

Appeal decision

Appeal No. 2019-7937

Appellant GODA, Mitsuhiro

The case of appeal against the examiner's decision of refusal of Japanese Patent Application No. 2017-122830, entitled "OPERATION METHOD OF GRIP AID", [the application published on November 29, 2018: Japanese Unexamined Patent Application Publication No. 2018-187334], has resulted in the following appeal decision:

Conclusion

The appeal of the case was groundless.

Reason

No. 1 History of the procedures

The present application is an application filed on June 23, 2017 (priority claim under the Paris Convention on May 3, 2017, United States), a written amendment was submitted on July 1 of the same year, a notice of reasons for refusal was issued on March 23, 2018, a written opinion and a written amendment were submitted on April 13 of the same year, a notice of reasons for refusal (final) was issued on September 27 of the same year, a written opinion and a written amendment were submitted on October 12 of the same year, a written amendment was submitted November 10 of the same year, the written amendment submitted on October 12, 2018 was dismissed and a decision of refusal was issued on April 25, 2019. An appeal against the examiner's decision of refusal was requested on June 14, 2019, and written amendments were submitted on June 15, 2019, March 14, 2020, and March 27 of the same year.

No. 2 The Invention

The inventions according to Claims 1 to 3 of the present application are ones that are specified by the matters recited in Claims 1 to 3 of the scope of claims amended by the written amendment submitted on April 13, 2018, among which the invention according to Claim 1 is as follows.

"A grip aid handling method, wherein the grip aid comprises:

a band part, wherein a leading part of the band attached to a grip of a tool and a back-end part of the band are wound around the grip, and the back-end part attached to the leading part of the band for overlap zone, thereby the band part is fixed to the grip; and,

a mound part, wherein at least one part of the back-end part of the band attached to the leading part of the band is formed in a chevron shape,

the grip aid handling method comprising, at the time of hitting a ball, pushing the mound part by hand fingers contacting the mound part in a forward and downward direction, or a lateral direction of the grip, to turn the grip in the pushed direction and to accelerate a ball hitting operation." (Hereinafter, referred to as "the Invention")

No. 3 Reasons for refusal stated in the examiner's decision

The reasons of the notice of reasons for refusal issued on September 27, 2018, that are the reasons of the decision of refusal, are as follows.

Reason 1 (new matter)

The amendment made by the written amendment submitted on April 13, 2018 is not one made within the matters described in the description, the scope of claims, or drawings originally attached to the application in the following point, and, therefore, does not meet the requirement stipulated in Article 17-2(3) of the Patent Act.

Note

The amendment of "to accelerate a ball hitting operation" is one that adds a new technical matter, and thus is not one that was made within the range of the description and the like originally attached.

Reason 2 (novelty)

The inventions according to the following claims of this application are inventions described in the following distributed publication or inventions that were made available to public through electric communication lines in Japan or abroad, prior to the filing of the application, and thus fall under Article 29(1)(iii) of the Patent Act, and the Appellant should not be granted a patent for these.

Note

- Claims 1-3
- Cited Document Registered utility model No. 3204886

Reason 3 (inventive step)

The inventions according to the following claims of this application could have been invented easily by a person ordinary skilled in the art of the Invention, based on an invention described in the following distributed publication, or an invention made available to public through electric communication lines in Japan or abroad, prior to the filing of the application,, and, therefore, the Appellant should not be granted a patent for these in accordance with the provisions of Article 29(2) of the Patent Act.

Note

- Claims 1-3
- Cited Document Registered utility model No. 3204886

Reason 4 (industrial applicability)

The inventions according to the following claims of this application do not meet the requirement stipulated in the main paragraph of Article 29(1) of the Patent Act in the following point, and thus the Appellant should not be granted a patent for these.

Note

- Claims 1-3

Regarding the point of "at the time of hitting a ball, pushing the mound part by hand fingers contacting the mound part in a forward and downward direction, or a lateral direction of the grip, to turn the grip in the pushed direction and to accelerate a ball hitting operation" of the Invention, it is possible to understand that "at the time of hitting a ball, pushing...", which is a handling method itself by a player, is the feature.

However, if the execution depends on handling by a player, it depends on a skill of a person and is not open to everybody, thus the Claims 1-3 do not fall under "the invention" of the Patent Act.

No. 4 Judgment by the body

1 Regarding Reason 2 ((novelty))

(1) Cited Document

In Registered utility model No. 3204886 (hereinafter, referred to as "Cited Document") that was made public on June 23, 2016 before the priority date of the present application, and was cited in the reasons for refusal stated in the examiner's decision, there are described the following matters.

A "[Claim of utility model]

[Claim 1]

A grip aid, wherein

a leading part of a band attached to a grip of a tool and a back-end part of the band are wound around the grip, the back-end part of the band is attached to the leading part of the band for overlap zone, at least one remaining portion of the back-end part not attached to the leading part is formed in a chevron shape by inserting a cushion, both side portions of the chevron shape portion are attached to a following part to the leading part, and, when the chevron shape portion of the back-end part of the band is pushed, the grip turns following to the band."

B "[Technical Field]

[0001]

The present device relates to a grip aid to easily and steadily handle a tool or an instrument with the grip, playing sports, or doing what is similar in kind."

C "[Problem to be Solved by the Device]

[0004]

The present device is not limited to a countermeasure to cope with the issue stated above, and aims to provide beginners, persons with a weak grip, e.g. children, women, and elderly or handicapped people, with a grip aid of a tool to easily and comfortably use, and to lower the load on a wrist and an elbow of a forearm, and a shoulder etc., and to help people prevent from inadvertent action or dropping out of a racket due to a weakness of grip power and the like."

D "[Means for solving the problem]

[0005]

Grip handling is assisted in a way that a leading part of a band attached to a grip of a tool and a back-end part of the band are wound around the grip, the back-end part of the band is attached to the leading part of the band for overlap zone, at least one remaining portion of the back-end part not attached to the leading part is formed in a chevron shape by inserting a cushion, both side portions of the chevron shape portion are attached to a following part to the leading part, and, when the chevron shape portion of the back-end part of the band is pushed, the grip turns following to the band."

E "[Advantage of the Device]

[0006]

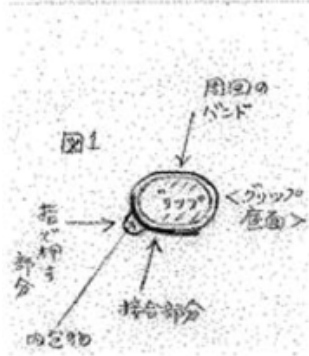
According to the present device, since the portion formed in a chevron shape by inserting a cushion can be pushed bidirectionally, left handedness or right handedness does not matter, and, with the necessity, a plurality of chevron shape portions can be formed on a same aid, or, a plurality of aids can be used, or, further, the cushion can be replaced to adjust a touch, strength, and the like to turn a grip.

There is no need to use all hand fingers at all times to turn a grip, and the grip can be

turned (rotated) by pushing by specific fingers or portions, regardless of the state of other fingers."

F "

【図 1】



【図 1】

[FIG. 1]

周回のバンド

Revolved band

指で押す部分

Portion pressed by fingers

グリップ

Grip

<グリップ底面>

<Grip bottom>

内包物 Inclusion

接着部分

Part of the attachment

"

G In the above-mentioned A and FIG. 1, it can be perceived that the grip aid is of a structure including a band part, wherein a leading part of the band attached to a grip of a tool and a back-end part of the band are wound around the grip, and the back-end part attached to the leading part of the band for overlap zone, and a chevron shape part, wherein at least one remaining portion of the back-end part not attached to the leading part of the band is formed in a chevron shape by inserting a cushion.

H According to the above-mentioned D-F, it is recognized that there is described a handling method of a grip aid to turn the grip, by pushing a chevron shape portion of a band in a lateral direction of the grip by specific fingers or portions, in the pushed direction.

In light of all the described matters of the above-mentioned A-F, and the recognized matters of G and H, it is recognized that there is described in Cited Document the following invention (hereinafter, referred to as "Cited Invention").

" A grip aid handling method, wherein the grip aid comprises: a band part, wherein a

leading part of the band attached to a grip of a tool and a back-end part of the band are wound around the grip, and the back-end part attached to the leading part of the band for overlap zone; and a chevron shape part, wherein at least one remaining portion of the back-end part not attached to the leading part of the band is formed in a chevron shape by inserting a cushion, the grip aid handling method comprising, pushing the chevron shape part by specific fingers or portions in a lateral direction of the grip, to turn the grip in the pushed direction."

(2) Comparison

In comparison between the Invention and Cited Invention,

the following components of the latter; "a grip", "a grip of a tool", "the band attached to a grip", " a leading part of the band ... and a back-end part of the band are wound around the grip ", " the back-end part is attached to the leading part of the band for overlap zone", " a chevron shape part, wherein at least one remaining portion of the back-end part not attached to the leading part of the band is formed in a chevron shape by inserting a cushion", "pushing the chevron shape part by specific fingers or portions in a lateral direction of the grip, to turn the grip in the pushed direction", and "an handling method of a grip aid",

respectively correspond to the following components of the former; "a grip", "a grip of a tool", "the band attached to a grip", " a leading part of the band ... and a back-end part of the band are wound around the grip", "a band part" in which " the back-end part is attached to the leading part of the band for overlap zone", "a mound part, wherein at least one part of the back-end part of the band attached to the leading part of the band is formed in a chevron shape", "at the time of hitting a ball, pushing the mound part by hand fingers contacting the mound part in a lateral direction of the grip, to turn the grip in the pushed direction", and "a grip aid handling method."

Although it is not certain whether "a band part" of the latter is fixed to the grip or not, at least "a band part" of the former and "a band part" of the latter are common in being attached to the grip.

Therefore, the two are identical in a point of being

"A grip aid handling method, wherein the grip aid comprises:

a band part, wherein a leading part of the band attached to a grip of a tool and a back-end part of the band are wound around the grip, and the back-end part attached to the leading part of the band for overlap zone, thereby the band part is attached to the grip; and,

a mound part, wherein at least one part of the back-end part of the band

attached to the leading part of the band is formed in a chevron shape,

the grip aid handling method comprising, at the time of hitting a ball, pushing the mound part by hand fingers contacting the mound part in a forward and downward direction, or a lateral direction of the grip, to turn the grip in the pushed direction."

and are different, although not quite satisfactorily, in the following points.

[Different Feature 1]

In the Invention, the band part "is fixed to" a grip, whereas, in Cited Invention, although it is attached to a grip, it is not specified to be fixed to the grip.

[Different Feature 2]

The Invention is one in which pushing the mound part" leads "to turn the grip in the pushed direction and to accelerate a ball hitting operation", whereas, in Cited Invention, although "pushing the chevron shape part" leads "to turn the grip in the pushed direction", it is not clear whether the ball hitting operation is accelerated or not.

(3) Judgment

Each of the above-mentioned different features will be examined below.

A Regarding [Different Feature 1]

The "band" of Cited invention is "attached to a grip", and in light of the function and effect to turn the grip by pushing the chevron shape part formed in the back-end part of the band in a lateral direction of the grip by specific fingers or portions in the pushed direction, it is technically obvious that the band and the grip of Cited invention need to be fixed, so that when the chevron shape part of the band is pushed, the band does not move away from the grip.

Therefore, the Different Feature 1 is not a substantive different feature.

B Regarding [Different Feature 2]

Regarding [0002] of the description attached to the application, "a ball hitting operation" of the Invention is understood as an operation "to cope with (return) a flying ball from the other party by swinging a racket grip by a shoulder, a forearm, hand fingers, and the like".

From above-mentioned "(2) Comparison" and consideration in "A [Different Feature 1]", it can be said that in the Invention and in Cited Invention, the overall structure of each grip aid used is identical. Also, in their handling methods, handlings are common except for the movements of the grips in that "at the time of hitting a ball,

pushing the mound part by hand fingers contacting the mound part in a forward and downward direction, or a lateral direction of the grip", and the effects of the handlings are common in that "to turn the grip in the pushed direction."

Regarding "to accelerate a ball hitting operation" of the Invention, although its technical meaning is not clear, and the functional mechanism by which the phenomenon of acceleration is generated is not clear enough, the Appellant alleges in the written request for appeal amended by the written amendment dated March 27, 2020 that "acceleration of ball hitting operation" of the Invention results from "pushing the mound part of the grip aid at necessary timing by a player", and thus by pushing the mound part in the process of ball hitting operation, it is possible for anybody "to accelerate a ball hitting operation". According to the Appellant allegation, "to accelerate a ball hitting operation" of the Invention can be understood as a result by a player pushing the mound part at some timing in the process of ball hitting operation.

In Cited Invention, it is accordingly obvious that after starting ball hitting operation, pushing the chevron shape part by specific fingers or portions during the ball hitting operation results in accelerating the ball hitting operation.

In view of the above, it cannot be said that the Invention concerning the Different Feature 2 is a substantive different feature.

Accordingly, there are substantially no different features between the Invention and Cited Invention in comparison.

Therefore, all the matters specifying the Invention are included in Cited Invention, and thus there is no difference between the Invention and Cited Invention.

Therefore, the Invention falls under Article 29(1)(iii) of the Patent Act, and the Appellant should not be granted a patent for that.

2 Reason 4 (industrial applicability)

Regarding "to accelerate a ball hitting operation" of the Invention, the Appellant alleges in the written demand for appeal amended by the written amendment dated March 27, 2020 that "a player is just pushing the mound part of a grip aid at necessary timing, and there is no dependency on player's way of handling".

In case "pushing the mound part of a grip aid at necessary timing" means some timing; i.e. naturally performed timing by every player, in the process of ball hitting operation, there is no difference between the Invention and Cited Invention, as examined in the above-mentioned "1".

Hereinafter, on the other case will be examined, where "necessary timing" is

the timing each player has to learn through training and the like, and whether "to accelerate a ball hitting operation" or not depends on each timing of pushing by each player.

Since "pushing the mound part ... to turn the grip in the pushed direction and to accelerate a ball hitting operation" of the Invention depends on "timing of pushing by a player", trial and error for grasping the timing, or training for learning the timing is necessarily required. Accordingly, the handling of "pushing the mound part" "to accelerate a ball hitting operation" is deemed not to have objectivity that can be transferred to other persons as knowledge.

Then, "grip aid handling method" including "at the time of hitting a ball, pushing the mound part by hand fingers contacting the mound part in a forward and downward direction, or a lateral direction of the grip, to turn the grip in the pushed direction and to accelerate a ball hitting operation " of the Invention has to be deemed as a skill.

In view of the above, it cannot be said that the Invention falls under the category of "industrially applicable inventions" of the Patent Act, and it does not meet the requirement stipulated in the main paragraph of Article 29(1) of the Patent Act, and therefore, the Appellant should not be granted a patent for that.

No. 5 Closing

As above, the Invention is an invention for which the appellant should not be granted a patent in accordance with the provisions of Article 29(1)(iii) of the Patent Act, or does not fall under an invention stipulated in the main paragraph of Article 29(1) of the Patent Act, and thus the Appellant should not be granted a patent for that.

Accordingly, without examining the inventions according to the other claims, the present application should be rejected.

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

August 18, 2020

Chief administrative judge: OZAKI, Atsushi
Administrative judge: FUJIMOTO, Yoshihito
Administrative judge: SHIMIZU, Yasushi