Appeal decision

Appeal No. 2017-14634

Kyoto, Japan
Appellant KYORAKU Co. Ltd.

Patent Attorney ASANO, Noriko

The case of appeal against the examiner's decision of refusal of Japanese Patent Application No. 2013-31046, entitled "Vehicular Duct and Method of Manufacturing Vehicular Duct" (the application published on September 4, 2014, Japanese Unexamined Patent Application Publication No. 2014-159239) has resulted in the following appeal decision.

Conclusion

The appeal of the case was groundless.

Reason

No. 1 History of the procedures

The application was filed on February 20, 2013, and the history of the subsequent procedures is as follows.

As of December 26, 2016: Notice of reasons for refusal

March 1, 2017: Submission of written opinion and written amendment

As of June 29, 2017: Examiner's decision of refusal

October 3, 2017: Submission of the request for appeal and written amendment

No. 2 Decision to dismiss amendment submitted on October 3, 2017

"Conclusion of Decision to Dismiss Amendment"

The amendment submitted on October 3, 2017 (hereinafter, referred to as "the Amendment") shall be dismissed.

[Reason]

1. Details of Amendment

The Amendment includes amendment for changing the description of "the cylindrical duct portion is integrally formed at an end portion of the hat-shaped duct portion, extends so as to project out to an opening portion side of the hat-shaped duct portion, and has an opening configuring a fitting portion with another duct at a tip end portion," in Claim 1 of the scope of claims before the Amendment to "the hat-shaped duct portion is formed so as to partially extend the cylindrical duct at an end portion of the cylindrical duct portion, a series of air passages is configured by the hat-shaped duct portion and the cylindrical duct portion, and the cylindrical duct portion extends so as to project out to an opening portion side of the hat-shaped duct portion, and has an opening configuring a fitting portion with another duct at a tip end portion," after the Amendment (hereinafter, referred to as the "Amended matter").

2. Propriety of amendment

(1) Purpose requirements of amendment

The amended matter is to limit the configuration of the hat-shaped duct portion in Claim 1 to the matter specifying the invention "the hat-shaped duct portion is formed so as to partially extend the cylindrical duct at an end portion of the cylindrical duct portion, a series of air passages is configured by the hat-shaped duct portion and the cylindrical duct portion," (hereinafter, referred to as "the matter specifying the invention 1"), and to delete the matter specifying the invention "the cylindrical duct portion is integrally formed at an end portion of the hat-shaped duct portion," (hereinafter, referred to as "the matter specifying the invention 2") in relation to the configuration of the cylindrical duct portion.

Then, the limitation by the matter specifying the invention 1 is for specifying constitution components, and it is recognized that the limitation is aimed at restriction of the scope of claims.

However, the deletion of the matter specifying the invention 2 cannot be recognized as the restriction of the scope of claims.

Although the matter specifying the invention 1 can be considered as the configuration obtained by limiting the matter specifying the invention 2, the matter specifying the invention 2 has the configuration in which the cylindrical duct portion and the hat-shaped duct portion are integrally formed, whereas in the matter specifying the invention 1, the hat-shaped duct portion is formed so as to partially extend the cylindrical duct, and thus it cannot be said that it is specified that the hat-shaped duct portion and the cylindrical duct portion are integrally formed. (That is, although "integrally" before the Amendment is a matter amended and specified by the written amendment dated March 1, 2017, grounds for amendment are not clear from the description of the written opinion on the same day. Then, considering the descriptions of Paragraphs [0017], [0018], [0043], and [0056] of the specification of the case, although it is recognized that "integrally" means integrally cutting out from a wall portion of a hollow molded body, the description "partially extend" after the Amendment is an expression that includes not only integral extension, but also extension by another member.)

Therefore, it is obvious that the deletion of the matter specifying the invention 2 is not considered as an amendment aimed at the restriction of the scope of claims and is not considered as the deletion of claims, and the correction of errors or the clarification of an ambiguous description, and thus it is not aimed at the matters prescribed in the items of Proviso to Article 17-2(5) of the Patent Act.

As described above, since the Amended matter violates the provision of Article 17-2(5) of the Patent Act, the Amendment shall be dismissed under the provisions of Article 53(1) of the Patent Act applied mutatis mutandis by replacing certain terms pursuant to Article 159(1) of the Patent Act.

(2) Independent requirements for patentability

Even if the Amendment is aimed at the restriction of the scope of claims and satisfies purpose requirements of amendment, as described below, the appellant should have not been granted a patent independently for the invention recited in Claim 1 after the Amendment (hereinafter, referred to as the "Amended Invention") at the time of patent application.

A. The Amended Invention

The Amended Invention is as follows.

"A vehicular duct which is attached to a component configuring a vehicle, and forms a part of an air passage for introducing air from an air-conditioning unit to a predetermined position in a passenger compartment, comprising:

a hat-shaped duct portion which is formed to have a hat-shaped cross section opening on one side, and forms a first air passage by being blocked in an extending direction at the opening portion with the component; and

a cylindrical duct portion which is formed in a cylindrical shape so as to configure a coupling portion on an upstream side of the hat-shaped duct portion with respect to the air-conditioning unit, and independently forms a second air passage communicating with the first air passage regardless of the component, wherein

the hat-shaped duct portion is formed so as to partially extend the cylindrical duct at an end portion of the cylindrical duct portion, a series of air passages is configured by the hat-shaped duct portion and the cylindrical duct portion, and the cylindrical duct portion extends so as to project out to an opening portion side of the hat-shaped duct portion, and has an opening configuring a fitting portion with another duct at a tip end portion."

B. Description in Cited Document

(A) Cited Document 1

Japanese Unexamined Patent Application Publication No. 2002-274157, which is a publication cited in the reasons for refusal of the examiner's decision and distributed before the priority date of the application (published on September 25, 2002, hereinafter referred to as "Cited Document 1"), includes the following description with the drawings (FIG. 1 to 5).

AA. "Embodiments of the invention" Embodiments of the present invention will be described in detail below with reference to the attached drawings. First, a first embodiment of the present invention will be described with reference to FIG. 1 to FIG. 5. FIG. 1 is a side explanatory view schematically showing a rear portion of a passenger compartment of a vehicle (automobile) according to a first embodiment of the present invention. As shown in this figure, in an automobile M of the so-called one (1) box type according to the present embodiment, a plurality of seats S1 to S3 are disposed in the passenger compartment, and at least two rows of seats S2, S3 among them are located at the rear part of the passenger compartment.

In the above-mentioned automobile M, an air-conditioner Ac (so-called air-conditioner) dedicated to the rear part of the passenger compartment is installed at the rear part of the passenger compartment (for example, the side part of the seat S3 in the rearmost row). A pillar duct Dp and a roof duct Dr1 are disposed as ventilation ducts for supplying air-conditioning wind from an air-conditioner Ac mainly to the rear seats S2, S3 side. The pillar duct Dp is extended along a rear pillar P_b extending generally in the vertical direction at the side part of a rear end of a vehicle body, and the roof duct Dr1 is extended along a roof portion R of the vehicle M." (Paragraphs [0019] to [0020])

BB. "In the present embodiment, the roof duct Dr1 is manufactured separately from a

single duct complete product, and is formed by, rather than arranging that on the vehicle roof portion R, arranging a duct forming member 10 having a generally hat-shaped (or a generally wide C-shaped) cross-section on an upper side (the roof panel P side) with respect to a roof trim 1 covering a ceiling portion of the passenger compartment, and assembling and integrating them. FIG. 2 is a plan explanatory view schematically showing the roof trim 1 in which the duct forming member 10 is integrated. FIGS. 3, 4, and 5 are cross-sectional explanatory views showing the roof duct structure in cross sections respectively along lines Y3-Y3, Y4-Y4, and Y5-Y5 in FIG. 2.

As shown in these figures, the duct forming member 10 has a generally hat-shaped (or a generally wide C-shaped) cross-section, and is fixed on an upper surface side (the roof panel P side while being attached to the vehicle roof portion R) of the roof trim 1 by assembling the opening side thereof toward the roof trim 1, and by fixing (for example adhering) the peripheral flange portion 10f to the upper surface of the roof trim 1, it is fixed to the upper surface side of the roof trim 1. The duct forming member 10 and the roof trim 1 are both manufactured by injection molding using, for example, a synthetic resin as a material. Further, reinforcing members (reinforcements) T1 and T2 made of, for example, steel plates are disposed between the duct forming member 10 and the roof panel P on the lower surface side of the roof panel P in order to reinforce the roof panel P.

As described above, by assembling and bonding the duct forming member 10 to the roof trim 1, the roof trim 1 and the duct forming member 10 form an air-conditioning wind passage having a closed cross section. That is, the manufacturing of the roof duct Dr1 and the assembling thereof to the roof trim 1 can be performed in one step. Therefore, as compared with the case in which the roof duct as a single duct complete product is manufactured in a separate process and assembled in a roof trim, the process of forming the roof duct Dr1 can be simplified to reduce the manufacturing and assembling costs of the roof duct Dr1." (Paragraphs [0023] to [0025])

CC. "The front grill opening portion 5 located on the left and right sides of the lamp opening portion 3 is covered with the extended portion 12 of the duct forming member 10. Further, on the base end side of the duct forming member 10, a connecting portion 10a connected to the above-described pillar duct Dp is formed." (Paragraph [0029])

According to the descriptions of AA. to CC. and FIGS. 1 to 5, it is recognized that Cited Document 1 describes the following invention (hereinafter, referred to as the "Cited Invention").
"A roof duct Dr1 as a ventilation duct for supplying air-conditioning wind from an air-conditioner Ac mainly to the rear seats S2, S3 side, wherein an opening side of a duct forming member 10 having a generally hat-shaped (or a generally wide C-shaped) cross-section is assembled and integrated toward a roof trim 1 to form an air-conditioning wind passage, and on a base end side of the duct forming member 10, a connecting portion 10a connected to a pillar duct Dp is formed."

(B) Cited Document 2

Japanese Unexamined Patent Application Publication No. H08-268041, which is a publication cited in the reasons for refusal of the examiner's decision and distributed before the priority date of the application (published on October 15, 1996, hereinafter

referred to as "Cited Document 2"), includes the following description with the drawings (FIG. 1 to 4).

AA. "<Example 1> FIG. 1 to FIG. 4 show the example of the present invention. In FIG. 1, reference numeral 1 denotes an instrument panel as an interior trim part of an automobile, and air-conditioning ducts 3 and 5 for supplying air-conditioning wind into the inside of a vehicle are connected to the instrument panel 1 through soft foams 7 and 9. The instrument panel 1 and the ducts 3 and 5 are injection molded using the same resin material. It is to be noted that as these molding methods, blow molding, vacuum molding, and the like may be employed, and the present invention is not limited thereto. In addition, in this example, no particular limitation is imposed on the kind of the molding material of the foams 7 and 9." (Paragraph [0050])

BB. "The upper surface duct 3 includes a central cylindrical portion 3a connected to an air-conditioning unit, and a trumpet-shaped outlet portion 3b extending horizontally so as to cover all of the air outlets 11 and 13 on the upper surface of the instrument panel 1. A flange 3c bulging to the outside is formed on the outlet portion 3b of the duct 3. Further, the foam 7 for the upper surface has a plate shape and is equipped with holes 17 and 19 of the same shape corresponding to the air outlets 11 and 13 on the upper surface." (Paragraph [0052])

C. Comparison with Cited Invention

In comparison between the Amended Invention and the Cited Invention, in light of the meaning of each expressions, function, structure, and the like, "a roof trim 1," "an air-conditioner Ac," and "a pillar duct Dp" of the Cited Invention respectively correspond to "a component configuring a vehicle," "an air-conditioning unit," and "another duct" of the Amended Invention.

Then, since "a roof duct Dr1" of the Cited Invention is attached to the roof trim 1, and is configured as "a ventilation duct for supplying air-conditioning wind from an air-conditioner Ac mainly to the rear seats S2, S3 side," it corresponds to "a vehicular duct which is attached to a component configuring a vehicle, and forms a part of an air passage for introducing air from an air-conditioning unit to a predetermined position in a passenger compartment" of the Amended Invention.

Further, since "a duct forming member 10" of the Cited Invention "has a generally hat-shaped (or a generally wide C-shaped) cross-section," it corresponds to "a hat-shaped duct portion" of the Amended Invention. Then, since the fact that "an opening side of a duct forming member 10 having a generally hat-shaped (or a generally wide C-shaped) cross-section is assembled and integrated toward a roof trim 1 to form an air-conditioning wind passage" of the Cited Invention means that "the air-conditioning wind passage" is formed by being blocked in the extending direction on "the opening side" with "the roof trim 1", it corresponds to the fact that it is equipped with "a hat-shaped duct portion which is formed to have a hat-shaped cross section opening on one side, and forms a first air passage by being blocked in an extending direction at the opening portion with the component" of the Amended Invention.

Further, with reference to FIG. 2 of Cited Document 1, since "a connecting portion 10a" of the Cited Invention is provided at a part where "the roof trim 1" (the component configuring a vehicle) does not exist, it is recognized as "a cylindrical duct

portion which independently forms an air passage regardless of the component," and "the connecting portion 10a" configures the air passage communicating to "the air-conditioning wind passage."

Therefore, "a connecting portion 10a" of the Cited Invention corresponds to "a cylindrical duct portion which is formed in a cylindrical shape so as to configure a coupling portion on an upstream side of the hat-shaped duct portion with respect to the air-conditioning unit, and independently forms a second air passage communicating with the first air passage regardless of the component" of the Amended Invention.

Then, "the connecting portion 10a" of the Cited Invention is "formed in a cylindrical shape so as to configure a coupling portion (with the pillar duct Dp (another duct)) on an upstream side (that is, a side where the air-conditioner Ac exists) of the duct forming member 10 (hat-shaped duct portion)" with respect to the air-conditioner Ac (air-conditioning unit), and since it is recognized that the coupling is usually made by fitting, it is recognized that "a tip end portion" of the connecting portion 10a "has an opening configuring a fitting portion with the pillar duct Dp (another duct)."

Therefore, the Amended Invention and the Cited Invention have the following corresponding feature and different features.

[Corresponding features]
"A vehicular duct which is attached to a component configuring a vehicle, and forms a part of an air passage for introducing air from an air-conditioning unit to a predetermined position in a passenger compartment, comprising:

a hat-shaped duct portion which is formed to have a hat-shaped cross section opening on one side, and forms a first air passage by being blocked in an extending direction at the opening portion with the component; and

a cylindrical duct portion which is formed in a cylindrical shape so as to configure a coupling portion on an upstream side of the hat-shaped duct portion with respect to the air-conditioning unit, and independently forms a second air passage communicating with the first air passage regardless of the component, wherein

the cylindrical duct portion has an opening configuring a fitting portion with another duct at a tip end portion."

[Different features]
1. In the Amended Invention, the hat-shaped duct portion is formed so as to partially extend the cylindrical duct at an end portion of the cylindrical duct portion, and a series of air passages is configured by the hat-shaped duct portion and the cylindrical duct portion, whereas, in the Cited Invention, this aspect is unclear.
2. In the Amended Invention, the cylindrical duct portion extends so as to project out to an opening portion side of the hat-shaped duct portion, whereas in the Cited Invention, this aspect is unclear.

D. Judgment

The different features will be examined below.

Regarding Different feature 1:

The duct forming member 10 and the connecting portion 10a of the Cited Invention are connected with each other, thereby supplying air-conditioning wind from

the air-conditioner Ac through the pillar duct Dp into the passenger compartment, and thus it is obvious that a series of air passages is configured by the duct forming member 10 and the connecting portion 10a.

Then, it is recognized that when configuring the air passages, a person skilled in the art could have easily conceived to form it so as to partially extend the duct forming member 10 at an end portion of the connecting portion 10a, for example, by using a means such as a well-known blow molding method and the like as described in Cited Document 2 (see 2. (2) B above).

Therefore, it could have been conceived by a person skilled in the art to adopt the constitution of the Amended Invention relating to Different feature 1, based on the Cited Invention and the well-known means.

Regarding Different feature 2:

In light of the working effect of the connecting portion 10a of the Cited Invention for supplying the air-conditioning wind from the air-conditioner Ac through the pillar duct Dp into the duct forming member 10, a projecting direction of the connecting portion 10a is nothing more than a design matter decided by a positional relationship between the duct forming member 10 and the pillar duct Dp.

Then, in light of the description of FIG. 2 of Cited Document 1, the roof trim 1 does not exist on the opening portion side of the duct forming member 10 of the connecting portion 10a, and no disincentive is found to adopt the constitution that the connecting portion 10a extends so as to project out to the opening portion side of the duct forming member 10.

Therefore, it could have been conceived by a person skilled in the art to adopt the constitution of the Amended Invention relating to Different feature 2 for the Cited Invention.

E. Regarding the effect

The effect of the Amended Invention, in view of the descriptions of the specification, cannot be said as a particular effect that a person skilled in the art cannot expect, and it is recognized that it is of a degree that can be predicted by a person skilled in the art from the Cited Invention and the well-known means.

As described above, the Amended Invention could have been easily made by a person ordinarily skilled in the art based on the Cited Invention and the well-known means, and thus the appellant should not be granted a patent for it independently at the time of patent application under the provisions of Article 29(2) of the Patent Act.

3. Closing on the Amendment

As described above, the Amended matter violates the provision of Article 17-2(5) of the Patent Act, and the Amendment shall be dismissed under the provisions of Article 53(1) of the Patent Act applied mutatis mutandis by replacing certain terms pursuant to Article 159(1) of the Patent Act.

Further, even if the Amendment is aimed at the restriction of the scope of claims and an amendment for the purpose of Article 17-2(5)(ii) of the Patent Act, the Amended Invention could have been easily made by a person skilled in the art based on the Cited Invention and the well-known means, and thus the appellant should not be

granted a patent for it independently at the time of patent application under the provisions of Article 29(2) of the Patent Act. Therefore, the Amendment violates the provision of Article 126(7) of the Patent Act which is applied mutatis mutandis in the provisions of Article 17-2(6) of the Patent Act, and shall be dismissed under the provisions of Article 53(1) of the Patent Act applied mutatis mutandis by replacing certain terms pursuant to Article 159(1) of the Patent Act.

Therefore, the decision is made in accordance to the above Conclusion of Decision to Dismiss Amendment.

No. 3 Regarding the invention
1. The Invention

Since the written amendment submitted on October 3, 2017 was dismissed as described above, although the inventions according to Claim 1 to Claim 10 of the present application are specified by the matters described in Claim 1 to Claim 10 of the scope of claims amended by the written amendment submitted on March 1, 2017, the invention according to Claim 1 (hereinafter, referred to as the "Invention") is as follows.

"A vehicular duct which is attached to a component configuring a vehicle, and forms a part of an air passage for introducing air from an air-conditioning unit to a predetermined position in a passenger compartment, comprising:

a hat-shaped duct portion which is formed to have a hat-shaped cross section opening on one side, and forms a first air passage by being blocked in an extending direction at the opening portion with the component; and

a cylindrical duct portion which is formed in a cylindrical shape so as to configure a coupling portion on an upstream side of the hat-shaped duct portion with respect to the air-conditioning unit, and independently forms a second air passage communicating with the first air passage regardless of the component, wherein

the cylindrical duct portion is integrally formed at an end portion of the hat-shaped duct portion, extends so as to project out to an opening portion side of the hat-shaped duct portion, and has an opening configuring a fitting portion with another duct at a tip end portion."

2. Description in Cited Documents

The described matters of Cited Document 1 and Cited Document 2 cited in the reasons for refusal of the examiner's decision are as described in No. 2 [Reason] 2. (2) B.

3. Comparison

In comparison of the Invention and the Cited Invention, there is a relationship described in No. 2 [Reason] 2. (2) B. between them, and thus the Invention and the Cited Invention have the following corresponding features and different features.

[Corresponding features]
"A vehicular duct which is attached to a component configuring a vehicle, and forms a part of an air passage for introducing air from an air-conditioning unit to a predetermined position in a passenger compartment, comprising: a hat-shaped duct portion which is formed to have a hat-shaped cross section opening on one side, and

forms a first air passage by being blocked in an extending direction at the opening portion with the component; and a cylindrical duct portion which is formed in a cylindrical shape so as to configure a coupling portion on an upstream side of the hat-shaped duct portion with respect to the air-conditioning unit, and independently forms a second air passage communicating with the first air passage regardless of the component, wherein the cylindrical duct portion has an opening configuring a fitting portion with another duct."

[Different features]
3. In the Invention, the cylindrical duct portion is integrally formed at an end portion of the hat-shaped duct portion, whereas in the Cited Invention, this aspect is unclear.
4. In the Invention, the cylindrical duct portion extends so as to project out to an opening portion side of the hat-shaped duct portion, whereas in the Cited Invention, this aspect is unclear.

4. Judgment

The different features will be examined below.

Regarding Different feature 3:

Since the duct forming member 10 and the connecting portion 10a of the Cited Invention are connected with each other, thereby supplying air-conditioning wind from the air-conditioner Ac through the pillar duct Dp into the passenger compartment, in view of easiness of production and the like, it can be said that there is motivation to integrally form the two.

Then, integral molding such as blow molding as a specific means for integrally forming a duct, is nothing more than a well-known means (hereinafter, referred to as the "well-known means") as described in Cited Document 2 (see 2. (2) above), for example, so that it is not difficult for a person skilled in the art to integrally form the duct forming member 10 and the connecting portion 10a based on the well-known means.

Therefore, it could have been conceived by a person skilled in the art to adopt the constitution of the Invention relating to Different feature 3 based on the Cited Invention and the well-known means.

Regarding Different feature 4:

Since Different feature 4 between the Invention and the Cited Invention is the same as Different feature 2 between the Amended Invention and the Cited Invention, similarly as examined regarding Different feature 2 in No. 2 [Reason] 2. (2) E., it is easy for a person skilled in the art to adopt the constitution of the Invention relating to Different feature 4 for the Cited Invention.

Then, the effect of the Invention, in view of the descriptions of the specification, cannot be said to have a particular effect that a person skilled in the art cannot expect, and it is recognized that it is of a degree that can be predicted by a person skilled in the art from the Cited Invention and the well-known means.

No. 4 Closing

As described above, the Invention could have been easily made by a person ordinarily skilled in the art based on the Cited Invention and the well-known means, and thus the appellant should not be granted a patent for it under the provisions of Article 29(2) of the Patent Act.

Accordingly, without examining inventions relating to other claims, the present application falls under the provision of Article 49(2) of the same Act, and should be rejected.

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

October 16, 2018

Chief administrative judge: YAMAZAKI, Katsushi
Administrative judge: INOUE, Tetsuo
Administrative judge: FUJIWARA, Naoyoshi