

Patent Right	Date	September 17, 2020	Court	Tokyo District Court, 47th Civil Division
	Case number	2018 (Wa) 18555		
<p>- A case in which the court dismissed the Plaintiff's claims against the Defendants for an injunction and disposal of the allegedly infringing product, which were filed based on the alleged infringement of the patent right for an invention titled "Equol-containing extract and manufacturing method therefor, equol extraction method and foods containing equol."</p>				

Summary of the Judgment

In this case, the Plaintiff, the holder of a patent right based on a patent for an invention of a method for manufacturing a product, titled "Equol-containing extract and manufacturing method therefor, equol extraction method and foods containing equol" (the "Patent Right" and the "Patent"), seeks an injunction against the infringement of the Patent Right by the Defendants and demands the disposal of the infringing compositions, by alleging that the Patent Right is infringed by Defendant 1's acts of using the method of manufacturing a powdery fermented product containing ornithine and equol (the "Defendants' Method") and producing and selling a fermented soy germ extract with the use of that method (the "Defendants' Feedstock"), and Defendant 2's acts of producing and selling foodstuff containing a fermented soy germ extract with the use of the Defendants' Feedstock (the "Defendants' Product").

The issues of the case are as follows: [i] whether the Defendants' Method falls under the technical scope of the invention covered by the Patent (the "Invention"); [ii] whether there are grounds for invalidation of the Patent (lack of novelty and inventive step, violation of the support requirement, and violation of the enablement requirement); and [iii] whether the Plaintiff can assert the corrections to the Invention against the Defendants' claim of invalidity.

In this judgment, the court held as follows. The claim of the Invention is described as: a "method of manufacturing a fermented product containing ornithine and equol, which comprises fermentative treatment of fermentation feedstock containing arginine and at least one type of daidzein selected from a group consisting of daidzein glycoside, daidzein and dihydro daidzein, using a microorganism that has the capacity to produce ornithine and equol." It is clearly stated that "arginine" is already contained in the "fermentation feedstock" in the stage of adjusting the "fermentation feedstock" together with the selected type of "daidzein." On the other hand, in the case of the Defendants'

Method, the "culture solution containing arginine" is not contained in the "fermentation feedstock" in the stage of adjusting the "fermentation feedstock" together with the selected type of "daidzein," but it first appears in the step of "fermentative treatment" and it is mixed with another prescribed solution (treatment solution containing daidzein). Thus, the Defendants' Method cannot be regarded as satisfying the claim description mentioned above, and it therefore does not fall under the technical scope of the Invention. Explaining as such, without making determination on Issues [ii] and [iii], the court dismissed all of the Plaintiff's claims against the Defendants.