Appeal decision

Appeal No. 2019-13111

Appellant PANASONIC INTELLECTUAL PROPERTY MANAGEMENT CORPORATION

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The case of appeal against the examiner's decision of refusal of Japanese Patent Application No. 2015-148734, entitled "Lighting Device" (the application published on February 2, 2017, Japanese Unexamined Patent Application Publication No. 2017-27916) 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 July 28, 2015, a notice of reasons for refusal was issued on February 14, 2019, and despite submission of a written opinion and a written amendment on April 5, 2019, an examiner's decision of refusal (hereinafter, referred to as "the examiner's decision") was issued on August 26, 2019. An appeal against the examiner's decision of refusal was requested on October 2, 2019, and a written amendment was submitted at the same time.

No. 2 Decision to dismiss amendment for the amendment dated October 2, 2019

[Conclusion of Decision to Dismiss Amendment]

The amendment dated October 2, 2019 shall be dismissed.

[Reason]

1 Detail of Amendment

The amendment dated October 2, 2019 (hereinafter, referred to as "the Amendment") was an amendment of the scope of claims, and the description of Claim 1 before and after the Amendment is as follows, as indicated by underlining the amendment points.

(1) Claim 1 before the Amendment
"[Claim 1]
A lighting device comprising:
a light source;
an optical member that is made of a base material having translucency, and diffuses light from the light source; and
a filter element that is arranged between the light source and the optical member, and contains a dye absorbing light having a specific wavelength,
wherein the filter element is arranged at an interval from the optical member; and
wherein any other optical member is not arranged between the filter element and the optical member".

(2) Claim 1 after the Amendment
"[Claim 1]
A lighting device comprising:
a light source;
an optical member that is made of a base material having translucency, and diffuses light from the light source; and
a filter element that is arranged between the light source and the optical member, and contains a dye absorbing light having a specific wavelength,
wherein the filter element is arranged at an interval from the optical member;
wherein any other optical member is not arranged between the filter element and the optical member; and
wherein on an optical axis of the light source, an interval between the light source and the filter element is larger than an interval between the filter element and the optical member".

2 Propriety of the Amendment
2-1 Regarding addition of new matter
(1) Amended matter
As described in 1 above, the Amendment, concerning the description of Claim 1

of the scope of claims, is intended to add the matter "on an optical axis of the light source, an interval between the light source and the filter element is larger than an interval between the filter element and the optical member" (hereinafter, referred to as "Matter A") and limit it.

Then, examination will be conducted as follows on whether or not it can be said that Matter A is within the matters described in the description (hereinafter, referred to as "the Original description," and together with scope of claims and drawings, referred to as "the Original description etc.), and, scope of claims or drawings originally attached to the application; that is, whether or not "it is a technical matter derived from all the statements of the description or the drawings, for a person skilled in the art, and the amendment does not introduce a new technical matter in relation to technical matters derived in such a manner," (reference decision: Intellectual Property High Court Special Department judged on May 30, 2008, 2006 (Gyo-Ke) 10563).

(2) Examination

A The statements of the Original description, etc. (the underlines were applied by the body)

(A) The Original description, relating to an interval between the light source and the filter element and an interval between the filter element and the optical member, describes the following matters.

"[0008]

[FIG. 1] FIG. 1 is an external perspective view of the lighting device according to Embodiment 1.

[FIG. 2] FIG. 2 is a schematic cross-sectional view of the lighting device according to Embodiment 1.

[FIG. 3] FIG. 3 is an external perspective view of the light emitting module.

[FIG. 4] FIG. 4 is a drawing showing the characteristics of the filter element.

[FIG. 5] FIG. 5 is a schematic view showing an example of an optical path when the lighting device according to Comparative Example 1 emits light.

[FIG. 6] FIG. 6 is a schematic view showing an example of an optical path when the lighting device according to Embodiment 1 emits light.

[FIG. 7] FIG. 7 is a drawing showing the light emitting characteristics of the lighting device according to Embodiment 1 and the dye content.

[FIG. 8] FIG. 8 is a schematic cross-sectional view of the lighting device according to Embodiment 2.

[FIG. 9] FIG. 9 is a schematic cross-sectional view of the lighting device according to

Modification 1.
[FIG. 10] FIG. 10 is a schematic cross-sectional view of the lighting device according to Modification 2.
[FIG. 11] FIG. 11 is a schematic cross-sectional view of the lighting device according to Modification 3.
[FIG. 12] FIG. 12 is a schematic cross-sectional view of the lighting device according to Modification 4.
...
[0038]
As shown in FIG. 2, the filter element 50 may be arranged at an interval from the cover 30. For example, the interval D1 between the filter element 50 and the cover 30 is preferably 1 mm or more. The interval D1 here means a distance between the filter element 50 and the cover 30 on the optical axis J1 of the light emitting module 20 (LED element 22). In other words, the interval D1 is a distance from a lower surface of the filter element 50 to an inner surface of the cover 30 on the optical axis J1.
[0039]
As a result, when the lighting device 10 is visually recognized from the outside of the cover 30, the filter elements 50 are arranged at intervals from the cover 30, so that the effect that the color of the filter elements 50 is difficult to see from the outside can be obtained. In addition, the number of multiple reflections of light, which will be described later, can be increased.
...
[0053]
In particular, when the filter element 50 is arranged at an interval from the cover 30, an air layer is provided between the filter element 50 and the cover 30 to increase the interface, so that the light reflection between the filter element 50 and the cover 30 is more likely to occur (the number of reflections increases). Therefore, the content of the dye 51 can be further reduced.
[0054]
Further, in the lighting device 10, the cover 30 is arranged outside the filter element 50. When the lighting device 10 is visually recognized from the outside, the filter element 50 is hidden by the cover 30, which also has the effect of making the color of the filter element 50 difficult to see from the outside. In particular, when the filter element 50 is arranged at an interval from the cover 30, the effect that the color of the filter element 50 becomes less visible from the outside can be obtained.
...

[0062]

(Modification)

The shape of the cover included in the lighting devices 10 and 10a is not particularly limited. For example, the lighting device 10 and the lighting device 10a may include a long rectangular plate-shaped cover like the cover 130 included in the lighting device 110 described above. FIGS. 9 to 12 are schematic cross-sectional views of the lighting device according to Modifications 1 to 4. Further, the bases 40b to 40e provided in the respective lighting devices 10b to 10e shown in FIGS. 9 to 12 have a function of holding the light emitting module 20, the filter element 50, and the cover 130.

[0063]

The lighting device 10b shown in FIG. 9 includes a long rectangular plate-shaped cover 130. The cover 130 diffuses the light from the light emitting module 20 by including the light diffusing material 61 in the base material 60 having translucency.

[0064]

In such a lighting device 10b as well, since the filter element 50 is arranged between the light emitting module 20 and the cover 130 having light diffusivity, the same effect as that of the lighting device 10 can be obtained.

[0065]

In the lighting device 10b, although a gap (air layer) is provided between the light emitting module 20 and the filter element 50 and between the filter element 50 and the cover 130, this gap is not indispensable. For example, as in the lighting device 10c shown in FIG. 10, the filter element 50 and the cover 130 may be overlapped without a gap.

[0066]

Further, for example, as in the lighting device 10d shown in FIG. 11, the interval D2 between the light emitting module 20 and the filter element 50 may be wider than that of the lighting device 10b. The interval D2 here means the interval between the light emitting module 20 and the filter element 50 on the optical axis J2 of the light emitting module 20 (LED element 22). In other words, the interval D2 is a distance from a lower surface of the LED element 22 to an upper surface of the filter element 50 on the optical axis J2.

[0067]

As described above, one of the factors that make the color of the filter element 50 visible when the light is turned off in the lighting device is that the external light that has entered the inside of the lighting device through the cover is reflected inside the

lighting device and goes out of the lighting device again through the filter element 50 to get out of the device.

[0068]

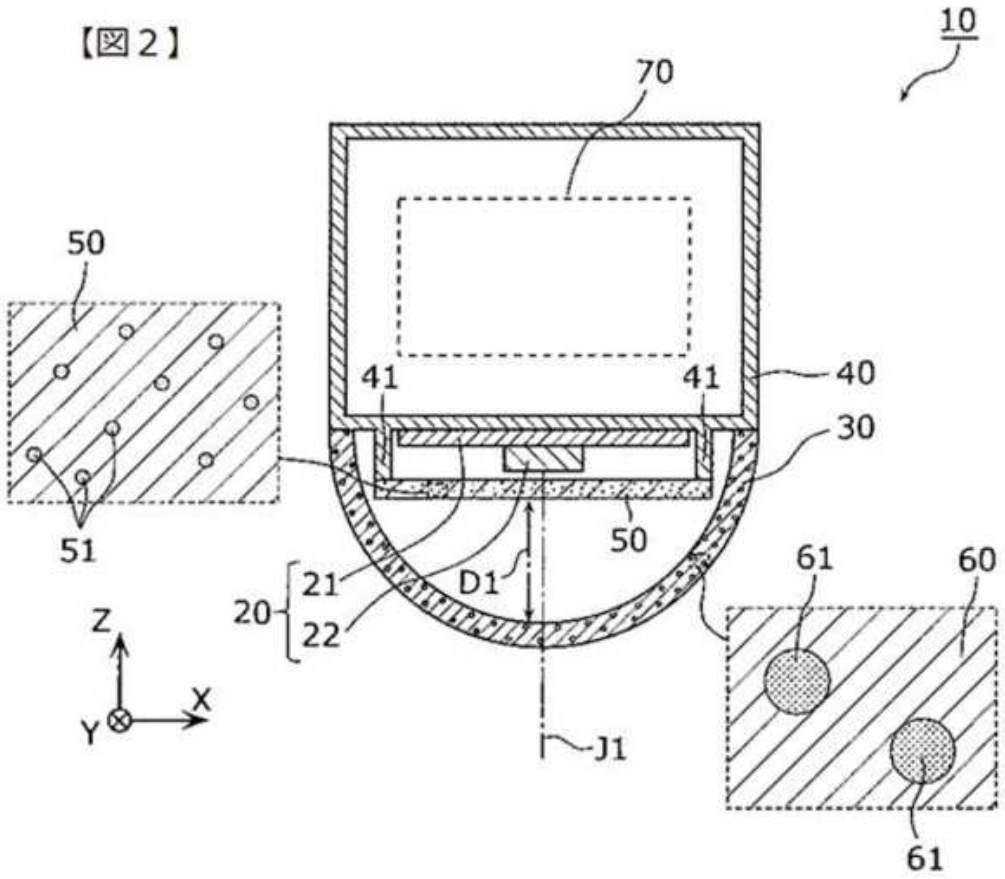
Here, as the distance between the light emitting module 20 and the filter element 50 becomes longer as in the lighting device 10d, the number of reflections of external light that has entered the space between the light emitting module 20 and the filter element 50 increases. Therefore, the external light that has entered the space between the light emitting module 20 and the filter element 50 is attenuated by reflection and then passes through the filter element 50 and goes out of the lighting device 10d, so that the effect that the color of the filter element 50 is difficult to see can be obtained. The interval D2 may be, for example, three times or more the thickness of the filter element 50.

[0069]

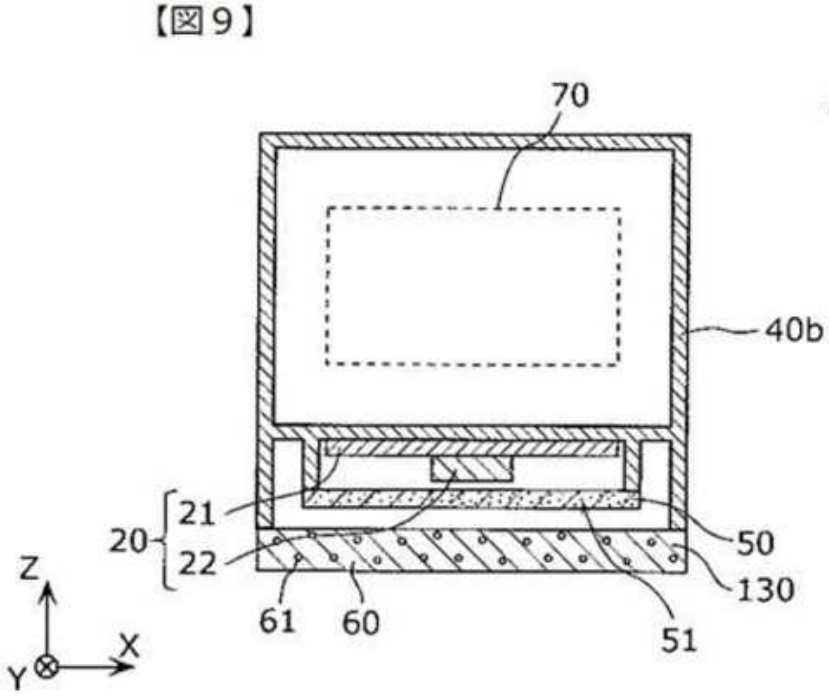
Further, similarly to the cover 30, the high refractive index material 31 may be provided on the outer surface of the cover 130, and the low reflective material 32 may be provided on the inner surface of the cover 130. For example, a high refractive index material 31 having a higher refractive index of light than the base material 60 is provided on the outer surface of the cover 130 of the lighting device 10e shown in FIG. 12, and a low-reflecting material 32 having a lower light reflectance than the base material 60 is further provided on the inner surface of the cover 130. Other configurations of the lighting device 10e are the same as those of the lighting device 10d."

(B) The Original description, etc. shows the following figures.

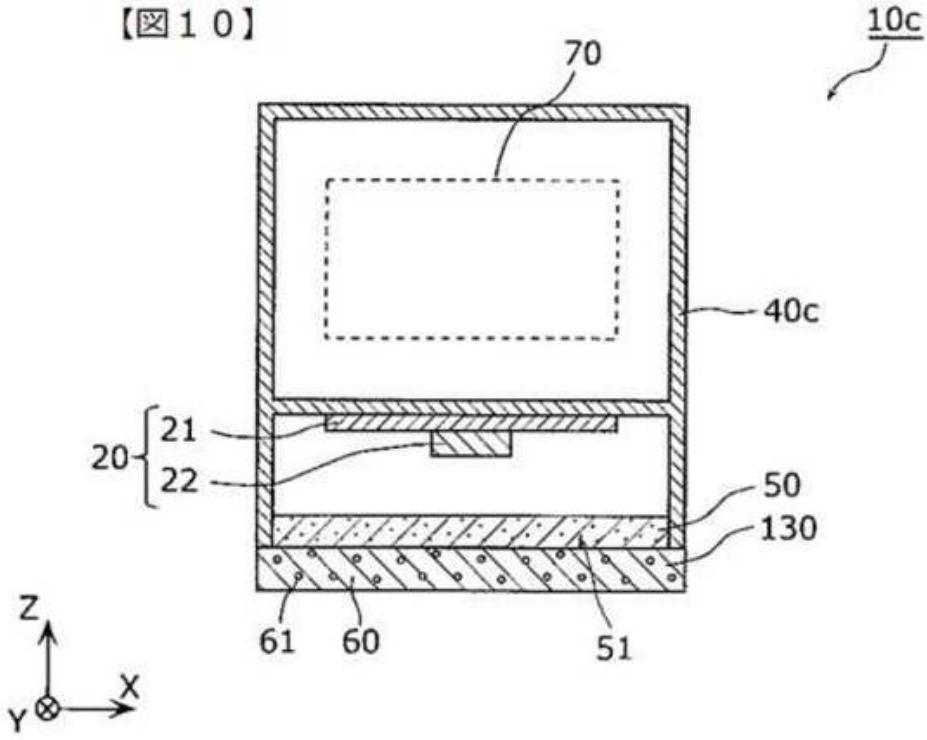
【図２】


10
70
50
41
41
40
30
50
51
21
20
22
D1
61
60
Z
X
Y
J1
61

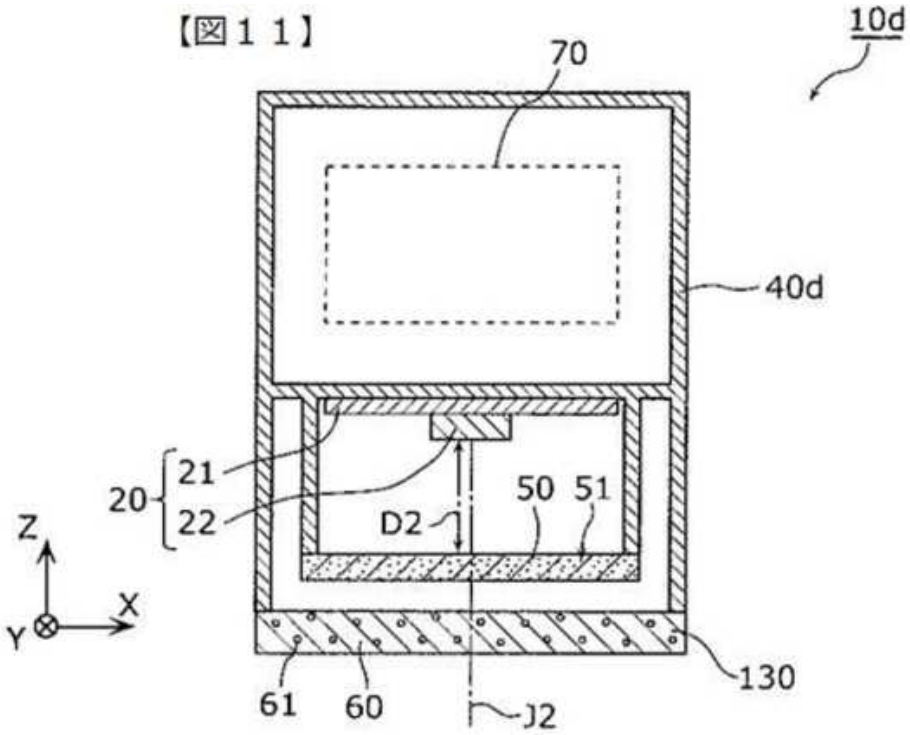
【図９】


10b
70
40b
21
20
22
50
130
61
60
51
Z
X
Y

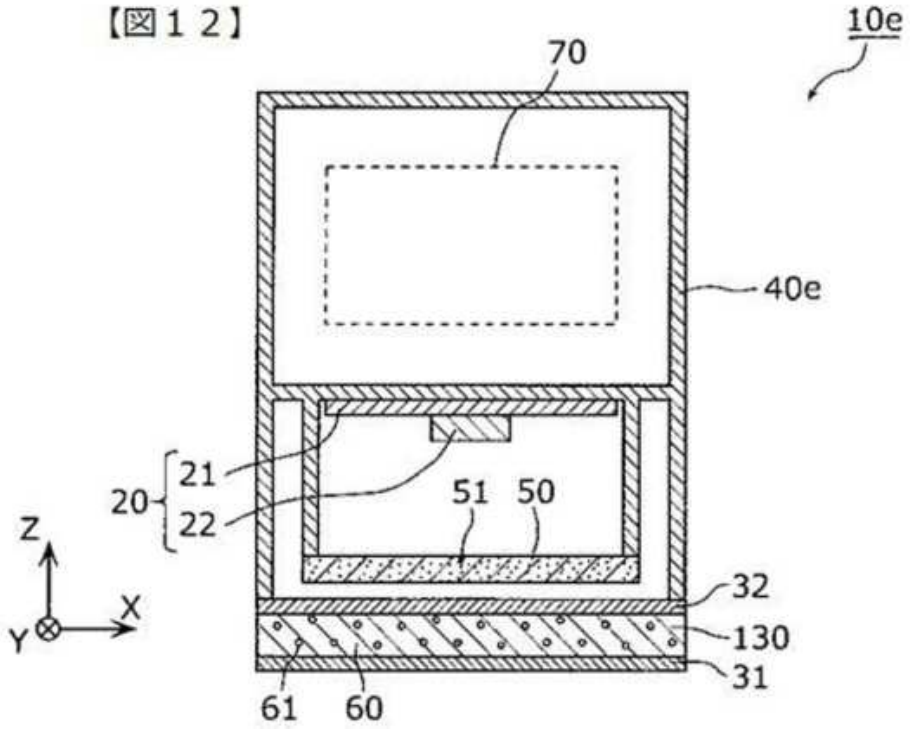
【図１０】


10c
70
40c
20
21
22
50
130
61
60
51
Z
X
Y

【図１１】


10d
70
40d
20
21
22
D2
50
51
130
61
60
J2
Z
X
Y

【図１２】



B　The Original description, etc. describes

that regarding the lighting device according to Embodiment 1 shown in FIG. 2, the filter element 50 may be arranged at an interval from the cover 30; for example, the interval D1 between the filter element 50 and the cover 30 is preferably 1 mm or more (Paragraph [0038]), that by the interval D1, when the lighting device 10 is visually recognized from the outside of the cover 30, there can be obtained the effect that the color of the filter elements 50 is difficult to see from the outside, and in addition, the number of multiple reflections of light can be increased (Paragraphs [0039], [0053], and [0054]),

that the lighting device 10b according to Modification 1 shown in FIG. 9 includes a long rectangular plate-shaped cover 130, and the filter element 50 is arranged between the light emitting module 20 and the cover 130 (Paragraphs [0063] and [0064]),

that regarding the lighting device 10c according to Modification 2 shown in FIG. 10, the filter element 50 and the cover 130 may be overlapped without a gap (Paragraph [0065]), and

that regarding the lighting device 10d according to Modification 3 shown in FIG. 11, the interval D2 between the light emitting module 20 and the filter element 50 may be wider than that of the lighting device 10b according to Modification 1 shown in FIG. 9 (Paragraph [0066]), as the distance between the light emitting module 20 and the filter

element 50 becomes longer as in the lighting device 10d, the number of reflections of external light that has entered the space between the light emitting module 20 and the filter element 50 increases (Paragraph [0068]), and the interval D2 may be, for example, three times or more the thickness of the filter element 50 (Paragraph [0068]).

According to the above, the Original description, etc. relating to Matter A describes that an interval (interval D2) is provided between a light source (light emitting module 20 (LED element 22)) and a filter element (filter element 50), and an interval (interval D1) is provided between the filter element (filter element 50) and an optical member (cover 30, cover 130). However, there is no description or suggestion that "an interval between the light source and the filter element" (interval D2) of Matter A is set to be larger than "an interval between the filter element and the optical member" (interval D1); namely, there is no description or suggestion that the interval D2 and the interval D1 are subjects to be compared and it should be configured so that these intervals D1 and D2 satisfy the condition of D2>D1, and it cannot be said that it is a technical matter derived from all the statements of the description or the drawings, for a person skilled in the art.

C The Appellant, in article "3. (a)" of the written request for appeal dated October 2, 2019, alleges that "Claim 1 after the Amendment is a claim that added limitation 'on an optical axis of the light source, an interval between the light source and the filter element is larger than an interval between the filter element and the optical member' to Claim 1 before the Amendment. The basis of the limitation are FIG. 10 to FIG. 12 and the like."

However, even if examining the statements ("A (A)" above) of the Original description relating to FIG. 10 to FIG. 12 that the Appellant alleges as the basis of the amendment,

FIG. 10 shows "a schematic cross-sectional view of the lighting device according to Modification 2" (Paragraph [0008]), and the configuration thereof is that "the filter element 50 and the cover 130 may be overlapped without a gap" (Paragraph [0065]),

FIG. 11 shows "a schematic cross-sectional view of the lighting device according to Modification 3" (Paragraph [0008]), and the configuration thereof is that "the interval D2 between the light emitting module 20 and the filter element 50 may be wider than that of the lighting device 10b" (Paragraph [0066]) and "the interval D2 may be, for example, three times or more the thickness of the filter element 50" (Paragraph [0068]), and

FIG. 12 shows "a schematic cross-sectional view of the lighting device according to Modification 4" (Paragraph [0008]), and the configuration thereof is that "a high

refractive index material 31 having a higher refractive index of light than the base material 60 is provided on the outer surface of the cover 130, and a low-reflecting material 32 having a lower light reflectance than the base material 60 is further provided on the inner surface of the cover 130. Other configurations of the lighting device 10e are the same as those of the lighting device 10d" (Paragraph [0069]),

so that by means of the statements of the Original description relating to FIG. 10 to FIG. 12, it is not reasonable to understood that it is described or suggested that "an interval between the light source and the filter element" (interval D2) of Matter A and "an interval between the filter element and the optical member" (interval D1) are subjects to be compared and it is configured so that these intervals D1 and D2 satisfy the condition of D2>D1.

Furthermore, even if examining the illustrated contents of FIG. 10 to FIG. 12 ("A (B)" above), there cannot be seen a technical idea that regarding "an interval between the light source and the filter element" (interval D2) and "an interval between the filter element and the optical member" (interval D1) of Matter A is configured to satisfy the condition of D2>D1.

Therefore, the allegation of the Appellant described above cannot be accepted.

D As described above, it cannot be said that Matter A is described in the Original description, etc. of the present application, and furthermore, it cannot be said that it is a technical matter derived from all the statements of the Original description, etc. by a person skilled in the art.

Therefore, since it cannot be said that the Amendment is made within the scope of the matters described in the Original description, etc., it violates the provision of Article 17-2(3) of the Patent Act, and thus should be dismissed under the provisions of Article 53(1) of the same Act which is applied mutatis mutandis pursuant to Article 159(1) of the same Act.

2-2 Independent requirements for patentability

As mentioned in 2-1 above, the Amendment has not been done legitimately, but just to be sure, if the Amendment according to Claim 1 after the Amendment is intended for restriction of the scope of claims for patent prescribed in Article 17-2(5)(ii) of the Patent Act, and is not adding new matters, examination will be conducted below as to whether or not the Appellant should be granted a patent for the invention according to Claim 1 after the Amendment (hereinafter, referred to as "the Amended Invention") independently at the time of the patent application (whether or not it complies with the provisions of Article 126(7) of the Patent Act as applied mutatis mutandis pursuant to

the provisions of Article 17-2(6) of the same Act).

(1) Described matters in Cited Documents and the like
(1-1) Cited Document 1

Japanese Unexamined Patent Application Publication No. 2015-18612 indicated in the reasons for refusal stated in the examiner's decision as Cited Document 1 and distributed before the filing of the present application (hereinafter, referred to as "Cited Document 1") describes the following matters (the underlines are added by the body, the same applies hereinafter).

(1a) "[0001]

The present invention relates to a lighting device.

...

[0036]

Hereinafter, each component of the lighting device 1 according to the present embodiment will be described in detail.

...

[0050]

Hereinafter, the specific configuration of the wavelength selective absorption member 20 (the first wavelength selective absorption member 21 and the second wavelength selective absorption member 22) will be described with reference to FIGS. 4 to 7. FIGS. 4 to 7 are drawings showing the configurations of four specific examples of the lighting device according to the present embodiment.

[0051]

The first wavelength selective absorption member 21 and the second wavelength selective absorption member 22 shown in FIGS. 4 to 7 are dye addition filters to which a wavelength selective absorption dye is added, and are composed of the light transmissive resin 20b, and the wavelength selective absorption dye 20a contained in the light transmissive resin 20b.

[0052]

As shown in FIGS. 4 to 7, the wavelength selective absorption member 20 is arranged so as to face the light source unit LU. The light source unit LU is composed of a substrate 30, and a first LED light source 11 and a second LED light source 12 arranged on the substrate 30. Further, the first wavelength selective absorption member 21 is arranged on a light emitting side of the first LED light source 11, and the second wavelength selective absorption member 22 is arranged on the light emitting side of the second LED light source 12.

...

[0058]

Hereinafter, the wavelength selective absorption dye 20a and the light transmissive resin 20b constituting the first wavelength selective absorption member 21 and the second wavelength selective absorption member 22 will be described in detail.

[0059]

<Wavelength Selective Absorption Dye>

The wavelength selective absorption dye is a dye having a property of selectively absorbing a part of visible light. As the wavelength selective absorption dye, a dye having a property of selectively absorbing light having a specific wavelength of 570 nm to 600 nm or 570 nm to 780 nm can be used. Specific examples thereof include dyes mainly composed of organic compounds such as tetraazaporphyrin, tetraphenylporphyrin, octaethylporphyrin, phthalocyanine, cyanine, azo, pyromethene, squarylium, xanthene, dioxane, and oxonor. Further, a dye mainly composed of an organic compound containing a rare earth metal ion such as neodymium ion can also be mentioned.

...

[0070]

[Specific Example of Lighting Device]

Next, the ceiling light 100 will be described as a specific application example of the lighting device (lighting fixture). FIG. 12 is an exploded perspective view of the ceiling light according to the embodiment of the present invention when viewed from diagonally below.

[0071]

As shown in FIG. 12, the ceiling light 100 includes four light source units 110, a wavelength selective absorption member 120, a main body 130, a cover 140, and a power supply (not shown). Hereinafter, each component of the ceiling light 100 will be described in detail.

...

[0072]

[Light Source Unit]

As shown in FIG. 13, each light source unit 110 is composed of a substrate 30, and a plurality of LED light sources 10 arranged on the substrate 30. The plurality of LED light sources 10 can be arranged so as to form, for example, two rows of elements inside and the outside. Further, each of the LED light sources 10 is a B-Y type white LED light source, and as described above, is composed of a plurality of first LED light

sources 11 having an emission color with a low color temperature (2700K), and a plurality of second LED light sources 12 having an emission color with a high color temperature (6500K).

...

[0078]

[Wavelength Selective Absorption Member]

As shown in FIG. 12, the wavelength selective absorption member 120 is formed in an annular shape, and is arranged on a light emitting side of four light source units 110 arranged in an annular shape. The structure of the wavelength selective absorption member 120 may be the structure shown in FIGS. 4 to 7. FIG. 12 shows an example using the structure shown in FIG. 6.

...

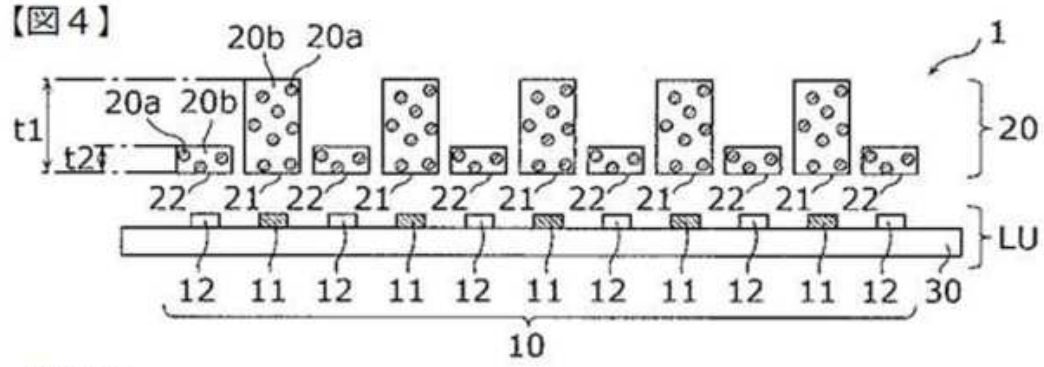
[0081]

[Cover]

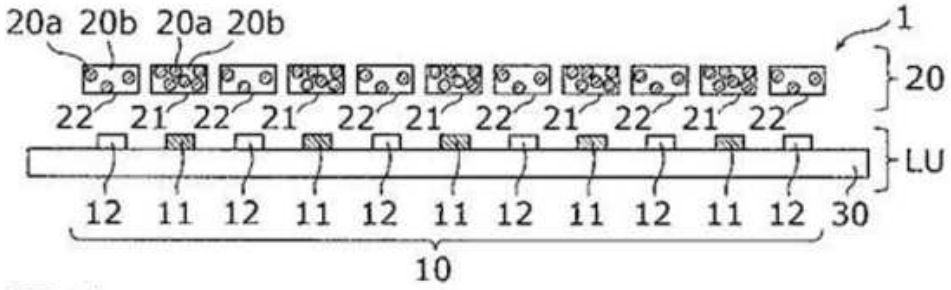
As shown in FIG. 12, the cover 140 is attached to the main body 130 so as to cover the light source unit 110 and the wavelength selective absorption member 120. The cover 140 in the present embodiment is a diffusion cover in which light diffusion particles are dispersed in a part or all of the material of the cover 140 in order to make the entire lighting device emit light uniformly. The cover 140 can be, for example, a milky white resin cover".

(1b) Cited Document 1 shows the following figures.

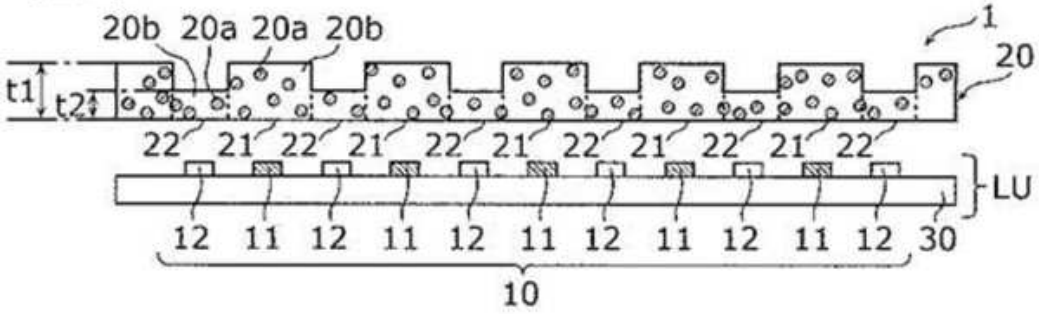
【図４】


20b 20a
1
20a 20b
t1
t2
20
22 21 22 21 22 21 22 21 22 21 22
LU
12 11 12 11 12 11 12 11 12 11 12 30
10

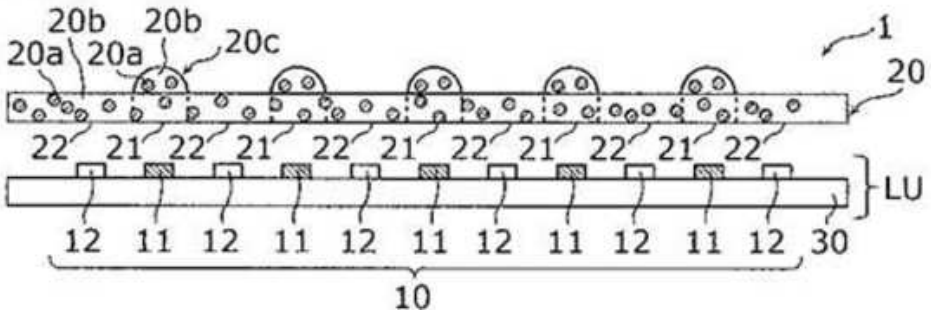
【図５】


20a 20b 20a 20b
1
20
22 21 22 21 22 21 22 21 22 21 22
LU
12 11 12 11 12 11 12 11 12 11 12 30
10

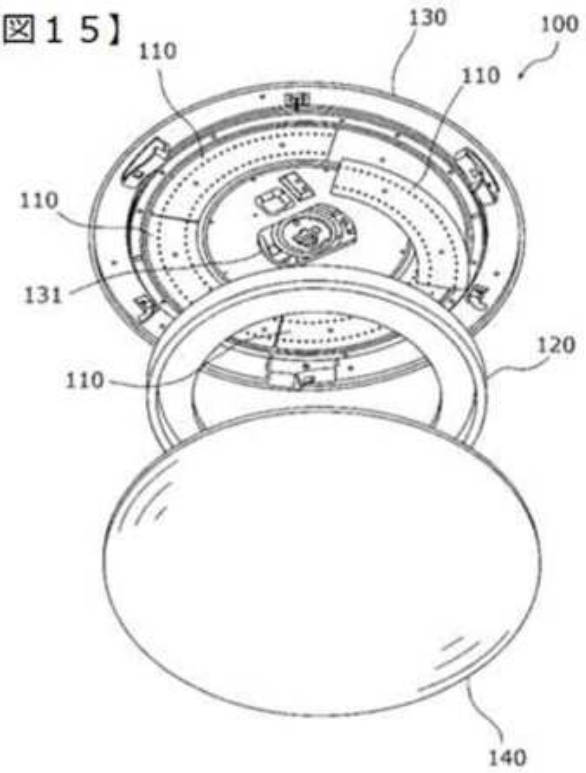
【図６】


20b 20a 20a 20b
1
20
t1
t2
22 21 22 21 22 21 22 21 22 21 22
LU
12 11 12 11 12 11 12 11 12 11 12 30
10

【図７】


20b 20b
20a 20a
20c
1
20
22 21 22 21 22 21 22 21 22 21 22
LU
12 11 12 11 12 11 12 11 12 11 12 30
10

【図１５】



In Cited Document 1, as described in descriptions (1a) and (1b), a technology relating to "a lighting device" is disclosed (Paragraph [0001]), and regarding the configuration of "the ceiling light 100" as a specific application example (Paragraph [0070]), the following matters can be recognized.

·The ceiling light 100 includes four light source units 110, a wavelength selective absorption member 120, a main body 130, a cover 140, and a power supply. (Paragraph [0071])

·Each light source unit 110 is composed of a substrate 30, and a plurality of LED light sources 10 arranged on the substrate 30. (Paragraph [0072])

·The wavelength selective absorption member 120 is formed in an annular shape, and is arranged on a light emitting side of four light source units 110 arranged in an annular shape. (Paragraph [0078])

·The cover 140 is attached to the main body 130 so as to cover the light source unit 110 and the wavelength selective absorption member 120, and is a diffusion cover in which light diffusion particles are dispersed in a part or all of the material of the cover 140 in order to make the entire lighting device emit light uniformly. (Paragraph [0081])

Further, in Paragraph [0078] of Cited Document 1, it is described that "the structure of the wavelength selective absorption member 120 may be the structure

shown in FIGS. 4 to 7," and considering the descriptions of Paragraphs [0051] and [0059] describing the structure shown in FIGS. 4 to 7, the wavelength selective absorption member 120 is configured as a dye addition filter to which a wavelength selective absorption dye is added, and the wavelength selective absorption dye is a dye having a property of selectively absorbing a part of visible light, and there can be specified a dye having a property of selectively absorbing light having a specific wavelength of 570 nm to 600 nm or 570 nm to 780 nm.

According to the above, it is recognized that Cited Document 1 describes the invention of

"A ceiling light 100, comprising: four light source units 110; a wavelength selective absorption member 120; a body 130; a cover 140; and a power supply,

wherein each light source unit 110 is composed of a substrate 30, and a plurality of LED light sources 10 arranged on the substrate 30,

wherein the wavelength selective absorption member 120 is formed in an annular shape, and is arranged on a light emitting side of four light source units 110 arranged in an annular shape,

wherein the cover 140 is attached to the main body 130 so as to cover the light source unit 110 and the wavelength selective absorption member 120, and is a diffusion cover in which light diffusion particles are dispersed in a part or all of the material of the cover 140 in order to make the entire lighting device emit light uniformly, and

wherein the wavelength selective absorption member 120 is configured as a dye addition filter to which a wavelength selective absorption dye is added, and the wavelength selective absorption dye is a dye having a property of selectively absorbing a part of visible light, and has a property of selectively absorbing light having a specific wavelength of 570 nm to 600 nm or 570 nm to 780 nm" (hereinafter, referred to as "the Cited Invention").

(1-2) Cited Document 2

Japanese Unexamined Patent Application Publication No. 2011-119248 indicated in the reasons for refusal stated in the examiner's decision as Cited Document 2 and distributed before the filing of the present application (hereinafter, referred to as "Cited Document 2") describes the following matters.

(2a) "[0001]

The present invention relates to a light emitting device, a lighting device, and a color converter. The present invention particularly relates to a light emitting device

applicable to a lighting device or a display device using a light emitting diode (LED; Light, Emitting, Diode).

...

[0041]

The color conversion member 15 may be a color filter in which a colored dye material such as an organic substance is mixed with a resin, or a phosphor bound to a resin material or the like. In the former case, the color conversion member 15 limits a part of the wavelength region of the light emitted by the LED package 11 to change the emission color. On the other hand, in the latter case, the color conversion member 15 changes the emission color by utilizing the phenomenon that the phosphor is excited by the light emitted by the LED package 11 and emits light having a wavelength different from the wavelength of the light.

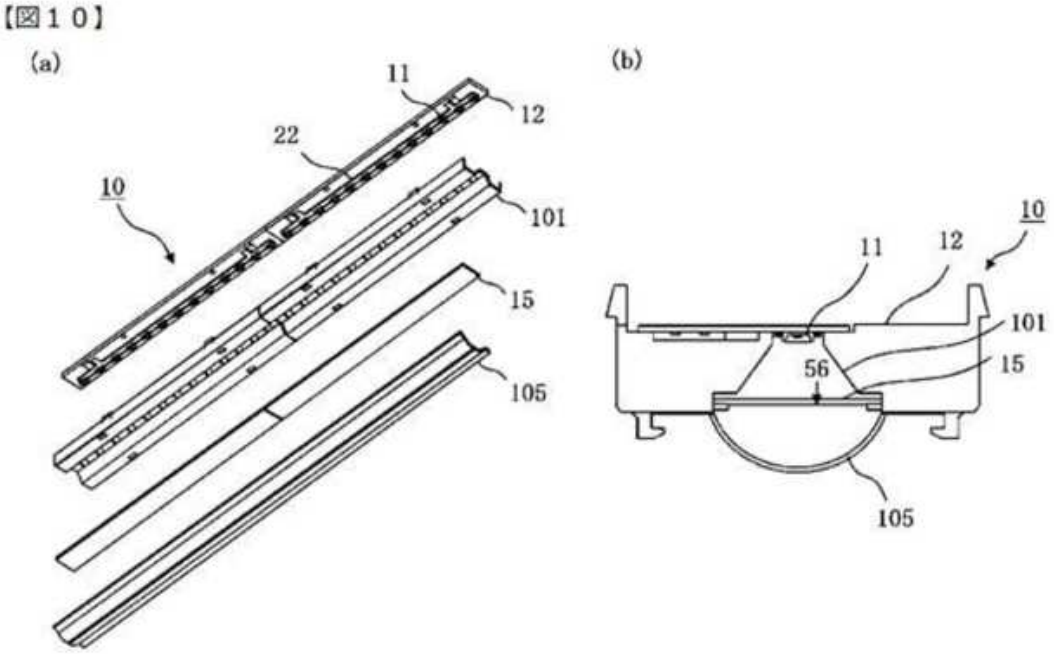
...

[0107]

As shown in FIGS. 10(a) and 10(b), in the light emitting device 10, a plurality of LED packages 11 are mounted in a line shape (substantially linear shape) in the same manner as those shown in FIG. 1 or 4, and a substrate 12 on which a conductive pattern 22 is formed, a color conversion member 15, and a main body-side reflector 101 similar to that of Embodiment 11 are provided. Further, in the present embodiment, the light emitting device 10 includes a dome-shaped (convex) translucent cover 105 attached to the exit surface 56 side of the color conversion member 15. The translucent cover 105 covers the exit surface 56 of the color conversion member 15 and is curved toward the light emitting surface side of the light emitting device 10. As the translucent cover 105, a light diffusing cover such as a milky white cover can be used. By forming the translucent cover 105 into a curved shape, a certain space is created between the translucent cover 105 and the color conversion member 15 near the inside of the apex, so that the light emitted from the color conversion member 15 can be sufficiently diffused inside the translucent cover 105. Therefore, the non-uniformity of the emission intensity distribution (difference in emission intensity) that occurs depending on the arrangement of the LED package 11 on the surface of the color conversion member 15 can be suppressed, and a soft light distribution characteristic such as a fluorescent lamp can be obtained".

(2b) Cited Document 2 shows the following figures.

【図１０】



(1-3) Cited Document 3

Japanese Unexamined Patent Application Publication No. 2013-98152 newly cited by the body and distributed before the filing of the present application (hereinafter, referred to as "Cited Document 3") describes the following matters.

(3a) "[0001]

The present invention relates to a lighting device using a light emitting diode element (LED) and a phosphor.

...

[0020]

Here, the resin cover 50 is made of a material that transmits and diffuses the light emitted by the light emitting element 60. This is the same as that described in, for example, Patent Document 1. However, as shown in FIG. 2, a thin film-shaped cut filter 70 is installed on the entire arch-shaped inner surface of the resin cover 50. The cut filter 70 is set to block light having a wavelength of 500 nm or less.

...

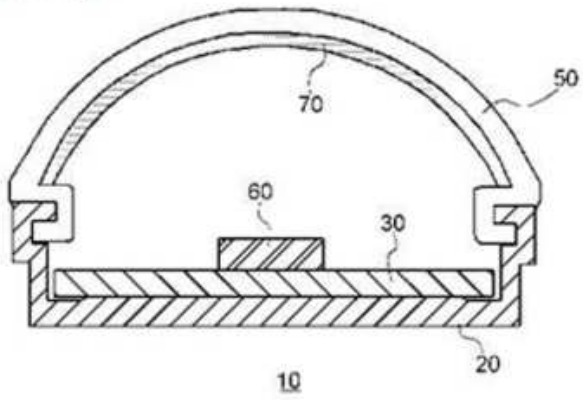
[0045]

Further, in the above example, the cut filter is provided along the inner surface of the resin cover, but this setting is arbitrary so long as the cut filter is installed around the light emitting element. For example, a resin cover having the same filter characteristics can be used. Alternatively, a cut filter may be provided around the outer side of the resin cover. In this case, if the cut filter is configured of a heat-

shrinkable material, the cut filter can be easily and firmly provided around the straight tubular structure. As described above, when the SSE phosphor is used, the requirements for the characteristics of the cut filter are eased, so that various configurations can be realized".

(3b) Cited Document 3 shows the following figures.

【図２】



(2) Comparison

The Amended Invention and the Cited Invention will be compared.

A "LED light sources 10" of the Cited Invention correspond to a "light source" of the Amended Invention.

B Since a "cover 140" of the Cited Invention is configured as "a diffusion cover in which light diffusion particles are dispersed in a part or all of the material of the cover 140 in order to make the entire lighting device emit light uniformly," it is technically obvious that it is made of a base material having translucency, and diffuses light from the LED light sources 10 by light diffusion particles.

Therefore, consider together with A above, it can be said that the "cover 140" of the Cited Invention corresponds to "an optical member that is made of a base material having translucency, and diffuses light from the light source" of the Amended Invention.

C In the Cited Invention, "each light source unit 110 is composed of a substrate 30, and a plurality of LED light sources 10 arranged on the substrate 30, the wavelength selective absorption member 120 is formed in an annular shape, and is arranged on a light emitting side of four light source units 110 arranged in an annular shape, and the cover 140 is attached to the main body 130 so as to cover the light source unit 110 and the wavelength selective absorption member 120," so that it is obvious that the wavelength selective absorption member 120 is arranged between the LED light source 10 and the cover 140 (this is also shown in FIG. 12).

Further, since the "wavelength selective absorption member 120" of the Cited Invention "is configured as a dye addition filter to which a wavelength selective absorption dye is added, and the wavelength selective absorption dye is a dye having a property of selectively absorbing a part of visible light, and has a property of selectively absorbing light having a specific wavelength of 570 nm to 600 nm or 570 nm to 780 nm," it is also obvious that it is configured as a dye addition filter containing a dye absorbing light having a specific wavelength.

Therefore, consider together with A and B above, it can be said that the "wavelength selective absorption member 120" of the Cited Invention corresponds to "a filter element that is arranged between the light source and the optical member, and contains a dye absorbing light having a specific wavelength" of the Amended Invention.

D Although in the Cited Invention, "the cover 140 is attached to the main body 130 so as to cover the light source unit 110," as shown in FIG. 12, since no other optical member is arranged between the wavelength selective absorption member 120 and the cover 140, it can be said that the arrangement of the "wavelength selective absorption member 12" and the "cover member 140" corresponds to the configuration "any other optical member is not arranged between the filter element and the optical member" of the Amended Invention (further, "is not arranged" mentioned above has the same meaning as "no other... is arranged").

E The "ceiling light 100" of the Cited Invention corresponds to the "lighting device" of the Amended Invention.

According to the above, the Amended Invention and the Cited Invention are identical in the point of being

"A lighting device comprising:

a light source;

an optical member that is made of a base material having translucency, and diffuses light from the light source; and

a filter element that is arranged between the light source and the optical member, and contains a dye absorbing light having a specific wavelength,

wherein no other optical member is arranged between the filter element and the optical member," and are different in the following point.

<Different Feature>

In the Amended Invention "the filter element is arranged at an interval from the optical member" and "on an optical axis of the light source, an interval between the light source and the filter element is larger than an interval between the filter element and the

optical member," whereas, in the Cited Invention, it is not specified in that manner.

(3) Judgment

The above-mentioned Different Feature is examined.

A Although the "wavelength selective absorption member 120" of the Cited Invention is "on a light emitting side of four light source units 110," in Paragraph [0078] of Cited Document 1, it is described that "the structure of the wavelength selective absorption member 120 may be the structure shown in FIGS. 4 to 7".

Then, examining the structure of the wavelength selective absorption member shown in FIGS. 4 to 7 of Cited Document 1, since in Paragraph [0052] of Cited Document 1, it is described that "as shown in FIGS. 4 to 7, the wavelength selective absorption member 20 is arranged so as to face the light source unit LU," it can be understood that it is sufficient that the "wavelength selective absorption member 120" of the Cited Invention is arranged so as to face the "light source unit 110". Then, concerning a form of such facing arrangement, since FIGS. 4 to 7 illustrate that the wavelength selective absorption member 20 is arranged at an interval from the light source unit LU, in light of the illustrated contents, it can be said that it is natural to arrange the light source (LED light source 10) and the filter element (wavelength selective absorption member 120) of the Cited Invention so as to face each other at an interval.

B Although the "cover 140" of the Cited Invention is "attached to the main body 130 so as to cover the light source unit 110 and the wavelength selective absorption member 120, and is a diffusion cover in which light diffusion particles are dispersed in a part or all of the material of the cover 140 in order to make the entire lighting device emit light uniformly," as described in Cited Document 2 (descriptions (2a) and (2b)) that in the light emitting device 10 equipped with the color conversion member 15 made from a color filter in which a colored dye material such is mixed with a resin between the LED package 11 and the translucent cover 105, a certain space is created between the translucent cover 105 and the color conversion member 15 so that the light emitted from the color conversion member 15 can be sufficiently diffused inside the translucent cover 105, thereby suppressing the non-uniformity of the emission intensity distribution (difference in emission intensity), it should be said that it is a well-known art in the technical field that a certain interval is made between the filter element (color conversion member 15) and the optical member (translucent cover 105) so as to configure the lighting device (light emitting device 10) emitting light uniformly.

In view of the above, in the Cited Invention intending to "make the entire

lighting device emit light uniformly," as the arrangement form of the "cover 140" "attached to the main body 130 so as to cover the light source unit 110 and the wavelength selective absorption member 120, there is sufficient motivation to arrange the optical member (cover 140) at an interval from the filter element (wavelength selective absorption member 120) considering the above well-known arts.

C Then, although Cited Document 3 (descriptions (3a) and (3b)) describes the light emitting device 10 equipped with a cut filter 70 blocking light having a wavelength of 500 nm or less between the light emitting element 60 and the resin cover 50, as the installation form of the cut filter 70, as clearly stated that "this setting is arbitrary so long as the cut filter is installed around the light emitting element" (Paragraph [0045]), it should be said that the arrangement form such as a light source (light emitting element 60), an installation interval between the filter element (cut filter 70) and the optical member (resin cover 50) is arbitrarily set by a person skilled in the art, as a design matter associated with the specific application of technology, based on the common general technical knowledge in the related technical field. Therefore, in the Cited Invention, it can be said that it is a matter that can be set appropriately by a person skilled in the art as a design matter associated with the specific application of technology, to configure the interval between the light source and the filter element (cut filter 70) to be larger than the interval between the filter element (cut filter 70) and the optical member (translucent cover 105).

D Then, the effect of the Amended Invention is within the range that could be predicted by a person skilled in the art from the Cited Invention, the well-known arts, and the common general technical knowledge, and is not remarkable.

E The Appellant, in the article "3. (b)" of the written request for appeal dated October 2, 2019, alleges that the configuration "on an optical axis of the light source, an interval between the light source and the filter element is larger than an interval between the filter element and the optical member" of the Amended Invention is not described and suggested in Cited Documents 1 to 6, and thus the Amended Invention could not easily be invented based on Cited Documents 1 to 6.

However, as described in A to C, in the Cited Invention, it is planned to arrange the light source (LED light source 10) and the filter element (wavelength selective absorption member 120) so as to face each other at an interval, and further, there is motivation to arrange the optical member (cover 140) at an interval from the filter element (wavelength selective absorption member 120) in light of the common general technical knowledge in the related technical field, it should be said that it is a design matter to a person skilled in the art to configure the interval between the light source

and the filter element (cut filter 70) to be larger than the interval between the filter element (cut filter 70) and the optical member (translucent cover 105), so that the allegation of the Appellant described above cannot be accepted.

E Summary

As described above, since the Amended Invention could have been easily invented by a person skilled in the art based on the above Cited Invention, the well-known arts and the common general technical knowledge, the Appellant should not be granted a patent for it independently at the time of patent application.

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 same Act, and thus should be dismissed under the provisions of Article 53(1) of the same Act which is applied mutatis mutandis by replacing certain terms pursuant to Article 159(1) of the same Act.

No. 3 Regarding the Invention

1 The Invention

As the Amendment was dismissed as above, the invention according to Claim 1 is recognized to be as specified by the matter described in Claim 1 of the scope of claims amended by the written amendment dated April 5, 2019, and the invention according to Claim 1 (hereinafter, referred to as "the Invention") is as described in "No. 2 1 (1) Claim 1 before the Amendment" above.

2 Reasons for refusal stated in the examiner's decision

The reasons for refusal stated in the examiner's decision include the following reason.

Since the invention according to Claim 1 could have been easily made by a person having a usual knowledge in the technical field to which the Invention belongs before the application was filed, based on the invention described in Cited Document 1 and technical matters (well-known arts) described in Cited Document 2, the Appellant should not be granted a patent under the provisions of Article 29(2) of the Patent Act.

3 Judgment by the body

The Invention is as described in "No. 2 1 (1) Claim 1 before the Amendment" above, and is an invention omitting the matter "on an optical axis of the light source, an interval between the light source and the filter element is larger than an interval between

the filter element and the optical member" relating to the above-mentioned Different Feature from the Amended Invention.

Therefore, as described in "No. 2 2 2-2 (3)" above, the Amended Invention corresponding to an invention including all matters specifying the Invention and adding other matters could have been easily invented by a person skilled in the art, based on the Cited Invention, the above well-known arts, and the common general technical knowledge, so that also the Invention could have been easily invented by person skilled in the art, based on the Cited Invention, the above well-known arts, and the common general technical knowledge, for the same reasons.

No. 4 Closing

As described above, the Invention could have been easily invented by person skilled in the art, based on the Cited Invention, the above well-known arts, and the common general technical knowledge, and the Appellant should not be granted a patent for it in accordance with the provisions of Article 29(2) of the Patent Act.

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

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

June 23, 2020

Chief administrative judge: SHIMADA, Shinichi
Administrative judge: UJIHARA, Yasuhiro
Administrative judge: SASAKI, Kazuhiro