(2) of the Patent Act.

### 3 Regarding Reasons for invalidation 1 (Article 29(1)(ii) of the Patent Act

#### (1) Regarding Invention 1

##### A Comparison

Comparing Invention 1 and the invention relating to the filter of the case in light of functions thereof, "the foreign matter filter" of the filter of the case corresponds to "a lint filter" of Invention 1, so that Invention 1 and the invention relating to the filter of the case are identical in a point that each of them is "a disposal filter for drum-type washing machines, which is used by being installed to a lint filter formed in a lattice shape of a drum type washing machine, comprising a body part which consists of a rectangular polyester monofilament nonwoven fabric water permeability sheet that is installed along an inner surface of the lint filter, wherein the body part is formed with plural rows of slits intermittent in a longitudinal direction of the body part, in a width direction of the body part." However, it is recognized that those are different in a point that Invention 1 comprises " a body part which consists of a polyester monofilament

nonwoven fabric water permeability sheet having a basis weight of 60 g/m<sup>2</sup>," whereas, the invention relating to the filter of the case comprises a body part which consists of a polyester monofilament nonwoven fabric water permeability sheet whose basis weight is unknown (hereinafter, referred to as "the different feature").

## B Judgment

(A) Since the degree of basis weight is a matter influencing the performance of the disposable filter for drum-type washing machines (dust collection performance, water permeability, and the like), it is recognized that the different feature is substantial.

Therefore, it cannot be recognized that Invention 1 and the invention relating to the filter of the case are identical.

(B) Concerning this point, the demandant alleges that since the basis weight of the commodity similar to those shown in Evidence A No. 1 is about 60 g/m<sup>2</sup> (Evidence A No. 14), the Invention is a product itself shown in Evidence A No. 1 and has no novelty (written refutation of the trial case, Page 3).

However, in the "report" of Evidence A No. 14, "the commodity the same as the filter shown in Evidence A No. 1...is measured" is described, and the demandant says that it is "the commodity same as the one shown in Evidence A No. 1," so that it cannot be recognized that a result of measuring the filter of the case is described in Evidence A No. 14.

Then, there is no evidence which objectively indicates that the basis weight of the filter of the case is 60 g/m<sup>2</sup>, and it is impossible to deny the possibility that design change was made on the basis weight since the sales period of the filter of the case until the producing period (May 16, 2017) of Evidence A No. 14. Also, the demandee changed the basis weight of the filter of the case from 70 g/m<sup>2</sup> to 60 g/m<sup>2</sup> from October 1, 2015, and alleges that the basis weight of the filter of the case relating to Evidence A No. 1 is 70 g/m<sup>2</sup> (the written reply of the trial case (2) Pages 2 to 3).

Therefore, it cannot be recognized that the basis weight of the filter of the case is 60 g/m<sup>2</sup>.

## (2) Regarding Invention 4

### A Comparison

Comparing Invention 4 and the invention relating to the filter of the case in light of functions thereof, "the foreign matter filter" and "a convex part" of the filter of the case respectively correspond to "the lint filter" and "a grip portion" of Invention 4, so that Invention 4 and the invention relating to the filter of the case are identical in a point that each of them is "a disposal filter for drum-type washing machines, which is used by being installed to a lint filter formed in a lattice shape of a drum type washing machine, comprising a body part which consists of a rectangular polyester monofilament nonwoven fabric water permeability sheet that is installed along an inner surface of the lint filter, wherein the body part is formed with plural rows of slits intermittent in a longitudinal direction of the body part, in a width direction of the body part, and wherein a grip portion is integrally provided at an end portion in the longitudinal direction of the body part." However, it is recognized that those are different in the same point as described in the different feature.

## B Judgment

As described above, it is recognized that the different feature is substantial ((1) B above), and it cannot be recognized that Invention 4 and the invention relating to the filter of the case are identical.

### (3) Summary

As described above, it cannot be recognized that Inventions 1 and 4 are the invention relating to the filter of the case which was publicly worked in Japan prior to the filing of the application of the patent, and thus it cannot be recognized that those fall under the provisions of Article 29(1)(ii) of the Patent Act.

## 4 Regarding Reasons for invalidation 2 (Article 29(2))

### (1) Regarding Invention 1

#### A Comparison

Invention 1 and the filter of the case are identical and different in the point of 3

#### (1) A above.

#### B Judgment

##### (A) We will examine the different feature.

Although the filter of the case is a disposable filter used by being installed to a foreign matter filter formed in a lattice shape of a drum-type washing machine, there are various kinds of drum-type washing machines, and it is anticipated that the situation related to the foreign matter filter also differs, so that it is recognized that the checking and examining of the performance thereof (dust collection performance, water permeability, and the like) by actually attaching that to various drum-type washing machines is a matter usually done in research and development for a person skilled in the Art.

Especially, although it is recognized that the drum-type washing machine can collect dust with a foreign matter filter originally equipped, without disturbing the water permeability, since the filter of the case is intended to further improve the dust collection performance, it is technically obvious that the installation of the filter of the case may affect the given water permeability, and thus the driving performance of the drum-type washing machine.

On this point, in Evidence A No. 1-2, "if the filter is used for a long time with dirty condition, the filter may be clogged and water may overflow, " and "if an error is displayed on the washing machine, please stop using it" are described, and it seems that the installation of the filter of the case may affect the water permeability of the drum type washing machine. Also, in light of the facts that Mr. ENOMOTO who is an employee of the demandant stated "when I tried to actually use the obtained product at home of an employee, it turned out that there were various points to be improved" (Evidence A No. 5), and the demandee alleges that "the polyester monofilament nonwoven fabric water permeability sheet in which a basis weight of 'the filter of the case' relating to Evidence A No. 1 is 70 g/m<sup>2</sup> has sufficient lint waste collection performance, but the water permeability is not necessarily sufficient, and although it is not frequent, there was a problem that the drum-type washing machine stopped during use" (the written reply for the trial case (2), Page 3), it can be said that the checking and examining of the performance of the filter of the case by actually installing that is the matter necessary for research and development, and it cannot be recognized that it is

particularly difficult for a person skilled in the art.

Then, since it is technically obvious that the degree of the basis weight is important for deciding the performance of the filter of the case (if the basis weight amount is large, the collection performance is improved, but the water permeability is lowered, and if the basis weight amount is small, the collection performance is not improved, but the water permeability is not lowered), it is recognized that those skilled in the art will make it within the range of normal creative ability to check and examine the performance of the filter of the case and optimize the basis weight while balancing the dust collection performance and the water permeability.

Regarding this point, also from this patent specification, although it is described that "a basis weight of about 60-100 g/m<sup>2</sup>, preferably a basis weight of about 80 g/m<sup>2</sup>...can be preferably used so that the water permeability of the lint filter 24 may not be deteriorated." ([0022]), among the range of assumed basis weight, there is no particular mention of the technical meaning of limiting to 60 g/m<sup>2</sup> in particular, and there is no critical significance in limiting the basis weight to 60 g/m<sup>2</sup>.

Also, as described in Evidence A No. 15, even from the fact that nonwoven fabric made of polyester monofilaments having a basis weight of 30 to 300 g/m<sup>2</sup> is known from the past, it is not recognized as a matter which cannot be adopted to make the basis weight 60 g/m<sup>2</sup>, so that it is recognized that making the basis weight of the filter of the case 60 g/m<sup>2</sup> could have been easily conceived by a person skilled in the art. (B) Also, although the specific numerical value of the basis weight of the filter of the case is unknown, the filter of the case is the disposable filter for drum-type washing machines the same as Invention 1, so that it is not thought that the degree of the basis weight is significantly different from that of Invention 1, and it is understood that it is about the same degree. In the background of the fact that the application of the case tried to receive the application of Article 30(2) of the Patent Act for the filter of the case, in light of the facts that the patent description of the case describes "about 60-100 g/m<sup>2</sup>, preferably about 80 g/m<sup>2</sup>" ([0022]), and the demandee also alleges that the basis weight of the filter of the case is 70 g/m<sup>2</sup> (the written reply for the trial case(2), Pages 2 to 3), it can be inferred that the basis weight of the filter of the case is about 70 to 80 g/m<sup>2</sup>, and it is not recognized that there is a remarkable difference from Invention 1.

Then, since the installation of this filter of the case may affect the given water permeability of the drum type washing machine, it can be said that it is reasonable to select a smaller basis weight, so that it is recognized that it would be performed accordingly by a person skilled in the art to change the basis weight of the filter of the case from about 70 to 80 g/m<sup>2</sup> to 60 g/m<sup>2</sup>.

Therefore, it is recognized that the invention relating to the filter of the case is made to have a configuration of Invention 1 relating the different point is a matter which could be easily conceived by a person skilled in the art.

(C) Furthermore, even with the effect of Invention 1, it is within the range that a person skilled in the art can sufficiently predict from the invention relating to the filter of the case and it is not exceptional.

The demandee alleges that Invention 1 has "the polyester monofilament nonwoven fabric water permeability sheet having a basis weight of 60 g/m<sup>2</sup>" as a constituent component, so that the body part and the grip portion with high form stability (resilience) can be stably installed along the inner surface of the body part of the lint filter while maintaining the balance of lint waste collection performance and

water permeability, and at that point, it can be said that this numerical limitation has a critical meaning (the written reply for the trial case (2), Page 3).

However, in the disposable filter for drum-type washing machines, it is natural to optimize the form and material while balancing the lint waste collection performance and the water permeability, and it is easily understood by a person skilled in the art that the degree of basis weight is important.

Then, as described above, there is no particular mention on limiting the basis weight to 60 g /m<sup>2</sup> in this patent description. As the demandee alleges that "the polyester monofilament nonwoven fabric water permeability sheet in which a basis weight of 'the filter of the case' relating to Evidence A No. 1 is 70 g/m<sup>2</sup> has sufficient lint waste collection performance, but the water permeability is not necessarily sufficient, and although it is not frequent, there was a problem that the drum-type washing machine stopped during use" (the written reply for the trial case (2), Page 3), if the basis weight is 70 g /m<sup>2</sup>, it will not inevitably cause troubles; in short, it is a problem of a degree and the critical meaning cannot be recognized extraordinarily.

## (2) Regarding Invention 4

### A Comparison

Invention 4 and the invention relating to the filter of the case are identical in a point of 3 (2) A above, and are different in a point of 3 (1) A above.

### B Judgment

As described above, it is recognized that the invention relating to the filter of the case is made to have a configuration of Invention 1 relating to the different point is a matter which could be easily conceived by a person skilled in the art. For the same reason, it is recognized that the invention relating to the filter of the case is made to have a configuration of Invention 4 relating to the different point is a matter which could be easily conceived by a person skilled in the art.

## (3) Summary

As described above, it is recognized that Inventions 1 and 4 could have been easily made by a person skilled in the art, on the basis of the invention relating to the filter of the case which was publicly worked in Japan prior to the filing of the patent application of the case, and thus it violates the provisions of Article 29(2) of the Patent Act, and the demandee should not be granted a patent.

## 4 Summary

Since it cannot be recognized that Inventions 1 and 4 are the invention relating to the filter of the case which GREEN CO-OP Union publicly sold prior to the filing of the patent application of the case, it cannot be recognized that it falls under the provisions of Article 29(1)(ii) of the Patent Act.

However, since it is recognized that Inventions 1 and 4 could have been easily made by a person skilled in the art, on the basis of the invention relating to the filter of the case, it violates the provisions of Article 29(2) of the Patent Act, and the demandee should not be granted a patent.

Then, although the invention relating to the filter of the case which GREEN CO-OP Union publicly sold prior to the filing of the patent application of the case is the

invention which comes to fall under Article 29(1)(ii) resulting from the action of the demandee, it cannot be said that the demandee submitted "a document for proving that the invention can receive the application of the provisions of Articles 30(2) of the Patent Act" to the Commissioner of the Japan Patent Office, and it cannot be said that the submission of the proving document is not required, so that the invention relating to the filter of the case which GREEN CO-OP Union publicly sold prior to the filing of the patent application of the case cannot receive the application of provision of exceptions to lack of novelty of the invention.

No. 7 Regarding the demand for trial of the case relating to Claims 2 and 3 of the patent

As described in No. 2 above, the correction of the case is approved, so that therefore the demand for trial of the case relating to Claims 2 and 3 of the patent has no subjects.

Accordingly, the demand for trial of the case relating to Claims 2 and 3 of the patent is illegal and cannot be amended and therefore should be dismissed in accordance with the provisions of Article 135 of the Patent Act.

No. 8 Closing

As described above, the correction of the description and the scope of claims of the patent shall be approved as the corrected description and the scope of claims attached to the written demand for correction.

It cannot be recognized that Inventions 1 and 4 fall under Article 29(1)(ii) of the Patent Act, and thus the patent relating to Inventions 1 and 4 cannot be invalidated for Reasons for invalidation 1.

Inventions 1 and 4 violate the provisions of Article 29(2) of the Patent Act, and cannot receive the application of Article 30(2) of the Patent Act, and thus the patent relating to Inventions 1 and 4 should be invalidated for Reasons of invalidation 2.

The demand for trial of the case relating to Claims 2 and 3 of the patent should be dismissed in accordance with the provisions of Article 135 of the Patent Act.

The costs in connection with the trial shall be borne by the demandee 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.

October 11, 2017

Chief administrative judge:	TAMURA, Yoshiaki
Administrative judge:	KUBOTA, Haruhiko
Administrative judge:	INOUE, Tetsuo