

Date	October 6, 2015	Court	Intellectual Property High Court, Second Division
Case number	2015 (Ne) 10064, 2015 (Ne) 10078		

– A case in which, while the court of prior instance examined two cases of plagiarism of another person's paper, accepted the author's allegation about infringement of the right of attribution, and ordered payment of 100,000 yen as a solatium and 10,000 yen as an attorney's fee for each case, the court of this instance partially modified the judgment in prior instance and increased the amount of damage corresponding to the attorney's fee to 100, 000 yen for each case.

References: Article 19, Article 20, Article 21, Article 23, Article 112, paragraph (1), Article 115 of the Copyright Act

Summary of the Judgment

The plaintiff, who is the author of a paper, alleged that the papers authored by Defendant 1, etc. infringed the plaintiff's right of reproduction, right of adaptation, right to integrity, and right of attribution specified in the Copyright Act and the plaintiff's interest that should be protected against a general act of tort, such as plagiarism of a paper. The plaintiff demanded that Defendant 1, who is Defendant 2's co-author and who is the professor in charge of Defendant 2 and Student P, Defendant 2, who is Defendant 1's co-author, and the defendant school operating the graduate school for which Defendant 1 works should pay damages for an act of joint tort or based on the employer liability. Furthermore, the plaintiff demanded that Defendant 1 and Defendant 2 should publish an apology as a measure for restoration of honor, and demanded, among other things, that the defendant academic society should delete the papers of Defendant 1, etc. from its website, and sought a declaratory judgment concerning the ownership of the copyright on the grounds that the copyright assignment agreement concluded with the defendant academic society was canceled due to nonperformance.

The court of prior instance did not recognize the effect of the plaintiff's cancellation of the copyright assignment agreement concluded with the defendant academic society and dismissed the plaintiff's request for a declaratory judgment against the defendant academic society. On the other hand, the court of prior instance recognized the copyrightability of the plaintiff's paper and found that Defendant 1 and Defendant 2 infringed only the right of attribution and only with regard to two of the publicized papers authored by Defendant 1, etc. The court thus accepted the plaintiff's allegation that the defendants shall pay damages, i.e., 100,000 yen as a solatium and 10,000 yen as an attorney's fee for each paper, and the plaintiff's allegation that one of the papers

posted on the website operated by the defendant academic society should be deleted. On the other hand, the court dismissed the plaintiff's claim that Defendant 1 and Defendant 2 should make a public apology. Regarding the paper authored by Student P under the supervision of Defendant 1, the court found that Student P neither copied nor published any expressions from the plaintiff's paper and dismissed the plaintiff's allegation concerning Defendant 1's liability for joint tort. Moreover, regarding plagiarism in Defendant 2's paper, the court dismissed the plaintiff's allegation concerning the employer liability of the defendant school. Also, the court denied the existence of a general act of tort by holding that no infringement of any legal interest other than the copyright, etc. can be found. Consequently, the plaintiff filed an appeal against the judgment in prior instance with respect to all of the part for which the plaintiff lost the case, while Defendant 1 and Defendant 2 filed an incidental appeal against said judgment with respect to all of the part for which they lost the case. Meanwhile, the defendant academic society did not file any appeal.

In this judgment, the court upheld most of the judgment in prior instance and found that Defendant 1, who is the professor in charge of Defendant 2, etc., was not obliged to check whether or not any of the expressions used in students' papers infringed a third party's copyright. Therefore, the court dismissed the allegation that Defendant 1 has tort liability for the violation of such obligation. From the perspective of academic freedom and the university's autonomy, the court found that no university, etc. should be heavily involved in the professors' process of writing papers until publication and concluded that the defendant school does not have the employer liability for the plagiarism of the plaintiff's paper committed by Defendant 1. Regarding the infringement of the right of attribution committed by Defendant 1 and Defendant 2, the court upheld the judgment in prior instance to the effect that 100,000 yen shall be paid as a solatium for each paper and increased the amount of damages for the attorney's fee from 10,000 yen to 100,000 yen for each paper.