

Date	September 7, 2011	Court	Intellectual Property High Court, Third Division
Case number	2011 (Ne) 10002		
<p>○ In an appeal case against the judgment of the court of the prior instance, which dismissed the claims in a lawsuit to seek injunction against infringement of a patent right for the invention entitled "Rice cake" and other claims, the Intellectual Property High Court rendered an interlocutory judgment holding that the defendant's products (cut rice cake) fall within the technical scope of the patented invention and that the patent is not recognized as one that should be invalidated by a trial for invalidation.</p>			

References:

Articles 70 and 104-3 of the Patent Act and Article 245 of the Code of Civil Procedure

The appellant (the plaintiff in the prior instance) asserted that the act of the appellee (the defendant in the prior instance) of manufacturing, selling, and exporting the defendant's products constitutes infringement of the patent right for the invention entitled "Rice cake," and sought an injunction against the manufacturing, assignment, etc. of the defendant's products and payment of damages. The court of the prior instance ruled that the defendant's products (cut rice cake) are not recognized as falling within the technical scope of the patented invention, as they do not fulfill one of the constituent features of the patented invention, that is, "forming one or more notch parts or groove parts having lengths in the circumferential direction while regarding the direction along the perpendicular side as the circumferential direction not on the placing bottom face or the flat top face but on the side surface which is the perpendicular side of the upper surface part of this small rice cake body." Based on this ruling, the court of the prior instance dismissed all of the claims of the appellant (the plaintiff in the prior instance). In response to this, the appellant (the plaintiff in the prior instance) filed this appeal to seek rescission of the judgment of the court of the prior instance.

The Intellectual Property High Court determined as follows: "Among the constituent features of the patented invention, the statement 'not on the placing bottom face or the flat top face but on the side surface which is the perpendicular side of the upper surface part of this small rice cake body' is designed to specify the "side surface," and it is not reasonable to understand that the statement has the meaning of excluding forming notch parts, etc. on the placing bottom face or the flat top face. In the defendant's products (cut rice cake), notch parts are formed at the long edge parts of the side surface, which are two facing sides. Therefore, the defendant's products are recognized as being of the constitution in which, 'when the rice cake is toasted, the

upper side of the notch part 13 pops up against the lower side and the rice cake swells and transforms into the state where swollen filling is sandwiched between the upper and lower toasted plate part like *Monaka* (sweet bean paste in wafers) or a sandwich, thereby restraining the gushing of the melted rice cake by its swelling phenomenon.' Therefore, the defendant's products fall within the technical scope of the patented invention."

The Intellectual Property High Court also determined that (i) there is no fact that the appellee (the defendant in the prior instance) sold cut rice cakes in which notches are made on the side surface before the filing of the patent application, that (ii) the patented invention is not regarded as an invention that has been publicly worked or publicly known before the filing of the patent application, and that (iii) the patented invention is not regarded as having been easily arrived at based on inventions that have been publicly worked or publicly known before the filing of the patent application.

Based on these determinations, the Intellectual Property High Court rendered an interlocutory judgment in order to continue the proceedings with regard to the calculation of the amount of damage pertaining to the claim for damages and the scope of the claim for injunction, etc.