

Patent Right	Date	June 28, 2018	Court	Osaka District Court, 26th Civil Division
	Case number	2015 (Wa) 4292		
<p>- A case in which the court has accepted claims for an injunction and compensation for damage, stating that a carbonate pack sold, etc. by Defendants falls within a technical scope of the invention according to the patent right of Plaintiff (Title of the invention: CARBON DIOXIDE-CONTAINING VISCOUS COMPOSITION), and the sales, etc. thereof and the sales, etc. of granules correspond to an act of indirect infringement of the patent right.</p>				

### Summary of the Judgment

This case is a case in which Plaintiff who owns a patent right titled "CARBON DIOXIDE-CONTAINING VISCOUS COMPOSITION" has claimed an injunction of the sales, etc. of two pack-type carbonate packs and granules and compensation for damage, etc., alleging that two pack-type carbonate packs sold, etc. by Defendant falls within a technical scope of the invention according to the patent right, and the sales, etc. of the pack and the sales, etc. of the granules correspond to an act of indirect infringement of the patent right. The issues are: whether or not to fall within a technical scope; whether or not indirect infringement applies; and the presence or absence of reasons for invalidation.

The Patent is directed to a kit for obtaining a carbon dioxide-containing viscous composition to be used for pharmaceutical compositions or cosmetics. Regarding the language of "capable of retaining carbon dioxide in the form of bubbles" of the scope of claims, Defendants questions the content of carbon dioxide and alleges that the above language should be construed in a limited meaning, whereas the court decision has determined that the above language should be construed as literally meaning that a composition is capable of retaining carbon dioxide in the form of bubbles in view of the description of the specification and prosecution history, etc. Furthermore, the court has determined that Defendants' products fall within a technical scope of the invention according to the patent right of Plaintiff, and indirect infringement shall apply.

Further, Defendants have presented allegations of the invalidity of the patent due to nonconformance to the support requirement and lack of the inventive step, but all the allegations have been rejected.

Furthermore, since Plaintiff alleged a joint tort liability be accepted for every commercial distribution of each product, this issue was also considered. For a part of Defendants, the joint tort liability has been accepted, stating that there was

objectively closely-associated cooperativity among a part of Defendants, whereas for the most of Defendants, it has not been assumed.

Regarding an amount of damage on Plaintiff, damage under Articles 102, paragraphs (2) and (3) of the Patent Act was insisted. Regarding damage under the paragraph (2), the Defendants' allegation of cost deduction was partially accepted, whereas the allegation of the rebuttal to presumption was not recognized. Further, regarding damage under the paragraph (3), while making reference to a result of a questionnaire about a royalty fee for domestic businesses, considering the circumstances leading to this infringement lawsuit, the court has found a reasonable royalty rate and accepted a higher amount of damage for each product (Defendant).