

**Pen-type Syringe Case**  
**(Meaning of “distinctive feature” of a claimed invention and effect of amendments under the doctrine of equivalents)**

**Osaka High Court**  
**H11(Ne) No. 2198 (April 19, 2001)**

**FACTS**

Plaintiff, X, holds patent No. 2108611 directed to a method for producing a liquid for injection and an injection apparatus.

Defendant, Y, produced and sold syringes and cartridges applied to the syringe.

X sought an injunction barring Y from producing and selling the syringes and the cartridges, alleging direct and indirect infringement of X's patent.

**DISPOSITION IN THE LOWER COURT**

The Osaka District Court held that X's patent for the injection apparatus was not infringed, but X's patent for producing the liquid was indirectly infringed.

Y appealed to the Osaka High Court.

**ISSUE**

(1) Is a feature of a claimed method, which is different from a method used by defendant, a distinctive feature of the patented method?

(2) Was the term, “holding approximately perpendicular,” in the claimed method, intentionally excluded from the claim in the prosecution?

**HOLDING AND REASONING**

The Osaka High Court dismissed Y's appeal.

A “distinctive feature” of a patent is defined as a feature that, of all features of the claimed invention, has a peculiar function and effect; *i.e.*, a feature that would lead the whole invention to be evaluated as another technical conception different from the patented invention if the feature were to be replaced.

In this case, it was well known to apply a screw structure to an injection apparatus. Thus, the distinctive feature of the patented method is a method for easily producing a potent drug by slowly pushing a moving rear wall feature using the screw structure. Accordingly, the distinctive feature of the patent is

this characteristic part.

With respect to the term, “holding substantially perpendicular,” it is common to direct the point of a needle upward so as to prevent an injection liquid from leaking through the point. Thus, the term “holding approximately perpendicular” in the context of producing an injection liquid is not a feature having novelty or inventive step. Further, the function and the effect of the patented method are reducing alteration, which is caused when producing a potent drug; as long as the point of the needle is directed upward, the function and the effect stated above can be achieved. Therefore, it is not required that an ample be held substantially perpendicular. Accordingly, the patented method is not different from the method used by Y, the defendant, in light of the distinctive feature of the patented method being as described above.

(2) Y did not add the term, “holding approximately perpendicular,” in the amendment in order to overcome a rejection of the application, and thus the method used by Y is not intentionally excluded from the method of X.