

Date	June 26, 2008	Court	Tokyo District Court, 46th Civil Division
Case number	2007 (Wa) 21425		
– A case in which the court partially accepted the plaintiff's claim for disposal of the defendant's product, etc., return of unjust enrichment, and payment of damages, after examining the allegation of the plaintiff, who is the patentee of an invention titled "balloon clip fastening device," to the effect that the defendant's act of manufacturing and selling the defendant's product constitutes infringement of the plaintiff's patent right.			

In this case, the plaintiff, who is the patentee of an invention titled "balloon clip fastening device" (the "Invention"), alleged that the defendant's act of manufacturing and selling the defendant's product constitutes infringement of the plaintiff's patent right and demanded against the defendant disposal of the defendant's product and the molds used to manufacture the same, return of unjust enrichment, and payment of damages for an act of tort (while, at the time of filing this lawsuit, the plaintiff also claimed an injunction against the manufacturing, sale, etc. of the defendant's product, the lawsuit ended with regard to the aforementioned claim for an injunction, because the defendant acknowledged the aforementioned claim for an injunction on the first day for oral argument).

In this case, there is a consensus among the parties concerned about the fact that the defendant's product falls within the technical scope of the Invention. The major issues in this case are [i] the acceptability of the claim for disposal of the defendant's product and the molds used to manufacture the same and [ii] the amount of damage, etc. that should be returned or compensated by the defendant.

In the judgment, regarding Issue [i], the court accepted the claim for disposal of the defendant's product despite the fact that the defendant acknowledged the aforementioned claim for an injunction on the grounds that [a] it is recognized that the defendant still has the defendant's product in stock and that [b] the defendant continued selling the defendant's product even after receiving a warning against patent infringement from the plaintiff, recognizing and apologizing for the infringement of the plaintiff's patent right by the defendant's product, and promising to stop the sale of the defendant's product. On the other hand, the court dismissed the claim for disposal of the molds used to manufacture the defendant's product on the grounds that the defendant may not be found to possess said molds by itself.

Regarding Issue [ii], on the presumption that [a] the defendant's product was not sold as an independent product, but was sold as one of the items included in a set

product together with a yo-yo balloon, fastening device, etc., and [b] the product that the plaintiff manufactured by working the Invention was also not sold as an independent product, but was sold as one of the items included in a set product, the court found that the product manufactured by working the Invention included in the plaintiff's set product could have been sold if there had been no infringement of the patent right by the sale of the defendant's product. Furthermore, the court calculated and determined the amount of damage caused by the sale of the defendant's product based on the amount of profit per unit of the product manufactured by working the Invention included in the plaintiff's set product, and also partially accepted the plaintiff's claims for monetary compensation by recognizing the amount of damage to be equivalent to the reasonable amount of attorneys' fees and accepting the claim for return of unjust enrichment (equivalent to the reasonable amount of royalties for the Invention that should have been paid in connection with the sale of the defendant's product that was out of the scope of the claim for damages).