

Date	April 18, 2014	Court	Tokyo District Court, 40th Civil Division
Case number	2011 (Wa) 23424		
- A case wherein the court held that the plaintiff's right to claim a reasonable value for an employee invention has been extinguished by prescription, and that there has been no tort of violation of the plaintiff's right to have the honor of being the inventor.			

In this case, the plaintiff sued the defendant company, for which he/she had formerly worked, to seek payment of 267.6 million yen as a reasonable value under Article 35, paragraph (3) of the Patent Act prior to the revision by Act No. 79 of 2004 with regard to the patent right (the "Patent Right") applied for and obtained by the defendant company while indicating its representative(hereinafter referred to as the "defendant representative") as the inventor, with delay damages accrued thereon. The plaintiff also sued the defendant representative, alleging that the plaintiff's right to have the honor of being the inventor was violated due to the patent having been registered while indicating the defendant representative as the inventor of the invention covered by that Patent Right (the "Patented Invention"), contrary to the fact that the plaintiff was the true inventor, and accordingly, seeking payment of 2.2 million yen as damages in tort and delay damages accrued thereon, as well as the publication of an apology advertisement to restore the plaintiff's honor.

The major issues of the case include: [i] whether the plaintiff is the inventor of the Patented Invention; [ii] whether the Patented Invention is regarded as an employee invention and whether the defendant company has taken over the right to obtain a patent for that invention from the plaintiff; [iii] whether the plaintiff's right to claim a reasonable value for the employee invention has been extinguished by prescription or whether the extinctive prescription for said right has been interrupted; and [iv] whether or not the act of the defendant representative constitutes a tort of violation of the plaintiff's right to have the honor of being the inventor.

On these points, the court held as follows. The plaintiff is at least one of the inventors with regard to the characteristic elements of the Patented Invention. The plaintiff had vested the right to obtain a patent in the defendant company by January 25, 1999. This means that a period of ten years had already passed at the time the plaintiff exercised the right to claim a reasonable value for an employee invention, and thus the right to claim said value cannot be found to have been extinguished by prescription, and the extinctive prescription for said right has not been interrupted. The plaintiff is considered to have consented, at his/her own discretion, to indicate the defendant representative as the inventor of the Patented Invention and thus considered to have

waived the chance to exercise his/her moral rights, and therefore there has been no tort of violation of the plaintiff's right to have the honor of being the inventor. In conclusion, the court dismissed all of the plaintiff's claims.