

Date	September 13, 2012	Court	Osaka District Court, 21st Civil Division
Case number	2010 (Wa) 6028		
<p>– A case wherein, with respect to an electronic breaker which had not received the assessment as prescribed in the Electrical Appliances and Materials Safety Act, the court held that the act of selling such electronic breaker by affixing a PSE label, which is only allowed to be affixed to electrical appliances that have received such assessment, constitutes an act of causing a misconception about the quality, etc. of goods, etc. (Article 2, paragraph (1), item (xiii) of the Unfair Competition Prevention Act) but found that the PSE label did not stimulate demand for such electronic breaker based on the mode of indication and thereby denied occurrence of any damages.</p>			

In this case, the plaintiff, who holds a patent right for an invention titled "electronic breaker" (the "Patent Right"), alleged that the defendant's act of manufacturing, selling or otherwise handling the defendant's product (an electronic breaker) constitutes infringement of the Patent Right and claimed against the defendant an injunction against the manufacture and sale, etc. of the defendant's product as well as the disposal thereof and compensation for damages. In addition, the plaintiff preliminarily claimed compensation for damages by alleging that the act of selling the defendant's product which has not received the assessment as prescribed in the Electrical Appliances and Materials Safety Act by affixing thereto a PSE label falls under the act of causing a misconception about the quality, etc. of goods, etc. as prescribed in Article 2, paragraph (1), item (xiii) of the Unfair Competition Prevention Act.

The main issues are [i] whether or not the defendant's product falls within the technical scope of the patented invention; [ii] whether or not the act of selling the defendant's product by affixing thereto a PSE label falls under the act of causing a misconception about the quality of goods etc.; and [iii] whether or not any damages occurred.

In this judgment, with respect to Issue [i], the court found that a model change was made to the defendant's product prior to the registration of establishment of the Patent Right and that the defendant's product after such change does not fall within the technical scope of the patented invention, and thereby dismissed the principal claim based on the Patent Right.

On the other hand, with respect to Issue [ii], the court found that the act of selling the defendant's product by affixing thereto a PSE label without receiving anew the assessment as prescribed in the Electrical Appliances and Materials Safety Act after the model change constitutes an act of causing a misconception about the quality of the

goods, etc. Nevertheless, with respect to Issue [iii], the court held that the PSE label did not stimulate the demand for the defendant's product based on the mode of indication of the PSE label made on the defendant's product and in the advertisement thereon, and denied the occurrence of damages. Based on these findings, the court dismissed the preliminary claims as well.