

Date	December 21, 2017	Court	Intellectual Property High Court, Fourth Division
Case number	2017 (Gyo-Ke) 10083		
<p>– A case in which the court examined the invention titled "wash-free rice retaining tasty component and nutrient component" and found that, even though the manufacturing process is stated in a claim, it cannot be found that the disputed invention violates the clarity requirement because it is unambiguously clear, from the statements in the claims and the description, what structure or property of the wash-free rice embodying the disputed invention is described by the manufacturing process.</p>			

References: Article 36, paragraph (6), item (ii) of the Patent Act

Numbers of related rights, etc.: Patent No. 4708059, Invalidation Trial No. 2015-800173

#### Summary of the Judgment

Regarding the invention titled "wash-free rice retaining tasty component and nutrient component," a request for an invalidation trial was filed. The JPO made a decision to invalidate the invention described in Claim 1 (the "Invention"), and dismiss the request for an invalidation trial for the inventions described in Claims 2 and 3. This is a case where the patentee sought rescission of such part of the JPO decision that is related to Claim 1.

In the JPO decision, the JPO invalidated the patent for the Invention described in Claim 1 on the grounds that Claim 1 is not clear enough and does not satisfy the clarity requirement.

In this judgment, the court rescinded this part of the JPO decision that is related to Claim 1 as stated below by holding that Claim 1 is clear enough and cannot be considered to violate the clarity requirement.

(1) According to the statements in the claims and the description of the Invention, it can be said that Claim 1 as a whole can be considered to describe the manufacturing process as part of the matters to identify the invention of a product, "wash-free rice."

(2) Even if the manufacturing process is stated in the claims, as long as it is unambiguously clear, from the claims, description, drawings, and general technical knowledge, what structure or property of the product is described by the manufacturing process, the clarity requirement can be considered to be satisfied because the interests of a third party would not be unfairly damaged.

(3) Claim 1 states that the Invention is an invention of wash-free rice retaining tasty component and nutrient component that is characterized by its brown rice kernel (a) whose semi-aleurone cell layer is exposed to the surface of each rice grain after the

removal of up to the aleurone cell layer from the surface, (b) retaining "germ after the removal of its surface layer" or "germinal disks" on more than 50% of its rice grains, and (c) from which only the sticky rice bran on the rice grain surface is removed, while the aleurone granules in the aleurone cell layer are stuck to the rice surface.

The description only states that the rice is polished with a friction-type rice-milling machine to produce the rice described in (a) and (b) above, which is a preliminary form of the wash-free rice embodying the Invention and that, for the process of turning this rice into the wash-free rice embodying the Invention as described in (c), a wash-free rice machine is used. The description contains no statements that suggest that the rice polished with a friction-type rice-milling machine has any structure or property other than those described in (a) and (b) above or that the wash-free rice produced from said rice by using a wash-free rice machine has any structure or property other than that described in (c) above.

According to the claims and the description as stated above, it is reasonable to interpret that the statement "polished with a friction-type rice-milling machine" in Claim 1 means that a friction-type rice-milling machine is used to produce polished white rice that has the structure or property described in (a) and (b), which is a preliminary form of the wash-free rice embodying the Invention, and that the statement "with wash-free rice machine (21)" in Claim 1 means that a wash-free rice machine is used to produce, from said polished white rice, wash-free rice that has the structure or property described in (c), and that these statements do not suggest that the wash-free rice embodying the Invention has any structure or property other than those described in (a) to (c).

Therefore, even if the manufacturing process, i.e., "polished with a friction-type rice-milling machine" and "with wash-free rice machine (21)," is stated in Claim 1, it is unambiguously clear, from the statements in the claims and the description, what structure or property of the wash-free rice embodying the Invention is described by the manufacturing process.