

Trial decision

Invalidation No. 2018-800086

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The case of trial regarding the invalidation of Japanese Patent No. 6253829, entitled "MASSAGE MACHINE" between the parties above has resulted in the following trial decision.

Conclusion

The trial of the case was groundless.

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

Reason

No. 1 Object of the demand

The Demandant demands the decision, "The patent for the inventions recited in Claim 1 to Claim 7 of the scope of claims of Patent No. 6253829 shall be invalidated. The costs in connection with the trial shall be borne by the Demandee".

No. 2 History of the procedures

The application regarding Patent No. 6253829 (Japanese Patent Application No. 2017-95926) is a divisional application filed on May 12, 2017 from Japanese Patent Application No. 2012-124882 filed on May 31, 2012. The establishment of patent right was registered on December 8, 2017. After that, the Demandant FUJIIRYOKI demanded an invalidation trial.

A summary of the history after the demand is shown below.

July 10, 2018	Demand for trial
September 25, 2018	Submission of Written reply
dated October 22, 2018	Notification of matters to be examined
January 4, 2019	Submission of Oral proceedings statement brief (from the Demandant)
January 4, 2019	Submission of Oral proceedings statement brief (from the Demandee)
dated January 11, 2019	Notification of matters to be examined
January 22, 2019	Submission of Oral proceedings statement brief (2) (from the Demandee)
January 22, 2019	Implementation of Oral proceeding
February 5, 2019	Submission of Written statement (from the Demandant)
February 5, 2019	Submission of Written statement (from the Demandee)
February 19, 2019	Submission of Written statement (from the Demandee)

No. 3 The Invention

The inventions according to Claims 1 to 7 of the Patent (hereinafter referred to as "Invention 1" to "Invention 7", respectively) are as follows as specified by the matters recited in Claims 1 to 7 of the Scope of Claims of the Patent. (Descriptions separated by the Demandant are employed, for the sake of convenience, and are hereinafter referred to as "Constituent component A", or the like, in accordance with the symbols added thereto. The constituent components with sub-numbers of the same symbol may be assigned a common name, e.g., Constituent components D-1 to D-3, may be collectively referred to as "Constituent component D".)

"[Claim 1]

C(G): A massage machine including:

A: a backrest part on which a user leans;

B: a seat part on which the user sits; and

D-3: sidewalls integrally formed with

D-1: a first pair of left and right sidewalls arranged in the backrest part, and

D-2: a second pair of left and right sidewalls arranged in the seat part and facing an outside surface of the buttocks to the femoral areas of the user, wherein

E-1: the sidewalls include a first pair of massage units which can press the lumbar area of the user in the horizontal direction, and

E-2: a second pair of massage units which can press the buttocks to the femoral areas of the user in the horizontal direction,

F: the massage machine including a control part which controls operation of the first massage units and the second massage units.

[Claim 2]

H: The massage machine recited in Claim 1, wherein the backrest part and the seat part are integrally formed.

[Claim 3]

I: The massage machine recited in Claim 1 or Claim 2, wherein the control part simultaneously or sequentially operates the first massage units and the second massage units.

[Claim 4]

J: The massage machine recited in any of Claims 1 to 3, wherein the first massage units and the second massage units are air cells.

[Claim 5]

K: The massage machine recited in any of Claims 1 to 4 including a third massage unit which can press back sides of the buttocks or the femoral parts of the user.

[Claim 6]

L: The massage machine recited in Claim 5, wherein the third massage unit is an air cell.

[Claim 7]

M: The massage machine recited in any of Claims 1 to 6, wherein the backrest part includes a mechanical massage unit which massages the back of the user."

No. 4 Means of proof submitted by the parties

1 Demandant

Evidence A No. 1: Copy of Japanese Patent No. 6253829 (hereinafter the description "Copy of" is omitted)

Evidence A No. 2-1: "Kojien" the 7th edition, edited by Izuru SHINMURA, Iwanami Shoten, January 12, 2018, p. 185

Evidence A No. 2-2: "Kojien" the 7th edition, edited by Izuru SHINMURA, Iwanami Shoten, January 12, 2018, p. 1992-p. 1993

Evidence A No. 3: Written amendment submitted on October 25, 2017

Evidence A No. 4: Written opinion submitted on October 25, 2017

Evidence A No. 5: Specification originally attached to the application of the Patent

Evidence A No. 6: Drawings originally attached to the application of the Patent

Evidence A No. 7: Japanese Unexamined Patent Application Publication No. 2009-254408

Evidence A No. 8: Japanese Unexamined Patent Application Publication No. 2005-205234

Hereinafter, the documents submitted as Evidence A No. 7 and Evidence A No. 8 are referred to as "Document A-7" and "Document A-8" using their document numbers.

2 Demande

Evidence B No. 1: "Jitsuyo Nihongo Hyogen Jiten", Encyclopedia of Practical Japanese Expression, the section "integrated ("ittaiteki" in Japanese), weblio dictionary website, URL:

<https://www.weblio.jp/content/%E4%B8%80%E4%BD%93%E7%9A%84?dictCode=J TNHJ>

Evidence B No. 2: "Digital Daijisen", Shogakukan, the section "arrange ('moukeru' in Japanese)", kotobank website, URL:

<https://kotobank.jp/word/%E8%A8%AD%E3%81%91%E3%82%8B-644870>

Evidence B No. 3: "Daijirin the 3rd edition", Sanseido, the section 'arrange ("moukeru' in Japanese)", kotobank website, URL:

<https://kotobank.jp/word/%E8%A8%AD%E3%81%91%E3%82%8B-644870>

Evidence B No. 4: "Patent terminology glossary-synonym index/example with usage", edited by Committee of Patent Terminology Glossary, 1st edition, Nikkan Kogyo Shinbun, April 18, 1997, p. 136

No. 5 Reasons for invalidation alleged by the Demandant

1 Reason for invalidation 1 (violation of requirements for clarity)

The patent regarding Inventions 1 to 7, which was granted for a patent application that does not satisfy the requirements stipulated in Article 36(6)(ii) of the Patent Act, falls under Article 123(1)(iv) of the Patent Act and should be invalidated.

2 Reason for invalidation 2-1 (lack of novelty (1))

Inventions 1 to 7 are inventions described in Document A-7. Thus, the demandee should not be granted a patent for the inventions under the provisions of Article 29(1)(iii) of the Patent Act.

Therefore, the patent regarding Inventions 1 to 7 falls under Article 123(1)(ii) of the Patent Act and should be invalidated.

3 Reason for invalidation 2-2 (lack of novelty (2))

Inventions 1 to 7 are inventions described in the Document A-8. Thus, the Demandee should not be granted a patent for the invention under the provisions of Article 29(1)(iii) of the Patent Act.

Therefore, the patent regarding Inventions 1 to 7 falls under Article 123(1)(ii) of the Patent Act and should be invalidated.

No. 6 Summary of the Demandant's allegation

1 Reasons for invalidation 1 (violation of requirements for clarity) (see Written demand for trial p. 11-p. 12 "(4-1) Inaccuracies in description")

Constituent component D specifies "including sidewalls integrally formed with" (Constituent component D-3) the "first pair of left and right sidewalls arranged in the backrest part" (Constituent component D-1) and the "second pair of left and right sidewalls arranged in the seat part and facing an outside surface of the buttocks to the femoral areas of the user" (Constituent component D-2).

In the specification, the word "integrally" ("ittaiteki" in Japanese) in Constituent component D-3 is formed by adding a suffix "teki" to the word "ittai". Here, the word "ittai" means "one body, the same body, inseparable state, same kind" (Evidence A No. 2-1), and the word "teki" means "having the nature or indicating the state by attachment to a noun or a phrase" (Evidence A No. 2-2). Despite the above meanings, it is unclear to which specific state the "first sidewalls" and the "second sidewalls" move or what specific kind of manufacturing method is employed in order to achieve the "sidewalls" which are "integrally formed". The specification also does not describe the meaning of the words "integrally formed".

The words "integrally formed" were added by the amendment with the written amendment (Evidence A No. 3) submitted on October 25, 2017. According to the written opinion submitted on the same day (Evidence A No. 4), grounds for the amendment are paragraphs [0016], [0018] of the specification originally attached to the application of the Patent (Evidence A No. 5) and [FIG.1] to [FIG. 4] of the drawings originally attached to the application of the Patent (Evidence A No. 6). In light of the above grounds, the sidewall (4a) indicates the "first sidewall", and the side wall (3a) indicates the "second sidewall". However, it is unclear to which specific state the sidewalls (4a, 3a) move or what specific kind of manufacturing method is employed in order to achieve the "sidewalls" which are "integrally formed", because there is no description about them. There is also no description about a member which represents the whole of integrated sidewalls (4a) and (3a).

2 Reason for invalidation 2-1 (lack of novelty (1)) (see Written demand for trial p. 13-p. 20 "(4-2) Lack of novelty (1)")

Document A-7 discloses all of Constituent components A to G of Invention 1. Thus, Invention 1 is an invention described in Document A-7.

Document A-7 also discloses Constituent components H to M corresponding to Inventions 2 to 7, respectively. Thus, Inventions 2 to 7 are inventions described in Document A-7.

3 Reason for invalidation 2-2 (lack of novelty (2)) (see Written demand for trial p. 20-p. 30 "(4-3) Lack of novelty (2)")

Document A-8 discloses all of Constituent components A to G of Invention 1. Thus, Invention 1 is the invention described in Document A-8.

Document A-8 also discloses Constituent components H to M corresponding to Inventions 2 to 7, respectively. Thus, Inventions 2 to 7 are inventions described in Document A-8.

No. 7 Summary of the Demandee's allegation

1 Arguments against Reason for invalidation 1 (Violation of requirements for clarity) (see Written reply p. 4-p. 12 "2 Regarding (4-1) Inaccuracies in description")

Regarding the word "integrally" in Constituent component D-3, the word "integrally" ("ittaiteki" in Japanese) means "a state where a plurality of objects are unified and inseparable, an integrated state" (Evidence B No. 1).

The massage machine in Invention 1 includes a backrest part and a seat part. A section formed in the backrest part is conveniently called a "first sidewall" and a section formed in the seat part is conveniently called a "second sidewall". Whether the "first sidewall" and the "second sidewall" are separate parts or an integrated member is of no consequence. The section conveniently called "first sidewall" and the section conveniently called "second sidewall" are only required to have a section which can be recognized to constitute one sidewall with respect to the backrest part and the seat part. Thus, from the description of Constituent component D it is clear to which specific state the first sidewall and the second sidewall move to in order to constitute a sidewall.

According to [0016], [0017], [0022], and [0023] of the specification, and [FIG. 1], it is clear that the seat part (3) and the backrest part (4) are integrally formed, and that an integrated sidewall corresponding to the seat part (3) and the backrest part (4) is formed. The first sidewall (sidewall 4a) and the second sidewall (sidewall 3a) are only the names of sections in the integrated sidewall. Thus, Constituent component D is clear even if the description of the specification is taken into consideration.

2 Arguments against Reason for invalidation 2-1 (lack of novelty (1)) (see Written reply p. 13-p. 22 "3 Regarding (4-2) Lack of novelty (1)")

Document A-7 does not disclose at least Constituent components D-1 to D-3, E-1, and E-2 of Constituent components A to G of Invention 1. Thus, Invention 1 is not the invention described in Document A-7.

Given that Invention 1 is not the invention described in Document A-7, Inventions 2 to 7 are also not the invention described in Document A-7.

3 Arguments against Reason for invalidation 2-2 (lack of novelty (2)) (see Written reply p. 23-p. 32 "4 Regarding (4-3) Lack of novelty (2)")

Document A-8 does not disclose at least Constituent components D-1 to D-3, E-1, and E-2 of Constituent components A to G of Invention 1. Thus, Invention 1 is not the invention described in Document A-8.

Given that Invention 1 is not the invention described in Document A-8, Inventions 2 to 7 are also not the invention described in Document A-8.

No. 8 Judgment by the body

1 Regarding Reason for invalidation 1 (Violation of requirements for clarity)

(1) Regarding Constituent components D-1 to D-3

A The Demandant alleges, regarding Constituent component D which is the matter specifying the invention of Invention 1, that the extension of Constituent component D is unclear since it is unclear to which specific state the "first sidewall" (Constituent component D-1) and the "second sidewall" (Constituent component D-2) move or what specific kind of manufacturing method is employed in order to achieve the "sidewalls integrally formed" (Constituent component D-3).

B First, the word "integrally" in Constituent component D-3 is examined.

In consideration that the word "integrally" ("ittaiteki" in Japanese) is a combination of "ittai" and "teki" and in view of the meanings thereof grasped based on the evidences (Evidence A No. 2-1, Evidence A No. 2-2, and Evidence B No. 1), it can be interpreted that "ittaiteki" means a unified and inseparable state.

Accordingly, it is obvious that the description in Invention 1, "integrally formed with first sidewalls and ... a second sidewalls", means that the "first sidewall" and the "second sidewall" are unified and inseparable.

C In the embodiment of the invention disclosed in the Patent specification and drawings (specifically, FIGS. 1 to 4), there is no break between the "first sidewall" and the "second sidewall". They are obviously unified and inseparable. There is no description about the "first sidewall" and the "second sidewall" which are not unified or

separated. Thus, it can be said that the interpretation indicated in above B is consistent with the description in the Patent specification and the drawings, and reasonable.

D Next, the Demandant's allegation is examined.

E The Demandant's allegation is as follows: "The Invention is aimed at holding the body of a user or applying favorable and various massage effects to the lumbar area and buttocks or femoral areas of a user For implementing the above problem, only a configuration of pressing the lumbar area, buttocks, or femoral areas of the user in a horizontal direction is required in the first massage unit and the second massage unit arranged on the side walls, regardless of how the first sidewall and the second sidewall are connected to each other. From this point of view, the reason for particularly limiting the connection between the first sidewall and the second sidewall cannot be found" (see Oral proceeding statement brief of the Demandant p. 5-p. 6 2 (2)).

The Demandant's allegation is as follows: "... is summarized as arranging a massage unit in a position of a sidewall where the lumbar area, buttocks, or femoral area of a user can be pressed in a horizontal direction. Rearrangement of the members or operations of the other member when some of the members are rearranged has no relation with the summary of the Invention. ... If the massage unit is arranged in a position of the sidewall, there is no reason for exclusion from the summary of the Invention regardless of whether some members are rearranged due to reclining, or the like" (see Written statement of the Demandant dated February 5, 2019 p. 3 No. 1 1).

F However, as indicated in above B, Constituent component D is obvious. The Demandant's allegation that any type of first sidewall and second sidewall is applicable so long as it has a configuration of simply pressing the lumbar area, buttocks, or femoral areas is obviously groundless.

G The Demandant's allegation is as follows: "... the following descriptions are included in the detailed description of invention (A-1).

[0086] The massage machine of this invention is not limited to the embodiments shown in the figures and may be other embodiments within the scope of the invention. For example, in the locking mechanism part, a biasing member to be attached between the base 7 and the first link part 42 (link member 40) and formed of a spring (extension spring) or a damper which biases the chair body 2 to be erected may be arranged in place of the locking driving part 31. In this case, the biasing force of the biasing member can

maintain the chair body 2 in an erected state. When a user seated on the seat part 3 leans on the backrest part 4, the backrest part 4 can be reclined. When the user reduces a leaning force on the backrest part 4, the reclined backrest part 4 can be restored to the erected state by a biasing force of the biasing member.

... When this example is employed in the Invention, the backrest part 4 generates a relative change in positional relationship with the seat part 3, depending on whether the backrest part 4 is erected or reclined. The first sidewall arranged in the backrest part and the second sidewall arranged in the seat part also generate relative positional change, accordingly. Therefore, there is no reason for excluding configurations, regardless of whether a relative positional change is generated between the first sidewall and the second sidewall, from the summary of the Invention ..." (see Written statement of the Demandant dated February 5, 2019 p. 3-p. 4 No. 1 2(1)).

H However, the Patent specification [0086] only discloses that the chair body 2 (including the seat part 3, the backrest part 4, and the footrest 5) can be moved forward/backward only with a leaning force of the user without using a driving source, by replacing the locking driving part 31 with a biasing member, and does not describe including the "first sidewall" and the "second sidewall" which are not unified and inseparable. Thus, the above Demandant's allegation is groundless.

I The Demandant's allegation is as follows: "The configuration where a relative positional change may be generated between the first sidewall and the second sidewall, which is alleged to be excluded from the Invention by the Demande, becomes a problem only when the massage machine is reclined or locked. However, reclining or locking of the massage machine is a configuration which is specified first in Claim 8 described below. ...

[Claim 8] The massage machine described in any of Claims 1 to 7, wherein a base part is arranged below the backrest part and the seat part, and the backrest part and/or the seat part can be moved forward/backward with respect to the base part.

... Claim 8 includes, as is obvious from the fact that the forward/backward movement of the backrest part and the seat part is connected by 'and/or', a configuration where only a backrest part or a seat part moves forward/backward. Thus, the Invention positively and clearly indicates, even in Claim 8 which is the last dependent claim, inclusion of a configuration where a relative change in positional relationship may be generated between the first sidewall and the second sidewall arranged in the backrest part

and the seat part because only one of the backrest part and the seat part moves forward/backward.

Therefore, regarding the configurations of Claims 1 to 7, there is no reason for excluding configurations, regardless of whether a relative positional change is generated between the first sidewall and the second sidewall, from the summary of the Invention ..." (see Written statement of the Demandant dated February 5, 2019 p. 5 No. 1 2 (2)).

J However, Claim 8 only describes that the backrest part or the seat part moves forward/backward with respect to the base part, and does not specify that the "first sidewall" and the "second sidewall" are not unified or that the "first sidewall" and the "second sidewall" are separable. Thus, the above Demandant's allegation is groundless.

K The Demandant's allegation is as follows: "Regarding Claim 2, as the Demandee alleges, if it is recognized that a configuration where no relative positional change is generated between the seat part and the backrest part is specified, ... Claim 1 is considered to include a configuration where a relative positional change is generated, and as a result, Claim 1 is considered to include a configuration where a relative positional change is generated between the first sidewall and the second sidewall ..." (see Written statement of the Demandant dated February 5, 2019 p. 6-p. 7 No. 1 2 (3)).

L However, regardless of whether the "seat part 3" and the "backrest part 4" of Invention 1 relatively move or not, as indicated in above B, it is specified that the "first sidewall" and the "second sidewall" are unified and inseparable. Thus, the above Demandant's allegation is groundless.

(2) Summary of Reason for invalidation 1

As described above, the description in Constituent components D-1 to D-3 is obvious. Thus, it cannot be said that Inventions 1 to 7 are unclear for the reason that the constituent components are included.

Therefore, the patent regarding Inventions 1 to 7 was not based on a patent application that does not satisfy the requirements stipulated in Article 36(6)(ii) of the Patent Act, and cannot be invalidated on the basis of the Reason for invalidation 1 alleged by the Demandant.

2 Regarding Reason for invalidation 2-1 (lack of novelty (1))

(1) Description of Document A-7 and Invention described in Document A-7

Document A-7 describes the following matters with drawings (the underlines were added by the body).

A "[0017] The chair-type massage machine regarding the embodiment of the invention is described in detail below, with reference to the drawings. FIG. 1 is a perspective view illustrating the overall configuration of the chair-type massage machine regarding the embodiment of the invention. FIG. 2 is a front view of the chair-type massage machine. FIG. 3 is a plan view of the chair-type massage machine. As shown in FIG. 1, the chair-type massage machine 1 mainly includes a seat part 2 on which a treated person sits, a backrest part 3 supporting an upper body of the treated person from the rear, armrests 4 supporting arm parts of the treated person, and a footrest 5 supporting leg parts of the treated person. The concept of the direction used below is coincident with the concept of the direction as viewed from the treated person seated on the seat part 2. Other cases are explained as necessary."

B "[0023] On the left and right sides of the seat part 2 and the backrest part 3, the armrests 4 supporting arm parts of the treated person seated on the seat part 2 are arranged so as to be extended forward along the seat part 2 from the side positions of the backrest part 3. The armrest 4 includes an upper armrest part 20 and a lower side cover 21. The armrest part 20 is formed in a substantially cylindrical shape, and is extended from a position, which is slightly above the central part in a vertical direction of the erected backrest part 3 and corresponds to the side of a shoulder of the treated person whose upper body is supported by the backrest part 3, downward and forward, up to the vicinity of a front end of the seat part 2. In an inside part from a rear end of the armrest part 20 up to the vicinity of the central part in a longitudinal direction, an opening 20a is formed through which an arm part of the treated person can be inserted into/removed from the armrest part 20. Therefore, the arm part of the treated person inserted into the armrest part 20 through the opening 20a can be supported, fingertips can be supported from substantially the whole circumference, and a part from the vicinity of the wrist up to the upper arm or the shoulder via the elbow can be supported, from below, outside, and above, respectively."

C "[0024] The treated person seated on the seat part 2 is supported by the chair-type massage machine 1 configured as above, as if the entire body is wrapped from the back and left and right side faces. The chair-type massage machine 1 includes various operation means for treating the treated person. A plurality of air cells 7 and vibrators

8 are arranged in appropriate parts of the chair-type massage machine 1, which presses the treated person by expansion and contraction. The backrest part 3 includes a mechanical massage mechanism 9, which can press the back in the upper body of the treated person. In addition, the seat part 2 can be moved to the left and right, the backrest part 3 can be erected and reclined, and the footrest 5 can be moved upward/downward and extended/contracted. The operation means of the chair-type massage machine 1 is described below."

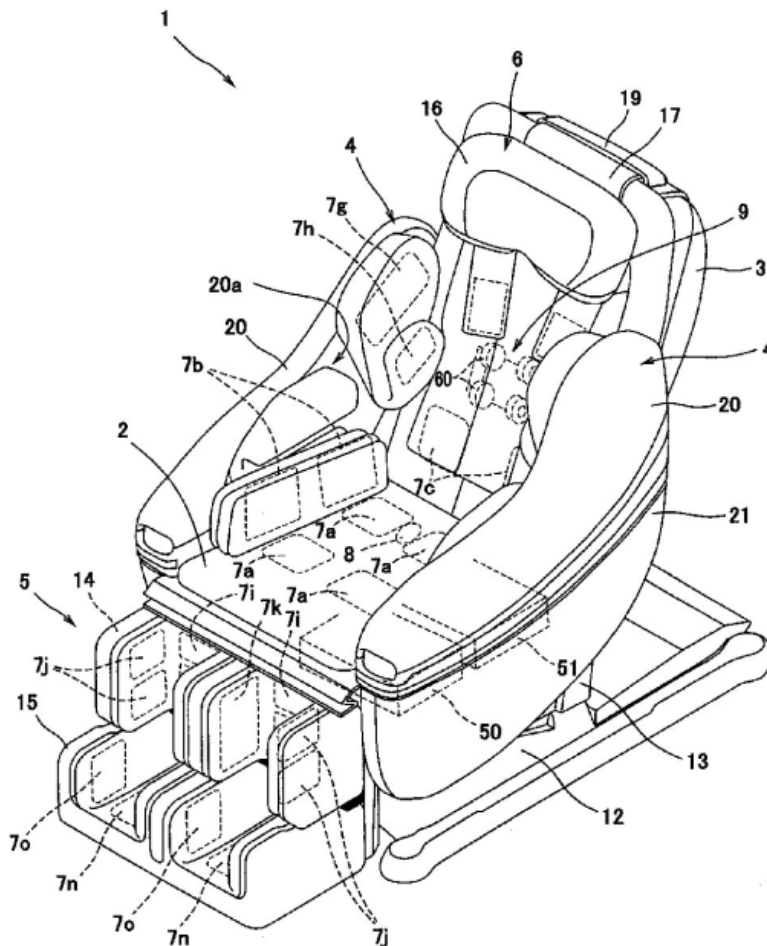
D "[0026] Above both side parts of the seat part 2, front and rear air cells 7b, 7b are arranged. The rear air cell 7b is formed by layering three synthetic-resin cells. The front air cell 7b is formed by layering three synthetic-resin cells and adding one fabric cell on the surface. They are expanded toward the center in a horizontal direction by air supply. The air cells 7b can press a series of sections from the side part of the buttocks (or lumbar area) of the treated person seated on the seat part 2 up to the front side part of the femoral areas, toward the inside from the outside, by expansion and contraction, and can hold the buttocks (or lumbar area) from the left and right sides by simultaneously expanding the left and right air cells 7b."

E "[0037] FIG. 5 is a block diagram illustrating a configuration of the chair-type massage machine 1. As shown in FIG. 5, each of the air cells 7a-7s described above is connected to an air intake/discharge device 51 formed of pumps and valves via flexible hollow air tubes. The air intake/discharge device 51 is housed below the seat part 2, and driven by an instruction from a control part 50 housed below the seat part 2, to independently supply/discharge air to/from each of the air cells 7a-7s. When the air intake/discharge device 51 is driven by an instruction from the control part 50 to expand or contract the air cells 7a-7s, every part of the body of the treated person can be pressed for treatment, and a shoulder part (with a pillow 7r), arm parts, buttocks (or lumbar parts), lower leg parts, and feet can be held."

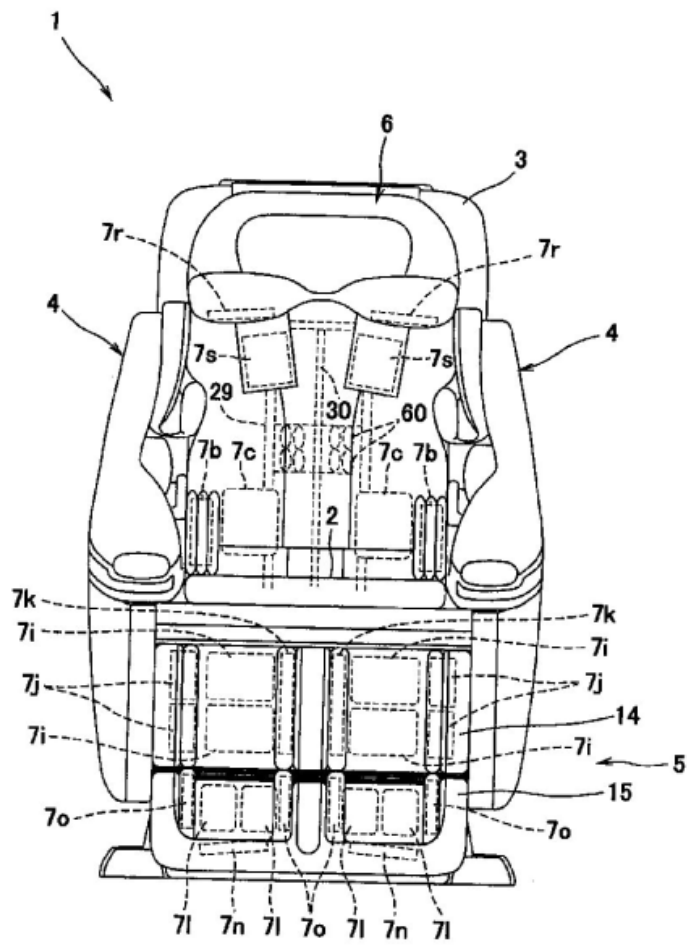
F "[0047] [Reclining mechanism of the backrest part and the footrest] FIG. 7 is a side view illustrating erecting/reclining operation of the backrest part 3 and upward/downward motion and extension/contraction motion of the footrest 5. In (a), the backrest part 3 is erected and the contracted footrest 5 is lowered. In (b), the backrest part 3 is inclined backward and the extended footrest 5 is raised."

G "[0048] As shown in FIG. 7 (a), the back frame 29 in the backrest part 3 is supported by a rear part of the seat frame 13 via a horizontal axis 36 in a position slightly above a lower end of the back frame 29. In the lower end of the back frame 29, one end of a direct-acting actuator 37 including air cylinders or the like is pivotally supported. The other end of the actuator 37 is pivotally supported in a front part of the seat frame 13. Accordingly, when the actuator 37 extends and contracts, the backrest part 3, with the back frame 29, can be erected (see FIG 7 (a)) and inclined backward (see FIG. 7 (b)) so that an upper part of the backrest part 3 may rotate forward/backward around the axis 36."

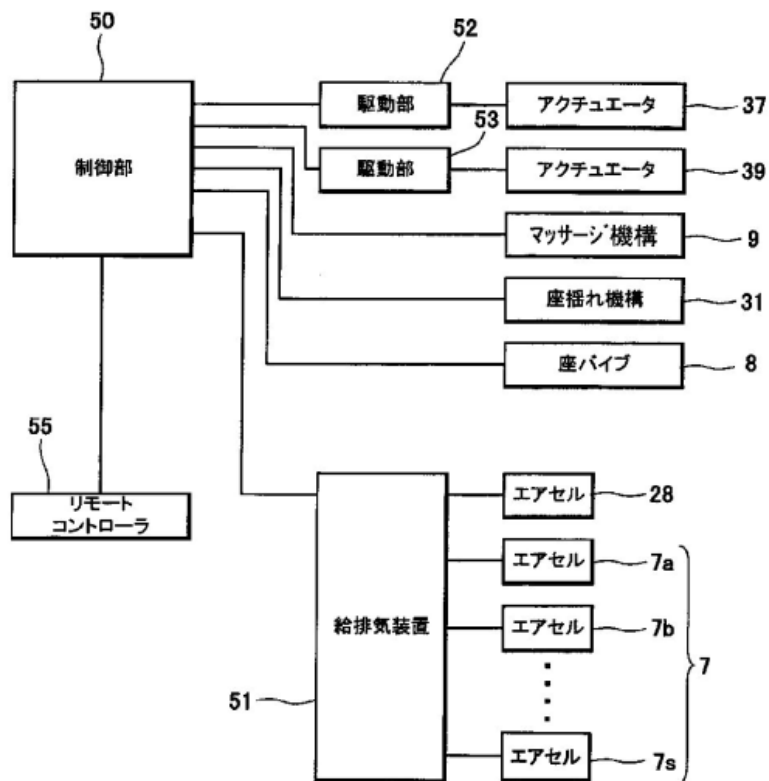
H FIG. 1



I FIG. 2

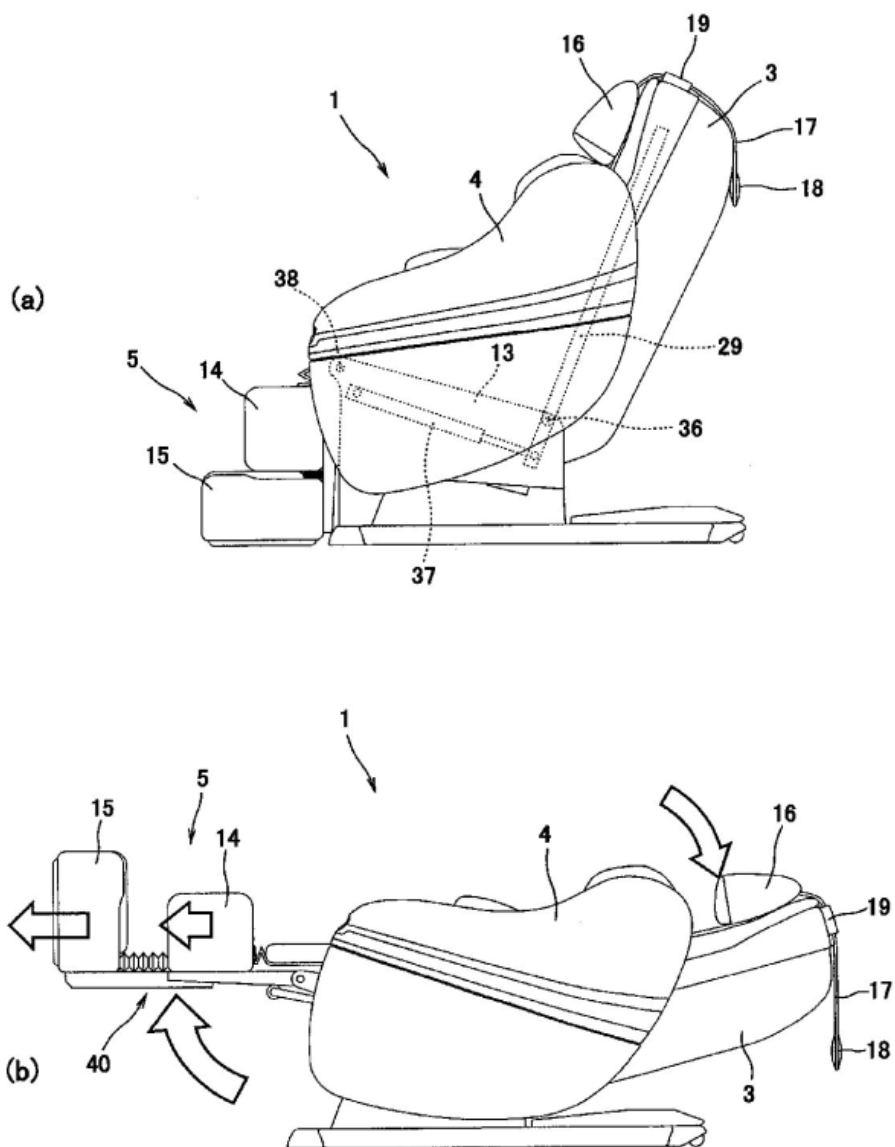


J FIG. 5



制御部	Control part
駆動部	Driving part
アクチュエータ	Actuator
マッサージ機構	Massage mechanism
座揺れ機構	Seat vibration mechanism
座パイプ	Seat vibrator
リモートコントローラ	Remote controller
給排気装置	Air intake/discharge device
エアセル	Air cell

K FIG. 7



L According to the described matter in above D, the rear air cell 7b and the front air cell 7b are arranged above both side parts of the seat part 2. The air cells 7b expand toward the center in the horizontal direction, thereby pressing the treated person inward from the outside. Thus, it can be recognized that the air cells 7b can press horizontally.

M According to the described matter in above E, the air intake/discharge device 5 is driven in response to an instruction from the control part 50 to supply/discharge air to/from each of the air cells 7a-7s. Thus, it can be recognized that the control part 50 controls operation of the air cells 7b.

N On the basis of the descriptions in the described matters in above C, F, and G, it can be said that FIG. 7 in above K shows that a relative displacement is generated between the backrest part 3, the seat part 2, and the armrest 4.

O Invention A-7

Summarizing the described matters in above A to K based on the common general technical knowledge together with the recognized matters in above L to N, it can be recognized that Document A-7 describes the following invention (hereinafter referred to as "Invention A-7").

"A chair-type massage machine 1 including

a backrest part 3 supporting an upper body of a treated person from the rear, and a seat part 2 on which the treated person sits,

the chair-type massage machine 1 including, on the left and right sides of the seat part 2 and the backrest part 3, armrests 4 arranged so as to be extended forward along the seat part 2 from the side positions of the backrest part 3, wherein,

above both side parts of the seat part 2, front and rear air cells 7b, 7b are arranged which can press a series of sections from the side part of the buttocks or lumbar area of the treated person up to the front side part of the femoral areas, in the horizontal direction,

the chair-type massage machine 1 further including a control part 50 for controlling operation of the air cells 7b."

(2) Regarding Invention 1

(2-1) Comparison

Invention 1 and Invention A-7 are compared as follows.

The "treated person" in Invention A-7 corresponds to the "user" in Invention 1. The "seat part 2" corresponds to the "seat part", and the "chair-type massage machine 1" corresponds to the "massage machine".

The "backrest part 3" in Invention A-7 supports an upper body of the user from the rear; i.e., the upper body of the user is supported from the rear. Thus, it can be said that the backrest part 3 is a part on which a user leans, and corresponds to the "backrest part" in Invention 1.

The "rear air cell 7b" and the "front air cell 7b" in Invention A-7 are paired to press the user in the horizontal direction. Thus, they have the same function as the "first massage unit" and the "second massage unit" in Invention 1.

It can be said that the "control part 50", which controls operation of a member which can press the user in the horizontal direction, corresponds to the "control part" in Invention 1.

Therefore, Invention 1 and Invention A-7 are identical in the following point.

<Corresponding Feature>

"A massage machine including:

- a backrest part on which a user leans;

- a seat part on which the user sits,

- the massage machine including a first pair of massage units which can press a user in a horizontal direction, and

- a second pair of massage units which can press the user in the horizontal direction,

- the massage machine further including a control part which controls operation of the first massage units and the second massage units."

Invention 1 and Invention A-7 are different in the following points.

<Different Feature 1>

Invention 1 includes sidewalls integrally formed with a first pair of left and right sidewalls arranged in the backrest part, and a second pair of left and right sidewalls arranged in the seat part and facing an outside surface of the buttocks to the femoral areas of the user. Invention A-7 includes armrests arranged on the left and right sides of the seat part and the backrest part, so as to be extended forward along the seat part from the side positions of the backrest part.

<Different Feature 2>

In Invention 1, the sidewalls include a first pair of massage units which can press the lumbar area of the user in the horizontal direction and a second pair of massage units which can press the buttocks to the femoral areas of the user in the horizontal direction. In Invention A-7, above both side parts of the seat part, rear and front air cells 7b, 7b are arranged which can press a series of sections from the side part of the buttocks or lumbar area of the treated person up to the front side part of the femoral areas, in the horizontal direction.

(2-2) Examination on Different Features

Whether or not the different features are substantial different features is examined below.

(A) Regarding Different Feature 1

A The "first sidewall" in Invention 1 is "arranged in the backrest part", and the "second sidewall" is "arranged in the seat part".

B Considering that a case particle "ni" ("in" in English) means "indicating a place or direction where a motion or an effect exists" (Kojien 6th edition, Iwanami shoten), the "backrest part" and the "seat part" are clearly indicated. Thus, it is natural to interpret that the first and second sidewalls are attached to the backrest part per se and the seat part per se, respectively. It doesn't mean that the first sidewall and the second sidewall are spaced toward a certain direction from the backrest part and the seat part.

C The armrests 4 in Invention A-7 are "arranged so as to be extended forward along the seat part 2 from the side positions of the backrest part 3" (see above (1) B), and relatively move with respect to the backrest part and the seat part (see the recognized matter in above (1) N). In light of the above matters, although the armrests 4 are located at the side of the backrest part and the seat part, it cannot be said that they are attached to the backrest part per se and the set part per se, respectively. The armrests 4 in Invention A-7 include no part corresponding to the "first sidewall" and the "second sidewall" in Invention 1. Thus, it cannot be said that the armrests 4 in Invention A-7 correspond to the "sidewalls" in Invention 1.

D The Demandant's allegation is as follows: "According to the description in Constituent components D1 and D2, the first sidewall is only required to be located at the side of the back rest part and the second sidewall is only required to be located at the side of the seat part, and the backrest part and the seat part are separately arranged. Thus, an interpretation that the sidewalls may not be arranged in the backrest part and the seat part does not exist. ... Constituent components D1 and D2 specify a configuration where walls, which are called sidewalls, are arranged at the side of the backrest part and the seat part, and a state of the side walls when the backrest part is inclined backward is irrelevant" (see Oral proceedings statement brief of the Demandant p. 6-p. 7 2 (1)).

E As indicated in above B, in Invention 1, the first sidewall and the second sidewall are attached to the backrest part per se and the seat part per se, respectively. As indicated in above C, in Invention A-7, it cannot be said that the armrests 4 are attached to the backrest part per se and the seat part per se, respectively. Thus, the above Demandant's allegation cannot be accepted.

F As described above, Invention 1 and Invention A-7 are substantially different in the above Different Feature 1.

(B) Regarding Different Feature 2

A The first massage unit and the second massage unit in Invention 1 and the rear and front air cells in Invention A-7 are identical in forming two pairs to press from the lumbar area to the femoral areas of a user in a horizontal direction. The locations of the massage units and sections of the user to be pressed by them are examined below.

(B-1) Regarding the locations where the massage units are arranged

B The "massage units" in Invention 1 are "included ... in the sidewalls".

C As with above (A) B, the location "sidewall" is clearly indicated. Thus, it is natural to interpret that the massage units are mounted on the sidewalls per se.

D The air cells in Invention A-7 are arranged above the seat part as indicated in the description, "Above both side parts of the seat part 2, front and rear air cells 7b, 7b are arranged" (see above (1) D).

As indicated in (A), Invention A-7 does not include a configuration corresponding to the "sidewalls integrally formed with ... first sidewalls arranged in the backrest part, and ... second sidewalls arranged in the seat part" in Invention A-7. Thus, it cannot be said that the air cells 7b, 7b in Invention A-7 correspond to the "massage units" in Invention 1.

E The Demandant's allegation is as follows: "The locations of the air cells 7b, 7b in Invention A-7, in comparison between the Invention and Invention A-7, should be examined in a relationship with the armrests 4, and an argument on a relationship with the seat part 2 is only shifting the focus improperly.

According to the fact that the air cells 7b, 7b in Invention A-7 are members for treating the lumbar area, buttocks, and femoral areas of a user in a horizontal direction

(Paragraph 0026), the air cells are to be located inside (on the side of the user) the armrests 4, and in fact, drawings show the arrangement (FIG. 1 to FIG. 3).

Therefore, regardless of whether the Demande's allegation is acceptable or not, it is recognized that the air cells 7b, 7b are arranged in the armrests 4 which correspond to the first sidewall and the second sidewall in the Invention" (see Oral proceedings statement brief of the Demandant p.8-p.9 2 (3)).

F However, although the air cells 7b, 7b are located inside the armrests 4, there is no ground to recognize that the air cells are mounted on the armrests 4 per se.

Even if the air cells 7b, 7b are mounted on the armrests 4 per se in Invention A-7, as indicated in above (A) C, it cannot be said that the armrests 4 correspond to the "sidewalls" in Invention 1. Thus, it cannot be said that the air cells 7b, 7b in Invention A-7 correspond to the "massage units" in Invention 1.

G Accordingly, the above Demandant's allegation is groundless, and cannot be accepted.

(B-2) Regarding the sections of the user pressed by the massage units

H The "first massage unit" in Invention 1 presses "the lumbar area", and the "second massage unit" presses "the buttocks to the femoral areas".

I The conjunction "naisi" in Japanese means (a) "a word indicating the middle with upper and lower limits of the number, rank, or kind. from ... to ..." (Kojien 6th edition, Iwanami shoten), and (b) "or, alternatively" (Kojien 6th edition, Iwanami shoten). There is a difference in specification of the sections to be pressed by the second massage unit depending on which of the meanings (a) and (b) is employed. This point is also examined for confirmation.

J The patent specification ([0018]) describes that the section to be massaged by the air cell 10 (second massage unit) is "the buttocks to ('naisi' in Japanese) the femoral area". According to above I, the air cell 10 can be recognized as massaging from the buttocks to the femoral area or recognized as massaging the buttocks or the femoral area.

K The Patent specification ([0065], [0066]) describes that the section to be massaged by the massage unit 9 is "the buttocks or the femoral area". In this case, it can be said that the word "or" is used when a positional relation (the section to be treated by

the massage unit 9) between the massage unit 9 and a user is changed on the assumption that the massage unit 9 is movable.

L It is clear that massaging "the buttocks or the femoral areas" by the movable massage unit 9 and massaging "the buttocks to the femoral areas" by the unmovable air cell 10 are distinguished from each other with different technical concepts. It would be reasonable to interpret the word "naisi" in above I not as (b) "or, alternatively" but as (a) "from ... to ...".

M Accordingly, it can be said that the "first massage unit" in Invention 1 presses a section of the "lumbar area" and the "second massage unit" presses a section from "the buttocks" to "the femoral areas".

N The air cells 7b, 7b in Invention A-7 "can press a series of sections from the side part of the buttocks (or lumbar area) of the treated person seated on the seat part 2 up to the front side part of the femoral areas, toward the inside from the outside" (see above (1) D). In light of the above description, it can be recognized that the whole of air cells press "the lumbar area", "the buttocks", and "the femoral areas", while there is no concrete description about the section to be pressed among "the lumbar area", "the buttocks" and "the femoral areas". There is also no description or indication that one air cell presses "the lumbar area" and the other air cell presses from "the buttocks" to "the femoral areas".

Accordingly, it cannot be said that the sections to be pressed by the first massage unit and the second massage unit in Invention 1 are the same as the sections to be pressed by the air cells 7b, 7b in Invention A-7.

O The Demandant's allegation is as follows: "The constituent component E of the Invention specifies a technical idea that the first massage unit and the second massage unit press a series of sections from the lumbar area to the femoral areas, and there is no particular technical significance in specifying in detail the correspondence between individual sections pressed by each of the massage units. The air cells 7b, 7b in Invention A-7 are also configured to press a series of sections from the lumbar area to the femoral areas with the front and rear air cells 7b, 7b (0026), which discloses the same technical idea as the Invention. Therefore, it is obvious that the rear air cell 7b and the front air cell 7b in Invention A-7 correspond to the first massage unit and the second massage unit in the Invention, respectively.

For confirmation, amplifying concretely based on Constituent component E of the Invention, ... the description does not exclude a configuration of massaging the buttocks in the first massage unit, or specify that the buttocks must be massaged in the second massage unit. ... The rear air cell 7b in Invention A-7, which includes a configuration of pressing the lumbar area, corresponds to the first massage unit in the Invention, the front air cell 7b in Invention B-6, which includes a configuration of pressing the femoral areas at least, corresponds to the second massage unit in the Invention.

The air cells 7b, 7b in Invention A-7, which are configured to press a series of sections from the buttocks or the lumbar area to the front side part of the femoral areas in a horizontal direction (0026), ... may press the lumbar area with the rear air cell 7b and press from the buttocks to the femoral areas with the front air cell 7b. Therefore, even if it is considered that the buttocks are included in the sections to be pressed by the second massage unit in the Invention, the front air cell 7b in Invention A-7, which includes a configuration of pressing from the buttocks to the femoral areas, corresponds to the second massage unit in the Invention." (See Oral proceedings statement brief of the Demandant p. 7-p. 8 2(2). The description "Invention B-6" is an error and was corrected to "Invention A-7" in the Oral proceeding on January 22, 2019.)

The Demandant also alleges as follows: "... In Invention A-7, the sections to be treated by the rear air cell 7b include the lumbar area, and the sections to be treated by the front air cell 7b include the buttocks and the femoral areas ..." (see Written statement of the Demandant dated February 5, 2019 p. 9 No. 3).

P However, the Demandant's allegation that there is no technical significance in specifying the sections to be pressed by the massage units although Invention 1 specifies that the "first massage unit" presses "the lumbar area" and the "second massage unit" presses "the buttocks to the femoral areas", is not based on the matters specifying the invention of Invention 1. Other than the Demandant's allegation, there is no ground for the allegation that the air cells in Invention A-7 obviously correspond to the massage units in Invention 1.

The Demandant assumes that the first massage unit in Invention 1 does not exclude pressing the buttocks or the second massage unit does not necessarily press the buttocks. However, as indicated in above H to M, this assumption is groundless.

Although the Demandant alleges, regarding the air cells in Invention A-7, that the rear air cell may press the lumbar area and the front air cell may press from the

buttocks to the femoral area, there is no description or indication in Document A-7 for clearly specifying the sections to be pressed by each of the air cells.

Q Accordingly, the above Demandant's allegation is groundless, and the assumption thereof is groundless. Thus, the Demandant's allegation cannot be accepted.

R As described above, Invention 1 and Invention A-7 are substantially different in Different Feature 2.

(2-3) Summary of Invention 1

As described above, Different Features 1 and 2 are substantially different features. Thus, Invention 1 is not the invention described in Document A-7.

Therefore, the patent regarding Invention 1 does not violate the provisions of Article 29(1)(iii) of the Patent Act, and cannot be invalidated by the Reason for invalidation 2-1 (lack of novelty (1)) alleged by the Demandant.

(3) Regarding Inventions 2 to 7

(3-1) Comparison

Inventions 2 to 7, which directly or indirectly refer to Invention 1, include all of Constituent components A to G of Invention 1, and include Constituent components H to M, respectively.

Comparing Inventions 2 to 7 with Invention A-7, at least the above Different Features 1 and 2 are included.

(3-2) Summary of Inventions 2 to 7

As indicated in (2), Invention 1 is not the invention described in Document A-7.

Accordingly, Inventions 2 to 7 are also not the invention described in Document A-7.

(4) Summary of Reason for invalidation 2-1

As described above, it cannot be said that Inventions 1 to 7 are the invention described in Document A-7.

3 Regarding Reason for invalidation 2-2 (lack of novelty (2))

(1) Description of Document A-8 and Invention described in Document A-8

Document A-8 describes the following matters with drawings (the underlines were added by the body).

A "[0029] FIG. 7 is a block diagram illustrating the configuration of the massage machine 1 regarding this embodiment. Below the backrest part 3 of the massage machine 1, a control part 6 is housed. The control part 7 includes, as shown in FIG. 7, a CPU 70, a ROM 71, a RAM 72, an input-output interface 73, a timer 74, and a counter 75."

B "[0043] (Embodiment 2) The other configuration of the massage machine of this embodiment is described below. FIG. 9 is a perspective view illustrating the configuration of the massage machine 10 regarding this embodiment. As shown in FIG. 9, the massage machine 10 has a chair shape, and mainly includes a seat part 12 on which a treated person sits, a backrest part 13 supporting an upper body of the treated person, and a footrest 14 to be used as rests on which the treated person puts his or her feet."

C "[0044] The seat part 12 includes a cushion part 12a arranged above a base 12b. The base 12b made of synthetic resin having relatively high hardness has a concave inside. The cushion part 12a includes an interior material (not shown) made from urethane foam, sponge, or styrene foam placed on an inner surface of the base 12b, and is covered by an exterior material made of polyester raised tricot, artificial leather, natural leather, or the like. The seat part 12 is shaped to cover the lumbar area and the femoral area of a sitting treated person from the back part to the side part."

D "[0045] As shown in FIG. 9, a plurality of air-bags are arranged on the cushion part 12a of the seat part 12. When the treated person sits on the seat part 12, air-bags (first femoral treatment parts) B21, B22 are arranged in parts corresponding to the back part of the femoral areas of the treated person, and air-bags (second femoral treatment parts) B23, B24 are arranged in parts corresponding to the outside part of the femoral areas. An air-bag B25 is arranged in a part corresponding to the anus of the treated person. Air-bags (buttock treatment parts) B26, B27 are arranged in parts corresponding to the side part of the buttocks and the lumbar area."

E "[0046] The air-bags B21 to B27 are arranged so as to perform the same treatment as the treatment performed on the treated person by the air-bags B1 to B7 illustrated in FIG. 1 of Embodiment 1. Thus, the air-bags B21, B22 can press parts of

the femoral areas from the vicinity of the inside part to the back part, and the air-bags B23, B24 can press parts of the femoral areas from the vicinity of the front part to the side part. The air-bags B21 to B24 expand or contract to hold and massage left and right femoral areas. The air-bag B25 can press the anus of the treated person. The air-bags B26, B27 can hold and massage the buttocks and the lumbar area of the treated person."

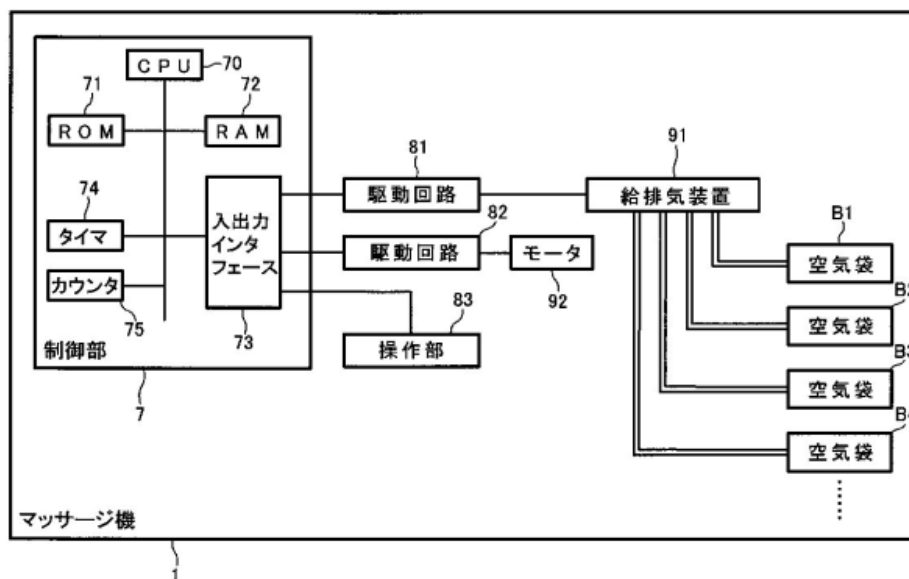
F "[0050] The backrest part 13 is arranged at the rear of the seat part 12. The backrest part 13 is formed by, for example, pivotally attaching a lower part to the base 12b so as to be rotated forward/backward, thereby enabling reclining motion. The backrest part 13 may be moved so that the lower part of the backrest part 13 slides into the seat part 12 as the backrest part 13 is inclined."

G "[0051] The backrest part 13 mainly includes a part for supporting the trunk of the treated person, and a part for supporting the head of the treated person. The whole of the backrest part 13 is integrally formed by a cover part 13a having a concave inside. Inside the cover part 13a, a cushion part 13b for supporting the trunk of the treated person and a cushion part 13c for supporting the head of the treated person are vertically arranged. The cover part 13a is formed in a rounded, substantially boat shape from the same materials as the base 12b. The cushion parts 13b, 13c are formed from the same interior material and exterior material as the cushion part 12a as described above."

H "[0053] The cover part 13a includes a part extended forward beyond the cushion part 13c, and the part also includes a cushion part 13e. The cushion part 13e is arranged in a position so as to cover the upper arm parts and side parts of the shoulder of the treated person when seated, and includes a plurality of air-bags."

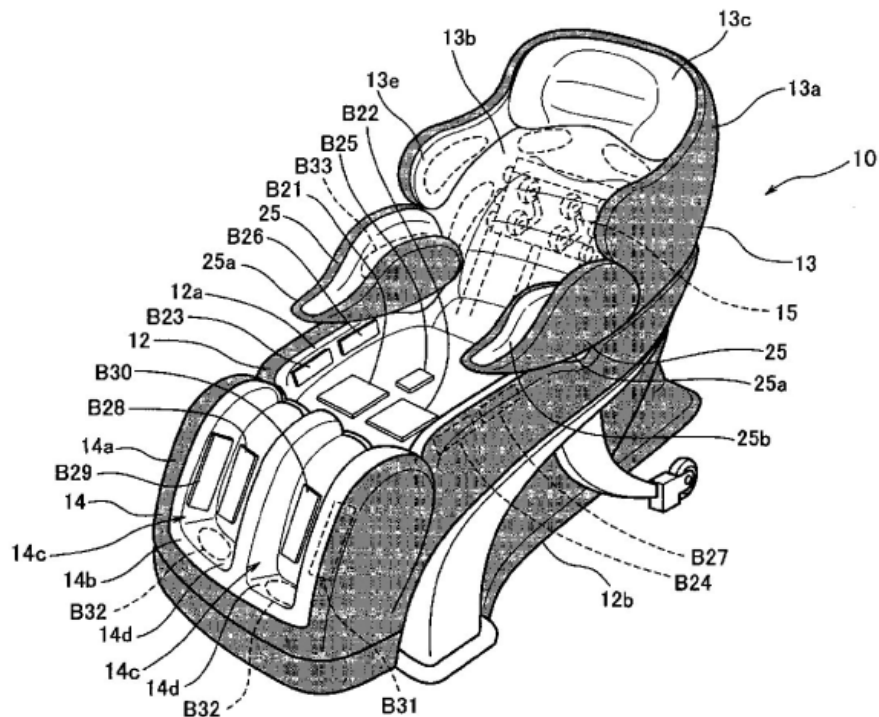
I "[0056] The operation of the massage machine 10 configured as above can hold and massage the femoral areas, buttocks, and lumbar area of the treated person sitting on the seat part 12 in the same way as the massage machine 1 described in Embodiment 1. Since the control of the operation of the air-bags B21 to 31 included in the massage machine 10 is the same as that of the massage machine 1 shown in Embodiment 1, the explanation thereof is omitted."

J FIG. 7



タイマ	Timer
カウンタ	Counter
制御部	Control part
入出力インタフェース	Input-output interface
駆動回路	Driving circuit
操作部	Operation part
モータ	Motor
給排気装置	Air intake/discharge device
空気袋	Air-bag
マッサージ機	Massage machine

K FIG. 9



L In light of the described matters C and D, FIG. 9 in above K shows that the seat part 12 is formed by placing the cushion part 12a on an inner surface of the synthetic-resin base 12b having relatively high hardness, and that a pair of left and right parts including the cushion part 12a and the base 12b (hereinafter referred to as "wall parts 12w") facing the lumbar area, buttocks, and femoral areas of the treated person are formed laterally outside the air-bags B23, B24, B26, and B27 in the seat part 12.

M In light of the described matters in above G and H, it is recognized in FIG. 9 in above K that the backrest part 13 is formed by arranging a cushion part on an inner surface of the cover part 13a made of the same material as the base 12b, and that a pair of left and right inside parts extended forward and including the cushion part 13e (hereinafter referred to as "wall parts 13w") are formed in the backrest part 13.

N In light of the illustrated matter in above L and the recognized matter in above M, FIG. 9 in above K shows a boundary between the wall part 12w and the wall part 13w. Thus, it is recognized that the wall part 12w and the wall part 13w are separated from each other.

O In light of the illustrated matter in above L and the described matters in above D and E, the air-bags B23, B24, B26, and B27 are arranged on the wall parts 12w in pair to press the treated person from the side parts. Thus, it is recognized that the air-bags can press in a horizontal direction.

P According to the described matters in above A and I, it is recognized that the control part 7 controls operation of the air-bags B23, B24, B26, and B27.

Q In light of the illustrated matter in above L and the recognized matter in above M, it can be said that the wall part 13w, which is a part of the backrest part 13, is mounted on the backrest part 13 per se, and that the wall part 12w, which is a part of the seat part 12, is mounted on the seat part 12 per se.

R Invention A-8

Summarizing the above matters in A to Q, it is recognized that Document A-8 describes the following invention (hereinafter referred to as "Invention A-8").

"A massage machine 10 including
a backrest part 13 supporting an upper body of a treated person, and
a seat part 12 on which the treated person sits,
the massage machine 10 including a pair of left and right wall parts 13w
arranged in the backrest part 13, and
a pair of left and right wall parts 12w arranged in the seat part 12 and facing the
lumbar area, buttocks, and femoral areas of the treated person, wherein
the wall parts 12w include a pair of air-bags B26, B27 which can press the
buttocks and the lumbar area of the treated person in a horizontal direction, and
a pair of air-bags B23, B24 which can press the femoral areas of the treated
person in the horizontal direction,
the massage machine 10 further including a control part 7 for controlling
operation of the air-bags B23, B24, B26, and B27."

(2) Regarding Invention 1

(2-1) Comparison

Invention 1 and Invention A-8 are compared as follows.

The "treated person" in Invention A-8 corresponds to the "user" in Invention 1. In the same way, the "seat part 12" corresponds to the "seat part", and the "massage machine 10" corresponds to the "massage machine".

The "backrest part 13" in Invention A-8 supports an upper body of a user; in other words, the upper body of the user is supported. Thus, it can be said that the backrest part 13 on which the user leans corresponds to the "backrest part" in Invention 1.

It can be also said that the "wall parts 13w" in Invention A-8, which are mounted on the backrest part per se at both sides in a pair, correspond to the "first sidewalls" in Invention 1. Likewise, the "wall parts 12w" in Invention A-8, which face the buttocks and the femoral areas of the user at both sides in a pair, correspond to the "second sidewalls" in Invention 1.

The "air-bags B26, B27" and the "air-bags B23, B24" in Invention A-8, which can press the user in pair in a horizontal direction, have the same function as the "first massage units" and the "second massage units" in Invention 1.

In addition, the "control part 7" in Invention A-8, which controls operation of members which can press the user in a horizontal direction, has a common feature with the "control part" in Invention 1.

Therefore, it can be said that Invention 1 and Invention A-8 are identical in the following point.

<Corresponding Feature>

"A massage machine including
a backrest part on which a user leans, and
a seat part on which the user sits,
the massage machine including a pair of left and right first sidewalls arranged in the backrest part, and
a pair of left and right second sidewalls arranged in the seat part and facing an outside surface of the buttocks to the femoral areas of the user,
the massage machine further including a first pair of massage units which can press the user in the horizontal direction, and
a second pair of massage units which can press the user in the horizontal direction,
the massage machine further including a control part which controls operation of the first massage units and the second massage units."

Invention 1 and Invention A-8 are different in the following points.

<Different Feature 3>

Invention 1 includes sidewalls integrally formed with first sidewalls and second sidewalls, while it is unclear whether Invention A-8 includes such sidewalls.

<Different Feature 4>

Invention 1, the sidewalls include a first pair of massage units which can press the lumbar area of the user in the horizontal direction and a second pair of massage units which can press the buttocks to the femoral areas of the user in the horizontal direction. Invention A-8, the wall parts 12w include a pair of air-bags B26, B27 which can press the buttocks and the lumbar area of the treated person in a horizontal direction, and a pair of air-bags B23, B24 which can press the femoral areas of the treated person in the horizontal direction.

(2-2) Examination on Different Features

Whether or not the different features are substantially different features is examined below.

(A) Regarding Different Feature 3

A The description in Invention 1, "sidewalls integrally formed with first sidewalls ... and second sidewalls", means, as shown in above 1 (1) B, that the "first sidewall" and the "second sidewall", which are unified and inseparable, form a "sidewall".

B Document A-8 does not describe that the wall part 13w and the wall part 12w in Invention A-8 are integrated, or indicate that the wall part 13w and the wall part 12w should be integrated. As indicated in the recognized matter in above (1) N, the wall part 13w and the wall part 12w in Invention A-8 are separated, and the wall part 13w and the wall part 12w are not unified and inseparable. Thus, the wall part 13w and the wall part 12w are not integrally formed.

C Accordingly, although Invention A-8 includes parts (wall part 13w and wall part 12w) corresponding to the "first sidewall" and the "second sidewall" in Invention 1, it cannot be said that a part corresponding to a "sidewall" integrally formed with the parts is included.

D The Demandant's allegation is as follows: "... Invention A-8 describes in detail based on reclining of the backrest part 13 (Written opinion p. 28). Constituent component D of the Invention specifies a relationship between the first sidewall and the second sidewall, and has no relation with the state when the backrest part is reclined. ... The cushion part 13e and the cushion part 12a of Invention A-8 are arranged in a row, as shown in the figure, from the backrest part 13 to the side part of the seat part 12, to obviously form one sidewall with respect to the backrest part 13 and the seat part 12. ..." (see Oral proceedings statement brief of the Demandant p. 11-p. 13 3 (2))

E However, as indicated in above C, Invention A-8 does not include a part corresponding to the "sidewalls integrally formed with first sidewalls ... and second sidewalls". Thus, the above Demandant's allegation cannot be accepted.

F As described above, Invention 1 and Invention A-8 are substantially different in Different Feature 3.

(B) Regarding Different Feature 4

A The first massage units and the second massage units in Invention 1 and the air-bags B26, B27 and the air-bags B23, 24 in Invention A-8, which form two pairs, respectively, have a common feature in pressing from the lumbar area to the femoral areas of a user in a horizontal direction. We will examine the locations where the massage units are arranged, and the sections of the user to be pressed by the massage units.

(B-1) Regarding the locations where the massage units are arranged

B As indicated in Claim 1 of the Patent (see No. 3), the massage units in Invention 1 are parts "included ... in the sidewalls".

C As indicated in above (A), Invention A-8 does not include a configuration corresponding to the sidewalls in Invention 1 (integrally formed with first sidewalls and second sidewalls). Thus, it cannot be said that the air-bags are arranged on the sidewall.

D The Demandant's allegation regarding the location where the air-bags are arranged is as follows: "In Invention A-8, the air-bags B23, B24, B26, and B27 arranged on an inner surface of the outside wall in the seat part 12 press, hold, and massage from the femoral areas to the lumbar area of the treated person in the horizontal direction

([0045] [0046] [FIG. 9]). ... Accordingly, Invention A-8 discloses Constituent components E1 and E2 in Invention 1." (see Written demand for trial p. 27)

E However, although it is indicated that the air-bags B23, B24, B26, and B27 in Invention A-8 are arranged on an inner surface of the outside wall in the seat part 12, the wall part 13w and the wall part 12w in Invention A-8 are not integrated originally, and there is no configuration corresponding to the sidewalls in Invention 1. Thus, the above Demandant's allegation has no basis, and cannot be accepted.

(B-2) Regarding the sections of the user to be pressed by the massage units

F In Invention 1, as indicated in above 2 (2) (2-2) (B) M, the first massage unit presses "the lumbar area", and the second massage unit presses from "the buttocks" to the "femoral areas".

G In Invention A-8, the air-bags B26, B27 press "the buttocks and the lumbar area", and the air-bags B23, B24 press "the femoral areas".

H Accordingly, although the air-bags B26, B27, B23, and B24 in Invention A-8 and the first and second massage units in Invention 1 are identical in pressing a section including the lumbar area, buttocks, and femoral areas, it cannot be said that they are identical in sections to be pressed by the massage units.

I As described above, it cannot be said that the air-bags in Invention A-8 include a unit for pressing "the lumbar area" and a unit for pressing "the buttocks to the femoral areas".

J The Demandant's allegation is as follows: "Constituent component E of the Invention specifies a technical idea of pressing a series of sections from the lumbar area to the femoral areas with the first massage units and the second massage units, and there is no particular technical significance in specifying in detail the correspondence between individual sections pressed by each of the massage units. ...

As described in above 2 (2), Constituent component E of the Invention only requires pressing the lumbar area in the first massage units and pressing the buttocks or the femoral areas in the second massage units. The air-bags B26, B27 in Invention A-8 include a configuration of pressing the lumbar area at least, and the air-bags B23, B24 include a configuration of pressing the femoral area at least. Thus, they correspond to

the first massage units and the second massage units in the Invention, respectively. ..." (see Oral proceedings statement brief of the Demandant p. 10-p. 11 3 (1))

In addition, the Demandant's allegation is as follows: "... In Invention A-8, the lumbar area is included in the sections to be treated by the air-bags B26, B27, and the femoral areas are included in the sections to be treated by the air-bags B23, B24..." (see Written statement of the Demandant dated February 5, 2019 p. 9 No. 3)

K However, as indicated in above I, Invention A-8 does not include a massage unit for pressing "the lumbar area" and a massage unit for pressing "the buttocks to the femoral areas". Thus, the above Demandant's allegation cannot be accepted.

L As described above, Invention 1 and Invention A-8 are substantially different in Different Feature 4.

(2-3) Summary of Invention 1

As described above, Different Features 3 and 4 are substantially different features. Thus, Invention 1 is not the invention described in Document A-8.

Therefore, the patent regarding Invention 1 does not violate the provisions of Article 29(1)(iii) of the Patent Act, and cannot be invalidated by the Reason for invalidation 2-2 (lack of novelty (2)) as alleged by the Demandant.

(3) Regarding Inventions 2 to 7

(3-1) Comparison

Inventions 2 to 7, as indicated in above 2 (3) (3-1), include all of Constituent components A to G of Invention 1, and include Constituent components H to M, respectively. Comparing Inventions 2 to 7 with Invention A-8, at least the above Different Features 3 and 4 are included.

(3-2) Summary of Inventions 2 to 7

As indicated in above (2), Invention 1 is not the invention described in Document A-8.

Accordingly, Inventions 2 to 7 are also not the invention described in A-8.

(4) Summary of Reason for invalidation 2-2

As described above, it cannot be said that Inventions 1 to 7 are the invention described in Document A-8.

4 Closing

As described above, the patent for the inventions according to Claims 1 to 7 of the Patent cannot be invalidated on the basis of the reasons for invalidation alleged and the means of proof submitted by the Demandant.

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

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

March 18, 2019

Chief administrative judge: ASHIHARA, Yasuhiro
Administrative judge: NIKAIDO, Yasuhiro
Administrative judge: HAYASHI, Shigeki