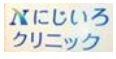
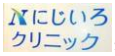
Trademark Right	Date	February 6, 2025	Court	Intellectual Property High Court, Second Division
	Case number	2024 (Ne) 10051		
- A case in which the court found that the act of the Appellee (Defendant) of using the Defendant's Marks  , etc. by affixing any of them on its advertisements, including websites, leaflets, bulletins, signboards, etc., in operating medical practice and providing medical information infringes the Appellant's Trademark Right for the Trademark consisting of the standard characters, "にじいろクリニック", and modified part of the judgement in prior instance with regard to the claim for compensation for the damage.				

Case type: Compensation
Result: Partial modification
Reference: Article 38, paragraph (3) of the Trademark Act
Judgment of the prior instance: Tokyo District Court, 2023 (Wa) 70130

Summary of the Judgment

1. In the present case, the Appellant (the "Plaintiff") made the following claims against the Appellee (the "Defendant"), arguing to the effect that the act of the Defendant of using the Defendant's Marks  , etc. by affixing any of them on its advertisements, including websites, leaflets, bulletins, signboards, etc., in operating medical practice and providing medical information infringes the Plaintiff's Trademark Right (registration number: 6457577) for the Trademark consisting of the standard characters, "にじいろクリニック": (A) a claim for the payment of 22,000,000 yen as a partial claim for the compensation for the damage caused by the Defendant's tortious act, i.e., infringement of the Plaintiff's Trademark Right due to the use of the Defendant's Marks on and after October 18, 2021 until August 17, 2023, at the time of the prior instance (Article 38, paragraph (3) of the Trademark Act, etc.) and the payment of the amount for delay damage accrued thereon; (B) a claim for an injunction against the use of the Defendant's Marks and the destruction and deletion of leaflets, websites, etc. with the Defendant's Marks affixed thereon related to the aforementioned advertisements (Article 36, paragraphs (1) and (2) of the Trademark Act, etc.); and (C) a claim for the posting of an apology advertisement (Article 39 of the Trademark Act and Article 106 of the Patent Act).

The court of prior instance found that the Defendant's Marks are similar to the

Plaintiff's Trademark. In addition, regarding the Plaintiff's claim for the compensation for the damage due to the trademark right infringement caused by the use of the Defendant's Marks during the aforementioned period, the court partially upheld the Plaintiff's claim to the extent of seeking the payment of 7,556,569 yen and the payment of the amount for delay damage. Furthermore, the court upheld the Plaintiff's claims for an injunction, destruction, and deletion, but dismissed the Plaintiff's claim for the posting of an apology advertisement.

Dissatisfied with this, the Plaintiff and the Defendant both filed an appeal against the parts of the judgment that ruled against them. In the appeal court, the Plaintiff organized its claims for damage and demanded the payment of 2,200,000 yen and the respective amounts of delay damage as a partial claim for the compensation for the damage ([i] the amount equivalent to the monthly license fee calculated under Article 38, paragraph (3) of the Trademark Act, [ii] the expenses for acquiring and maintaining the Plaintiff's Trademark Right under paragraph (5) of that Article, and [iii] the lawyer's fees) caused by the Defendant's trademark infringement (tortious act) due to the use of the Defendant's Marks to the date of conclusion of the oral argument for fact-finding proceedings.

2. This court found that the Defendant's use of the Defendant's Marks infringes the Plaintiff's Trademark Right. In addition, regarding the Plaintiff's claim for the compensation for the damage due to the trademark right infringement until the date of conclusion of the oral argument in the appeal court, the court partially upheld the Plaintiff's claim to the extent of seeking the payment of 19,592,137 yen and the payment of the amount for delay damage, and partially modified the judgment in prior instance (the rest of the conclusions in the judgment of prior instance remained the same). Out of this, the amount of damage to be calculated under Article 38, paragraph (3) of the Trademark Act was 17,767,237 yen in total, and the summarized reasons therefor shown in this judgment are as below.

(1) The Defendant received a written warning from the Plaintiff in December 2021, regarding the use of the Defendant's Marks, and started ongoing negotiations from January 2022. As a result, the Defendant entered into the Agreement with the Plaintiff in August 2022, under which, based on the premise that the Defendant's Marks are identical with or similar to the Plaintiff's Trademark, the Defendant would delete or remove Defendant's Marks from all Internet contents, signboards, leaflets, equipment, and others with the relevant marks affixed thereon and under which the Defendant would never use any marks identical with or similar to the Plaintiff's Trademark thereafter. Nevertheless, the Defendant has continued to use the Defendant's Marks even thereafter. Accordingly, denying the Defendant's negligence is difficult.

(2) Regarding the sales relating to the medical practice income at the Defendant's Clinic during the period between January 1, 2023 and December 23, 2024 (the date of conclusion of the oral argument), this court approved the order for submission of documents in response to the Plaintiff's request (designating the following as the facts to be proven: "the monthly average sales at the Defendant Clinic in 2023 are, respectively, not less than 11,000,000 yen in the first half and 13,000,000 yen in the second half, and the monthly average sales in 2024 are, respectively, not less than 15,000,000 yen in the first half and 17,000,000 yen in the second half," and the target documents as a set of the tax return of the income tax, etc. of the Defendant for 2023; Article 39 of the Trademark Act and Article 105, paragraph (1) of the Patent Act). Nevertheless, the Defendant did not observe this order. Based on the grounds that the Defendant's refusal to submit the target documents is not found to have "legitimate grounds" (as set forth in the proviso to that paragraph of the Patent Act); that the aforementioned "facts to be proven," which the Plaintiff demands, are not unreasonable contents, taking into account the changes in monthly sales stated in the tax return of the income tax, etc. of the Defendant for 2021 and those for 2022; and in light of the nature of the aforementioned target documents, it is considered extremely difficult for the Plaintiff to make specific arguments related to the contents and to prove the aforementioned facts to be proven by using other evidence. Accordingly, under the provisions of Article 224, paragraph (3) of the Code of Civil Procedure, it should be said that it is acceptable that the Plaintiff's arguments concerning the facts to be proven by the aforementioned target documents about the monthly average sales at the Defendant's Clinic in 2023 is true. Moreover, in light of the changes in sales at the Defendant's Clinic, the monthly sales during the period between January 1, 2024 and December 23, 2024 can be presumed as 15,000,000 yen in the first half and 17,000,000 yen in the second half.

(3) Regarding the license fee rate for the use of the Plaintiff's Trademark, which is receivable and retrospectively specified after the infringement of the Plaintiff's Trademark Right, the Plaintiff argues that the prevailing reasonable license fee rate in the industry of sexually transmitted disease clinics is not less than 5.5% and that the reasonable license fee rate is not less than 10% based on the value of the Plaintiff's Trademark, the mode in which the Defendant infringes the Trademark Right, etc. However, looking at the evidence, there is just one case example of the use of a registered trademark for Class 44, and this single case example, which shows that the license fee rate was 5.5%, is not sufficient to find that 5.5% is a prevailing rate. The Plaintiff's Trademark is considered to be capable of attracting a certain group of customers to the Plaintiff's business due to the generally associated concept. However, taking into account the fact that the Plaintiff first opened a website under the name "あおぞらクリニック" and, as only part of the clinic's

services, the Plaintiff has been using the name, "にじいろクリニック外来", for referring to its specific outpatient service, the Plaintiff's Trademark per se cannot be found to have acquired a considerable level of well-knownness or recognition. Accordingly, even taking into account the competitive situation between the Plaintiff and the Defendant and the background to the present case, it cannot be said that sufficient evidence is provided to support the claimed license fee rate, which significantly exceeds the average license fee rate of 2.6% for the use of a trademark right in general. This court takes into account all circumstances which have been uncovered in the present case and finds that the license fee rate, which becomes a basis to calculate the amount of compensation for damage under Article 38, paragraph (3) of the Trademark Act, should be set at 4% as a reasonable rate.

Judgment rendered on February 6, 2025
2024 (Ne) 10051
Appeal case of seeking compensation for damage caused by the trademark right infringement
(Court of prior instance: Tokyo District Court, 2023 (Wa) 70130)
Date of conclusion of oral argument: December 23, 2024

Judgment

Appellant and Appellee: X (referred to below as the "Plaintiff")

Appellee and Appellant: Y (referred to below as the "Defendant")

Main text

1. The Defendant's appeal shall be dismissed.
2. Based on the Plaintiff's appeal, the judgment in prior instance shall be modified as follows.
3. The Defendant shall pay to the Plaintiff the following amounts of money: 19,592,137 yen; the amounts accrued at the rate of 3% per annum on the amounts, out of 17,767,237 yen out of the aforementioned total amount, that are stated in the "Determined damage" column in the "Determinations in the present instance (appeal court)" section in the Attachment, for the period from the dates stated in the "Initial date for the calculation of delay damage" column in the same section in the Attachment respectively until the completion of the payment; and the amount accrued at the rate of 3% per annum on 1,824,900 yen, out of the aforementioned total amount, for the period from April 9, 2023 until the completion of the payment.
4. The Defendant shall not use the marks which are stated in the "List of Defendant's Marks" in the Attachment to the judgment in prior instance in its advertisements, including websites, leaflets, bulletins, signboards, etc., in operating medical practice and providing medical information.
5. The Defendant shall destroy the leaflets, bulletins, signboards, etc. with the marks described in the preceding paragraph affixed thereon.
6. The Defendant shall delete the marks in Paragraph 4 from the websites stated in the "List of Defendant's Websites" in the Attachment to the judgment in prior instance.
7. All the other claims made by the Plaintiff shall be dismissed.
8. The court costs throughout the first and second instances are divided into 20 parts, of

which, one part shall be borne by the Plaintiff and the rest shall be borne by the Defendant.
9. This judgment may be provisionally executed only with regard to Paragraphs 3, 4, and 6.

Facts and reasons

No. 1 Object of the appeal

1. Object of the Plaintiff's appeal

(1) The part of the judgment in prior instance that is against the Plaintiff shall be rescinded.
(2) The Defendant shall pay to the Plaintiff the following amounts: 14,443,341 yen; the amounts accrued at the rate of 3% per annum on the amounts, out of the aforementioned total amount, that are stated in the "Amount lost in the prior instance" column in the "Written request for modification to the Plaintiff's claims dated on November 28, 2024" section in the Attachment, for the period from the dates stated in the "Initial date for the calculation of delay damage" column in the same section in the Attachment respectively until the completion of the payment; and the amounts accrued at the rate of 3% per annum on the amounts, out of the aforementioned total amount, that are stated in the "Amount won in the prior instance" column in the same section in the Attachment for the period from the dates stated in the "Initial date for the calculation of delay damage" column in the same section in the Attachment until August 16, 2023.
(3) The Defendant shall post an apology advertisement containing the descriptions stated in 1. of the "List of Apology Advertisement" in the Attachment to the judgment in prior instance in a manner according to the descriptions stated in 2. of the same list.
(4) Declaration of provisional enforceability
(Of the amounts claimed for delay damage in (2), regarding the amounts for which initial date for the calculation of delay damage is the date on or before April 9, 2023, claims for the amounts were added in the present instance.)

2. Object of the Defendant's appeal

(1) The part of the judgment in prior instance that is against the Defendant shall be rescinded.
(2) All the claims made by the Plaintiff for the part rescinded as above shall be dismissed.

No. 2 Outline of the case

Unless otherwise specified, abbreviations in parentheses are those cited from the judgment in prior instance.

1. Summary of the case

(1) The Plaintiff is a doctor who operates "あおぞらクリニック" (*Aozora Clinic*, a medical clinic specializing in sexually transmitted diseases, which launched Shimbashi Clinic in 2013; referred to below as the "Plaintiff's Clinic"), and the Defendant is a doctor

who operates "にじいろクリニック新橋" (*Nijiiro Clinic Shinbashi*, a medical clinic specializing in sexually transmitted diseases, which launched Shimbashi Clinic in July 2021; referred to below as the "Defendant's Clinic").

The Plaintiff is the holder of the trademark right for the registered trademark stated in the "List of Trademark Right" in the Attachment to the judgment in prior instance (the "Plaintiff's Trademark," for which the application was filed on May 21, 2021, and the establishment was registered on October 18, 2021 [designated services: medical practice and providing medical information]; referred to below as the "Plaintiff's Trademark Right"). On the other hand, since July 2021 at the latest, the Defendant has continued to use the marks stated in the "List of Defendant's Marks" in the Attachment to the judgment in prior instance (Defendant's Marks 1 to 4; referred to below as the "Defendant's Marks") on some means, including its websites (the "Websites"), which are stated in the "List of Defendant's Websites" in the Attachment to the judgment in prior instance, leaflets, bulletins, and signboards.

The Plaintiff issued a written warning to the Defendant, stating that the Defendant's Marks are identical with or similar to the Plaintiff's Trademark, and started negotiations with the Defendant. On August 30, 2022, the Plaintiff entered into an agreement with the Defendant under which the Defendant would delete or remove the relevant marks identical with or similar to the Plaintiff's Trademark from all Internet contents, signboards, leaflets, equipment, and others with such marks affixed thereon and under which the Defendant would never use any marks identical with or similar to the Plaintiff's Trademark thereafter (the "Agreement"). However, the Defendant has continued to use the Defendant's Marks even thereafter.

(2) In the present case, the Plaintiff initially made the following claims against the Defendant, arguing that the Defendant's use of the Defendant's Marks in its advertisements, including websites, leaflets, bulletins, signboards, etc., in operating medical practice and providing medical information infringes the Plaintiff's Trademark Right.

A. A claim for: the payment of 22,000,000 yen as a partial claim for the compensation for the damage caused by the Defendant's tortious act, i.e., infringement of the Plaintiff's Trademark Right due to the use of the Defendant's Marks on or after October 18, 2021 (until August 17, 2023, at the time of the prior instance) (out of the total amount of 28,050,000 yen, which consists of 22,000,000 yen as a reasonable license fee for the use of the Plaintiff's Trademark under Article 38, paragraph (3) of the Trademark Act, 50,000 yen as expenses for acquiring and maintaining the Plaintiff's Trademark Right, etc. under paragraph (5) of that Article, and 6,000,000 yen as an amount equivalent to lawyer's fees);

and the payment of the amount for delay damage accrued thereon at the rate of 3% per annum as prescribed in the Civil Code for the period from April 9, 2023 (the date following the date of service of the written request for correction of the Plaintiff's claims) until the completion of the payment;

B. A claim for: an injunction against the use of the Defendant's Marks in its advertisements, including websites, leaflets, bulletins, signboards, etc., in operating medical practice and providing medical information (which is under Article 36, paragraph (1) of the Trademark Act or the Agreement); the destruction of leaflets, bulletins, signboards, etc. with the Defendant's Marks affixed thereon related to the aforementioned advertisements; and the deletion of the Defendant's Marks from the Websites (which is under Article 36, paragraph (2) of the Trademark Act or the Agreement); and

C. A claim for the posting of an apology advertisement containing the descriptions stated in 1. of the "List of Apology Advertisement" in the Attachment to the judgment in prior instance as a measure to restore the business credibility in a manner according to the descriptions stated in 2. of the same list (Article 106 of the Patent Act as applied mutatis mutandis pursuant to Article 39 of the Trademark Act).

(3) The court of prior instance determined as follows: the Defendant's Marks are found to be similar to the Plaintiff's Trademark, and therefore, Defendant's Marks 1 and 2 do not fall under Article 26, paragraph (1), item (vi) of the Trademark Act; regarding the Defendant's trademark, "The N にじいろクリニック新橋", the prior use right pursuant to Article 32, paragraph (1) of the Trademark Act is not found; and regarding the Plaintiff's Trademark, the grounds for invalidation and the defense of abuse of right under Article 4, paragraph (1), items (x) and (xix) of the Trademark Act are not found, either. Based on this, the court of prior instance partially upheld the Plaintiff's claims for the compensation for damage to the extent of seeking the payment of 7,556,569 yen and the payment of the amount for delay damage for which initial date for the calculation is August 17, 2023. Moreover, the court of prior instance upheld the Plaintiff's claims for an injunction against the use of the Defendant's Marks and for destruction, including the destruction of advertisements, such as leaflets, bulletins, signboards, etc., with the Defendant's Marks affixed thereon, and the deletion of the Defendant's Marks from the Websites, but dismissed the Plaintiff's claim for the posting of an apology advertisement, ruling that it cannot be found that the Plaintiff's business credibility had been damaged.

(4) Dissatisfied with this, the Plaintiff and the Defendant both filed an appeal against the parts of the judgment that ruled against them. In the present instance, the Plaintiff organized its claims for damage and expanded the claim for delay damage. In addition, the Plaintiff claimed the payment of the principal of 22,000,000 yen and the respective

amounts of delay damage as a partial claim for the compensation for the damage (the breakdown of which is as indicated in [i] to [iii] below) caused by the Defendant's trademark infringement (tortious act) due to the use of the Defendant's Marks from October 18, 2021, to the date of conclusion of the oral argument for fact-finding proceedings. (The date of the conclusion of the oral argument in the present instance was December 23, 2024.): [i] the amount equivalent to the monthly license fee calculated under Article 38, paragraph (3) of the Trademark Act and the amount for delay damage accrued thereon at the rate of 3% per annum as prescribed in the Civil Code for the period from the first day of every following month until the completion of the payment; [ii] 60,000 yen as expenses for acquiring and maintaining the Plaintiff's Trademark Right under paragraph (5) of that Article and the amount for delay damage accrued thereon at the rate of 3% per annum as prescribed in the Civil Code for the period from April 9, 2023, which is the date following the date of service of the written request for correction of the Plaintiff's claims, until the completion of the payment; and [iii] 6,000,000 yen as lawyer's fees and the amount for delay damage accrued thereon at the rate of 3% per annum as prescribed in the Civil Code for the period from the same date until the completion of the payment. Incidentally, the Plaintiff's claims other than those for the compensation for damage remain unchanged from those in the prior instance.

2. Basic facts

As the basic facts are the same as those stated in No.2, 2. of the "Facts and reasons" section of the judgment in prior instance (from pages 3, line 12 to page 4, line 25 in the judgment), except for those stated in No. 2, 2., (3) of the same section in the judgment in prior instance (from page 4, line 5 to line 9 in the judgment), which are to be amended as below, the relevant statements are cited here.

" (3) Use of the Defendant's Marks, etc.

Since July 2021 at the latest, the Defendant has been using the Defendant's Marks by affixing Defendant's Mark 1 on the webpages of the Websites, Defendant's Mark 2 on the leaflets and bulletins for the Defendant's Clinic, Defendant's Mark 3 on the door inside the clinic and the signboards outside it, and Defendant's Mark 4 on the signboard installed behind the reception desk of the clinic.

The Defendant registered the trademark, "THE N にじいろクリニック新橋", on April 3, 2024 (Exhibit Otsu 8), and by around October 4, 2024, it began using the mark, "THE N にじいろクリニック新橋", by affixing it on the several sections of the webpages of the Websites (Exhibit Otsu 12). However, it is found that as of October 10, 2024, the Defendant was using the Defendant's Marks by affixing Defendant's Mark 1 on the several sections of the same webpages and also that some photographs were posted,

which respectively show Defendant's Mark 3 affixed on the door inside the Defendant's Clinic and Defendant's Mark 4 affixed on the wall behind the reception desk thereof. It is also found that as of October 16, 2024, the Defendant was using the Defendant's Marks by affixing Defendant's Mark 2 on a bulletin board and a mailbox, which are installed at the building in which the clinic is located, as well as affixing Defendant's Mark 3 on the door inside the Defendant's Clinic and the signboards installed outside it (Exhibits Ko 39, 40-1 to 40-4, and 40-6; here, even if evidence with branch numbers does not note branch numbers, it should be understood that all branch numbers are included; the same applies below).

3. Issues

(1) Whether the Plaintiff's Trademark and the Defendant's Marks are identical with or similar to each other (Issue 1)

(2) Whether Defendant's Marks 1 and 2 fall under Article 26, and paragraph (1), item (vi) of the Trademark Act (Issue 2)

(3) Validity of the defense of the prior use right (Issue 3)

(4) Validity of the defense of invalidation (Issue 4)

A. Whether the grounds for invalidation specified in Article 4, paragraph (1), item (x) of the Trademark Act exist (Issue 4-1)

B. Whether the grounds for invalidation specified in Article 4, paragraph (1), item (xix) of the Trademark Act exist (Issue 4-2)

(5) Validity of the defense of the abuse of right (Issue 5)

(6) Whether the damage has occurred and the amounts thereof (Issue 6)

(7) Necessity of an injunction and destruction under Article 36, paragraphs (1) and (2) of the Trademark Act (Issue 7)

(8) Necessity of an apology advertisement (Issue 8)

No. 3 Judgment of this court

1. This court, too, finds it reasonable to recognize that the Defendant's use of the Defendant's Marks has infringed the Plaintiff's Trademark Right. Regarding the claims by the Plaintiff, the court determines as below: the claim for an injunction against the Defendant's use of the Defendant's Marks and the claim for the destruction of the advertisements with the Defendant's Marks affixed thereon are both well-grounded and should be upheld; the claim for the compensation for damage is well-grounded to the extent of Paragraph 3 of the main text, including the expanded claim in the present instance, and should be partially upheld; and the claim for the restoration of the business credibility is groundless and should be dismissed. The reasons are as follows.

2. Regarding the validity of the infringement of the Plaintiff's Trademark Right due to the use of the Defendant's Marks (Issues 1 to 5)

As the facts that all the Defendant's Marks are similar to the Plaintiff's Trademark and that the Defendant's use of the Defendant's Marks is found to infringe the Plaintiff's Trademark Right are as stated in No. 3, 1. to 6. of the "Facts and reasons" section in the judgment in prior instance (from page 19, line 9 to page 27, line 21 in the judgment), the relevant statements are cited here.

The Defendant argues to the effect that the Defendant acquired the trademark right for the trademark, "THE N にじいろクリニック新橋", on April 3, 2024, changed the descriptions of its signboards and websites, and has been operating its clinic under the same name since then and that, accordingly, the Defendant has not infringed the Plaintiff's Trademark Right since that date at the latest. However, as stated in the prior judgment in prior instance, which was amended and cited in the aforementioned No.2, 2. (basic facts), it is found that the Defendant has continued to use the Defendant's Marks by affixing them to the signboards of the Defendant's Clinic, the webpages of the Websites, etc. Accordingly, it should be said that even if there is a fact that the Defendant affixes the mark, "THE N にじいろクリニック新橋", to the several locations which the Defendant pointed out, this does not deny the fact of infringement of the Plaintiff's Trademark Right due to the use of the Defendant's Marks. Consequently, the Defendant's arguments cannot be accepted.

3. Regarding whether the damage has occurred and the amounts thereof (Issue 6)

(1) Regarding the damage to be calculated under Article 38, paragraph (3) of the Trademark Act

A. As the determination standards are as stated in No. 3, 7., (1), A. of the "Facts and reasons" section in the judgment in prior instance (from page 27, line 24 to page 28, line 6 in the judgment), the relevant statements are cited here.

B. In the present case, the use of the Defendant's Marks is found to infringe the Plaintiff's Trademark Right, and thus the negligence on the part of the Defendant is presumed (Article 39 of the Trademark Act and Article 103 of the Patent Act). Against this, the Defendant argues that it has acquired the trademark right for the aforementioned trademark, "THE N にじいろクリニック新橋", and considers that it does not infringe the Plaintiff's Trademark Right, and therefore that there is no negligence on the part of the Defendant.

However, as stated in the judgment in prior instance, which was amended and cited in the aforementioned No. 2, 2. (basic facts), the Defendant received a written warning from the Plaintiff dated on December 24, 2021, regarding the use of the Defendant's

Marks, and started ongoing negotiations from January 2022. As a result, the Defendant entered into the Agreement with the Plaintiff on August 30, 2022, under which, based on the premise that the Defendant's Marks are identical with or similar to the Plaintiff's Trademark, the Defendant would delete or remove the Defendant's Marks from all Internet contents, signboards, leaflets, equipment, and others with the relevant marks affixed thereon and under which the Defendant would never use any marks identical with or similar to the Plaintiff's Trademark thereafter. There is no argument or evidence sufficient to find that the Agreement is invalid. Nevertheless, the Defendant has continued to use the Defendant's Marks even thereafter. Moreover, it is found that since the Defendant acquired the aforementioned trademark right in April 2024, it has continued to use the Defendant's Marks on the signboards of the Defendant's Clinic, the webpages of the Websites, and other means as described above. Accordingly, in the present case, it should be said that denying the Defendant's negligence is difficult. Consequently, the Defendant's argument mentioned above cannot be accepted.

C. Sales of the Defendant's Clinic

The sales relating to the medical practice income at the Defendant's Clinic during the period between October 18, 2021 and the end of December 2022 are found to be as stated in the "Sales" column corresponding to each month and year of the same period shown in the "Determinations in the present instance (appeal court)" section in the Attachment (Exhibit Otsu 6).

In addition, regarding the sales relating to the medical practice income at the Defendant's Clinic during the period between January 1, 2023 and December 23, 2024 (the date of conclusion of the oral argument), the Plaintiff filed a request for the order for submission of documents, dated on August 26, 2024, under the provisions of Article 105, paragraph (1) of the Patent Act as applied mutatis mutandis pursuant to Article 39 of the Trademark Act, by designating the following as the facts to be proven, "the monthly average sales at the Defendant Clinic in 2023 are, respectively, not less than 11,000,000 yen in the first half and 13,000,000 yen in the second half, and the monthly average sales in 2024 are, respectively, not less than 15,000,000 yen in the first half and 17,000,000 yen in the second half," and the following as the target documents, "a set of the tax return of the income tax and the special income tax for reconstruction of the Defendant as well as copies of the attachments thereof (for 2023)." In response, this court determined to accept the request dated on November 5, 2024. Nevertheless, the Defendant did not observe this and is found to have stated in a document dated November 11, 2024 that it has no intention to submit the target documents. However, it is not found that the Defendant's refusal to submit the target documents has "legitimate grounds" set forth in the proviso to that

paragraph. Despite this, when calculating the average sales relating to the medical practice income at the Defendant's Clinic during the period between the second half of 2021 (July to December 2021) and the second half of 2022 (July to December 2022) based on the amounts stated in the "Monthly sales (income)" columns of the tax return of the income tax and the statement of accounts for 2021 and those for 2022 of the Defendant, the average sales are found to have changed to 3,804,616 yen in the second half of 2021, 6,745,050 yen in the first half of 2022, and 9,415,833 yen in the second half of 2022 (all amounts are rounded down to the nearest yen). Therefore, the aforementioned "facts to be proven," which the Plaintiff demands, are not unreasonable contents. Meanwhile, in light of the nature of the aforementioned target documents, it is considered extremely difficult for the Plaintiff to make specific arguments related to the contents and to prove the aforementioned facts to be proven by using other evidence. Therefore, in the present case, under the provisions of Article 224, paragraph (3) of the Code of Civil Procedure (the order for submission of documents under the provisions of Article 105, paragraph (1) of the Patent Act as applied mutatis mutandis pursuant to Article 39 of the Trademark Act is a special treatment stipulated in Article 220 of the Code of Civil Procedure, and the effect in the case where the order for submission of documents is not observed is understood to be governed by the provisions of Article 224 of that Code.), it should be said that it is acceptable that the Plaintiff's arguments concerning the facts to be proven by the aforementioned target documents, namely "the monthly average sales at the Defendant's Clinic in 2023 are, respectively, not less than 11,000,000 yen in the first half and 13,000,000 yen in the second half," is true. Thus, the monthly sales relating to the medical practice income at the Defendant's Clinic during the period between January 1, 2023 and the end of December 2023 are found to be as stated in the "Sales" column corresponding to each month and year of the same period shown in the "Determinations in the present instance (appeal court)" section in the Attachment. Furthermore, in light of the aforementioned changes in sales relating to the medical practice income at the Defendant's Clinic, it should be said that the monthly sales relating to the medical practice income during the period between January 1, 2024 and December 23, 2024 can be presumed as those stated in the "Sales" column corresponding to each month and year of the same period shown in the "Determinations in the present instance (appeal court)" section in the Attachment. No sufficient evidence is provided to overturn this presumption. Furthermore, the Plaintiff argues that, based on the aforementioned background to the order for submission of documents, etc., the monthly average sales should be, respectively, set at 22,000,000 yen for the first half of 2023, 26,000,000 yen for the second half of 2023, 30,000,000 yen for the first half of 2024, and 34,000,000 yen for the second half of 2024.

Meanwhile, the Defendant argues that, given the nature of the medical specialty of the Defendant's Clinic and the short period since the start of its operation, the average monthly sales of 6,655,167 yen during the period between July 2021 and December 2022 should be adopted. However, neither of these arguments can be said to be based on reasonable grounds and therefore cannot be adopted.

Based on the above, the monthly sales relating to the medical practice income at the Defendant Clinic during the period between October 18, 2021 and December 23, 2024 is found to be as stated in the "Sales" column corresponding to each month and year of the same period shown in the "Determinations in the present instance (appeal court)" section in the Attachment, which comes to 444,180,948 yen in total.

D. The license fee rate receivable for the use of the Plaintiff's Trademark

(A) In the present case, it is reasonable to accept 4% as a license fee rate for the use of the Plaintiff's Trademark, which is receivable and retrospectively specified after the infringement of the Plaintiff's Trademark, and this is as stated in No.3, 7., (1), C. of the "Facts and reasons" section in the judgment in prior instance (from page 28, line 23 to page 39, line 9 in the judgment), except for to the first sentence of No.3, 7., (1), C., (C) of the judgment in prior instance (from page 29, line 19 to line 24 ["... by customers."] in the judgment), which is to be amended as below. Therefore, the relevant statements are cited here.

"(C) Moreover, according to (3) of the basic facts section and each evidence to be described below, it is found that as of August 17, 2023, the Defendant was using the Defendant's Marks by affixing Defendant's Mark 1 on the webpages of the Websites for the Defendant's Clinic, Defendant's Mark 3 on the door inside the clinic and signboards outside it, and Defendant's Mark 4 on the wall behind the reception desk thereof (Exhibits Ko 4 and 7). It is also found that even after that, as of October 10, 2024, the Defendant was using Defendant's Mark 1 by affixing it on the several sections of the webpages of the Websites for the Defendant's Clinic and also that some photographs were posted on the same webpages, which respectively show Defendant's Marks 3 and 4 affixed on the door inside the clinic and the wall behind the reception desk thereof (Exhibits Ko 40-1 and 40-4). Moreover, as of October 16, 2024, the Defendant was still using the Defendant's Marks by affixing Defendant's Mark 2 on a bulletin board and a mailbox, which are installed at the building in which the clinic is located, as well as affixing Defendant's Mark 3 still on the door inside the clinic and the signboards installed outside it (Exhibit Ko 39). These marks are all found to be continuously used in a mode and method that are easily recognizable by customers. (Incidentally, as of the same date above, it is found that indications, such as "THE N", in small characters were attached to some

signboards [Exhibits Ko 39-5 and 39-6], but it is difficult to regard the characters as those forming part of the mark used by the Defendant. Moreover, as of October 4, 2024, the expression, "THE N にじいろクリニック新橋", was found to be posted on some sections of the Websites (Exhibit Otsu 12), and as mentioned above, given that the Defendant is found to have continued to use the Defendant's Marks even after the same date, these points are not sufficient to determine the details of the Defendant's liability for damage under Article 38, paragraph (3) of the Trademark Act."

(B) The Plaintiff argues that the prevailing reasonable license fee rate in the industry of sexually transmitted disease clinics is not less than 5.5% and that the reasonable license fee rate is not less than 10%, taking the following points into account: the value of the Plaintiff's Trademark, coupled with the name of the Plaintiff's Clinic, has gained recognition in the area where the Plaintiff's Clinic is located because the Plaintiff's Trademark implies the name of the medical services provided by clinics under the same parent business entity; the use of the Plaintiff's Trademark is expected to extremely contribute to an increase in the profits because of the implication that rainbow colors have; and the Plaintiff and the Defendant are in fierce competition and the Defendant has continued the malicious infringement of the Plaintiff's Trademark Right for a long period of time. However, regarding the argument that the prevailing license fee rate for the use of a registered trademark for Class 44 is 5.5%, there is just one case example of the use of a registered trademark for Class 44, even based on the statement in page 58 of Exhibit Ko 17 (Exhibit Otsu 10). This single case example, which shows that the license fee rate was 5.5%, is not sufficient to find that the prevailing license fee rate for the use of a registered trademark for Class 44 is 5.5%, and no other sufficient evidence is provided to find this. The Plaintiff's Trademark is considered to be capable of attracting a certain group of customers to the Plaintiff's business due to the LGBT concept, which is generally associated with the implication of the color, "にじいろ," (rainbow colors). However, taking into account the fact that the Plaintiff first opened a website under the name, "あおぞらクリニック", and only as part of the clinic's services, the Plaintiff has been using the name, "にじいろクリニック外来", for referring to its specific outpatient service on its website (Exhibit Ko 2), the Plaintiff's Trademark per se cannot be found to have acquired a considerable level of well-knownness or recognition. Accordingly, even taking into account the competitive situation between the Plaintiff and the Defendant and the background to the present case, the Plaintiff's argument cannot be accepted because it cannot be said that sufficient evidence is provided to support the claimed license fee rate, which significantly exceeds the average license fee rate of 2.6% for the use of a trademark right in general. Meanwhile, the Defendant argues that, taking into account the

aforementioned average rate as a prevailing rate and the fact that the Defendant acquired the aforementioned trademark right in April 2024, around 1% is appropriate as a reasonable license fee rate. However, when the mode of the Defendant's infringement of the Plaintiff's Trademark Right and the background to the Defendant's negotiations with the Plaintiff are considered, it cannot be said that accepting a rate lower than the aforementioned average one is reasonable. Consequently, the Defendant's argument cannot be adopted, either. This court takes into account all circumstances which have been uncovered in the present case and finds that the license fee rate, which becomes a basis to calculate the amount of compensation for damage under Article 38, paragraph (3) of the Trademark Act, should be set at 4% as a reasonable rate.

E. Incidentally, the Defendant argues to the effect that since the Defendant has been conducting business activities based on the aforementioned Defendant's trademark, which was granted by the JPO, the Defendant has not caused any damage to the Plaintiff, and even if the Defendant had caused any damage, Defendant's Marks 1, 3, and 4 are not identical with the Plaintiff's Trademark, and therefore, the damage is limited. However, the Defendant has been infringing the Plaintiff's Trademark Right by using Defendant's Marks, which are identical with or similar to the Plaintiff's Trademark, and thus, it cannot be said that the circumstances argued by the Defendant limit the damage incurred by the Plaintiff.

F. According to the above, the amount of damage incurred by the Plaintiff as calculated under Article 38, paragraph (3) of the Trademark Act is 17,767,237 yen in total, as the amounts respectively stated in the "Determined damage" column of the "Determinations in the present instance (appeal court)" section in the Attachment.

(2) The damage to be calculated under Article 38, paragraph (5) of the Trademark Act

A. Regarding the Defendant's infringement of the Plaintiff's Trademark Right, it is found reasonable to set, under Article 38, paragraph (5) of the Trademark Act, the amount equivalent to the expenses normally required for the acquisition and maintenance of the Plaintiff's Trademark Right at the amount of damage incurred by the Plaintiff and to set the amount at 44,900 yen in total, and as this is as stated in No. 3, 7., (2) of the "Facts and reasons" section in the judgment in prior instance (from page 31, line 11 to line 24 in the judgment), the relevant statements are cited here.

B. The Plaintiff also demands patent attorney's fees as expenses normally required for the acquisition of the Plaintiff's Trademark Right. However, it is not legally necessary for the Plaintiff to have a patent attorney represent the Plaintiff in filing an application for trademark registration. Moreover, the entire evidence presented in the present case is not sufficient to find that the patent attorney's fees are the expenses "normally" required for

the acquisition and maintenance of the Plaintiff's Trademark Right. Consequently, the Plaintiff's argument cannot be adopted.

(3) Amount equivalent to the lawyer's fees

It is found that the damage relating to lawyer's fees which are equivalent to and have a causal relationship with the Defendant's infringement of the Plaintiff's Trademark Right is 1,780,000 yen.

(4) Summary

Based on the above, the damage incurred by the Plaintiff as a result of the Defendant's infringement of the Plaintiff's Trademark Right is 19,592,137 yen (17,767,237 yen for the reasonable license fee, 44,900 yen for the expenses for the acquisition and maintenance of the Plaintiff's Trademark Right, and 1,780,000 yen for the lawyer's fees).

In addition, based on the fact that the Defendant has been infringing the Plaintiff's Trademark Right, it is reasonable to set, as the initial date for the calculation of delay damage for the damage of the reasonable license fee, the dates respectively stated in the "Initial date for the calculation of delay damage" column for the amounts respectively stated in the "Determined damage" column of the "Determinations in the present instance (appeal court)" section in the Attachment. Regarding the initial date for the calculation of delay damage for 1,824,900 yen in total, which consists of 44,900 yen for the expenses for the acquisition and maintenance of the Plaintiff's Trademark Right and 1,780,000 yen for the lawyer's fees, it is found reasonable to set April 9, 2023, which is the date later than the first date when the Defendant began the tortious act of infringing the Plaintiff's Trademark Right and which is also the date following the date of service of the written request (the written request for correction of the Plaintiff's claims).

4. Regarding the necessity of an injunction and destruction (Issue 7)

In the present case, as the injunction and destruction under Article 36, paragraphs (1) and (2) of the Trademark Act are found to be necessary, as stated in No. 3, 8. of the "Facts and reasons" section in the judgment in prior instance (from page 32, line 10 to line 22 in the judgment), the relevant statements are cited here. In addition, as the statements in (5) of the basic facts section in the judgment in prior instance, which was amended and cited above, it should be said that, given that the Plaintiff and the Defendant are found to have entered into the Agreement, the Plaintiff, under the Agreement, in any case, may demand that the Defendant suspend the use of the Defendant's Marks and destroy advertisements, including leaflets, bulletins, signboards, etc., with the Defendant's Marks affixed thereon.

5. Regarding the necessity of an apology advertisement (Issue 8)

In the present case, as an apology advertisement is not found to be necessary, as stated in No. 3, 9. of the "Facts and reasons" section in the judgment in prior instance (from

page 32, line 23 to page 33, line 4 in the judgment), the relevant statements are cited here.

The Plaintiff argues that an apology advertisement is necessary, but in light of the situations and mode in which the Plaintiff uses the Plaintiff's Trademark Right, it cannot be found that the Plaintiff's business credibility had been damaged to the degree that the Plaintiff needs an apology advertisement, even by taking into account that the Defendant has continued to infringe the Plaintiff's Trademark Right. Therefore, the Plaintiff's argument cannot be adopted.

6. Furthermore, even after reviewing the records presented in the present case while considering the arguments of the parties, there is no accurate argument or evidence sufficient to influence the aforementioned finding and determinations.

4. Conclusion

Consequently, the court determines that the judgment in prior instance is partially inappropriate and shall modify the relevant part based on the Plaintiff's appeal and expansion of the claim in the present instance, dismiss the Defendant's appeal as it is groundless, and issue a declaration of provisional enforceability pursuant to Article 310 of the Code of Civil Procedure. Accordingly, the judgment is rendered as indicated in the main text.

Intellectual Property High Court, Second Division
Presiding judge: SHIMIZU Hibiku
Judge: KIKUCHI Eri
Judge: RAI Shinichi

Attachment

Item	Determinations in the prior instance					Plaintiff's arguments (appeal court)					Written request for modification to the Plaintiff's claims dated on November 28, 2024			Determinations in the present instance (appeal court)				
	Month, year	Sales (yen)	License fee rate	Damage	Initial date for the calculation of delay damage	Month, year	Sales (yen)	License fee rate	Damage	Initial date for the calculation of delay damage	Amount lost in the prior instance	Amount won in the prior instance	Initial date for the calculation of delay damage	Month, year	Sales (yen)	License fee rate	Determined damage	Initial date for the calculation of delay damage
	Oct. 2021	1,765,445		Calculation results based on the total sales	Aug. 17, 2023	Oct. 2021	1,765,445	0.1	176,544	Nov. 1, 2021	176,544		(A) Nov. 1, 2021	Oct. 2021	1,765,445	0.04	70,617	Nov. 1, 2021
	Nov. 2021	5,473,100				Nov. 2021	5,473,100	0.1	547,310	Dec. 1, 2021	547,310		(A) Dec. 1, 2021	Nov. 2021	5,473,100	0.04	218,924	Dec. 1, 2021
	Dec. 2021	8,364,200				Dec. 2021	8,364,200	0.1	836,420	Jan. 1, 2022	836,420		(A) Jan. 1, 2022	Dec. 2021	8,364,200	0.04	334,568	Jan. 1, 2022
	Jan. 2022	6,801,800				Jan. 2022	6,801,800	0.1	680,180	Feb. 1, 2022	680,180		(A) Feb. 1, 2022	Jan. 2022	6,801,800	0.04	272,072	Feb. 1, 2022
	Feb. 2022	4,800,300				Feb. 2022	4,800,300	0.1	480,030	Mar. 1, 2022	480,030		(A) Mar. 1, 2022	Feb. 2022	4,800,300	0.04	192,012	Mar. 1, 2022
	Mar. 2022	5,835,100				Mar. 2022	5,835,100	0.1	583,510	Apr. 1, 2022	583,510		(A) Apr. 1, 2022	Mar. 2022	5,835,100	0.04	233,404	April 1, 2022
	Apr. 2022	6,677,700				Apr. 2022	6,677,700	0.1	667,770	May 1, 2022	667,770		(A) May 1, 2022	Apr. 2022	6,677,700	0.04	267,108	May 1, 2022
	May 2022	8,505,700	0.04			May 2022	8,505,700	0.1	850,570	Jun. 1, 2022	850,570		(A) Jun. 1, 2022	May 2022	8,505,700	0.04	340,228	Jun. 1, 2022
	Jun. 2022	7,849,700				Jun. 2022	7,849,700	0.1	784,970	Jul. 1, 2022	784,970		(A) Jul. 1, 2022	Jun. 2022	7,849,700	0.04	313,988	Jul. 1, 2022
	Jul. 2022	8,426,700				Jul. 2022	8,426,700	0.1	842,670	Aug. 1, 2022	842,670		(A) Aug. 1, 2022	Jul. 2022	8,426,700	0.04	337,068	Aug. 1, 2022
	Aug. 2022	9,552,400				Aug. 2022	9,552,400	0.1	955,240	Sep. 1, 2022	955,240		(A) Sep. 1, 2022	Aug. 2022	9,552,400	0.04	382,096	Sep. 1, 2022
	Sep. 2022	9,853,000				Sep. 2022	9,853,000	0.1	985,300	Oct. 1, 2022	985,300		(A) Oct. 1, 2022	Sep. 2022	9,853,000	0.04	394,120	Oct. 1, 2022
	Oct. 2022	8,029,900				Oct. 2022	8,029,900	0.1	802,990	Nov. 1, 2022	802,990		(A) Nov. 1, 2022	Oct. 2022	8,029,900	0.04	321,196	Nov. 1, 2022
	Nov. 2022	8,566,000				Nov. 2022	8,566,000	0.1	856,600	Dec. 1, 2022	856,600		(A) Dec. 1, 2022	Nov. 2022	8,566,000	0.04	342,640	Dec. 1, 2022
	Dec. 2022	12,067,000				Dec. 2022	12,067,000	0.1	1,206,700	Jan. 1, 2023	1,206,700		(A) Jan. 1, 2023	Dec. 2022	12,067,000	0.04	482,680	Jan. 1, 2023
	Subtotal (1)	112,568,045					112,568,045	0.1	11,256,804		↓				112,568,045	0.04	4,502,721	
											↓							
	Month, year	Sales (yen)	License fee rate	Damage	Initial date for the calculation of delay damage	Month, year	Sales (yen)	License fee rate	Damage	Initial date for the calculation of delay damage	↓			Month, year	Sales (yen)	License fee rate	Determined damage	Initial date for the calculation of delay damage
	Jan. 2023	7,647,453		Calculation results based on the total sales	Aug. 17, 2023	Jan. 2023	22,000,000	0.1	2,200,000	Feb. 1, 2023	2,200,000		(A) Feb. 1, 2023	Jan. 2023	11,000,000	0.04	440,000	Feb. 1, 2023
	Feb. 2023	7,647,453				Feb. 2023	22,000,000	0.1	2,200,000	Mar. 1, 2023	986,537	1,213,463	(A) Mar. 1, 2023	Feb. 2023	11,000,000	0.04	440,000	Mar. 1, 2023
	Mar. 2023	7,647,453				Mar. 2023	22,000,000	0.1	2,200,000	Apr. 1, 2023	0	2,200,000	(A) Apr. 1, 2023	Mar. 2023	11,000,000	0.04	440,000	Apr. 1, 2023
	Apr. 2023	7,647,453				Apr. 2023	22,000,000	0.1	2,200,000	May 1, 2023	0	4,143,196	(B) Apr. 9, 2023	Apr. 2023	11,000,000	0.04	440,000	May 1, 2023
	May 2023	7,647,453				May 2023	22,000,000	0.1	2,200,000	Jun. 1, 2023	14,443,341	7,556,659	← Subtotal	May 2023	11,000,000	0.04	440,000	Jun. 1, 2023
	Jun. 2023	7,647,453				Jun. 2023	22,000,000	0.1	2,200,000	Jul. 1, 2023	In the present instance, the Plaintiff demanded the rescission of 14,443,341 yen, which is the amount, out of 22,000,000 yen as a partial claim, that the Plaintiff lost in the prior instance, and also the payment of the same amount. In addition, the Plaintiff expanded the claim for the amount of delay damage related to the damage equivalent to the license fee and demanded the payment of the amount for delay damage for the relevant damage for which the initial date for the calculation is the first day of every month following October 2023. (When the license fee rate is set at 0.1%, the principal of the damage equivalent to the license fee in the course of February 2023 is 14,443,341 yen.) Moreover, regarding 7,556,659 yen, which is the amount that the Plaintiff won in the prior instance (including the damage equivalent to the license fee, the expenses for the acquisition and maintenance of the trademark right, and the lawyer's fees) as well, the Plaintiff organized the initial dates for the calculation of delay damage as shown in the aforementioned "Initial date for the calculation of delay damage" column. In the present case, which is for a partial claim, in light of the Plaintiff's arguments (appeal court), it is obvious that the Plaintiff claims the principal of 22,000,000 yen out of the total amount of the damage equivalent to the license fee during the period between October 2021 and December 2024 (the date of conclusion of the oral argument), the delay damage to be calculated from the first date of every following month, the expenses for the acquisition and maintenance of the trademark right, and the lawyer's fees. Moreover, it is construed that the Plaintiff's claims, which are modified, include the intention that when the license fee rate is set at less than 0.1%, the Plaintiff demands the payment of damage equivalent to the license fee and delay damage thereof in and after February 2023 until the principal amount reaches 22,000,000 yen, combined with the expenses for the acquisition and maintenance of the trademark right and the lawyer's fees.			Jul. 2023	11,000,000	0.04	440,000	Jul. 1, 2023
	Jul. 2023	7,647,453				Jul. 2023	26,000,000	0.1	2,600,000	Aug. 1, 2023				Jul. 2023	13,000,000	0.04	520,000	Aug. 1, 2023
	Aug. 2023	4,193,765				Aug. 2023	26,000,000	0.1	2,600,000	Sep. 1, 2023				Aug. 2023	13,000,000	0.04	520,000	Sep. 1, 2023
	Sep. 2023					Sep. 2023	26,000,000	0.1	2,600,000	Oct. 1, 2023				Sep. 2023	13,000,000	0.04	520,000	Oct. 1, 2023
	Oct. 2023					Oct. 2023	26,000,000	0.1	2,600,000	Nov. 1, 2023				Oct. 2023	13,000,000	0.04	520,000	Nov. 1, 2023
	Nov. 2023					Nov. 2023	26,000,000	0.1	2,600,000	Dec. 1, 2023				Nov. 2023	13,000,000	0.04	520,000	Dec. 1, 2023
	Dec. 2023					Dec. 2023	26,000,000	0.1	2,600,000	Jan. 1, 2024				Dec. 2023	13,000,000	0.04	520,000	Jan. 1, 2024
	Jan. 2024					Jan. 2024	30,000,000	0.1	3,000,000	Feb. 1, 2024				Jan. 2024	15,000,000	0.04	600,000	Feb. 1, 2024
	Feb. 2024					Feb. 2024	30,000,000	0.1	3,000,000	Mar. 1, 2024				Feb. 2024	15,000,000	0.04	600,000	Mar. 1, 2024
	Mar. 2024					Mar. 2024	30,000,000	0.1	3,000,000	Apr. 1, 2024				Mar. 2024	15,000,000	0.04	600,000	Apr. 1, 2024
	Apr. 2024					Apr. 2024	30,000,000	0.1	3,000,000	May 1, 2024				Apr. 2024	15,000,000	0.04	600,000	May 1, 2024
	May 2024					May 2024	30,000,000	0.1	3,000,000	Jun. 1, 2024				May 2024	15,000,000	0.04	600,000	Jun. 1, 2024
	Jun. 2024					Jun. 2024	30,000,000	0.1	3,000,000	Jul. 1, 2024				Jun. 2024	15,000,000	0.04	600,000	Jul. 1, 2024
	Jul. 2024					Jul. 2024	34,000,000	0.1	3,400,000	Aug. 1, 2024				Jul. 2024	17,000,000	0.04	680,000	Aug. 1, 2024
	Aug. 2024					Aug. 2024	34,000,000	0.1	3,400,000	Sep. 1, 2024				Aug. 2024	17,000,000	0.04	680,000	Sep. 1, 2024
	Sep. 2024					Sep. 2024	34,000,000	0.1	3,400,000	Oct. 1, 2024				Sep. 2024	17,000,000	0.04	680,000	Oct. 1, 2024
	Oct. 2024					Oct. 2024	34,000,000	0.1	3,400,000	Nov. 1, 2024				Oct. 2024	17,000,000	0.04	680,000	Nov. 1, 2024
	Nov. 2024					Nov. 2024	34,000,000	0.1	3,400,000	Dec. 1, 2024				Nov. 2024	17,000,000	0.04	680,000	Dec. 1, 2024
	Dec. 2024					Dec. 2024			Until the date of conclusion of the oral argument	Dec. 23, 2024				Dec. 2024	12,612,903	0.04	504,516	Dec. 23, 2024
	Subtotal (2)	57,725,936					638,000,000	0.1	63,800,000	(A) First day of every following month					331,612,903	0.04	13,264,516	First day of every following month (However, the amount for December 2024 should be calculated based on the date of conclusion of the oral argument in the present instance.)
	Total ((1)+(2))	170,293,981	0.04	6,811,759	Aug. 17, 2023		750,568,045	0.1	75,056,804	(A) First day of every following month					444,180,948	0.04	17,767,237	

Prior instance	Determined amount	Initial date for the calculation of delay damage
[1] License fee	6,811,759	Aug. 17, 2023
[2] Expense for the acquisition and maintenance	44,900	
[3] Lawyer's fee	700,000	
Total	7,556,659	Aug. 17, 2023

Plaintiff	Demanded damage		Claimed amount	Initial date for the calculation of delay damage
[1] License fee	75,056,804		22,000,000	(A) First day of every following month
[2] Expense for the acquisition and maintenance	60,000			(B) Apr. 9, 2023
[3] Lawyer's fee	6,000,000			
Total	81,116,804		22,000,000	

Present instance	Determined amount	Initial date for the calculation of delay damage
[1] License fee	17,767,237	As above
[2] Expense for the acquisition and maintenance	44,900	Apr. 9, 2023
[3] Lawyer's fee	1,780,000	
Total	19,592,137	

* The sales for October 2021 in the prior instance were calculated on a pro-rata basis for 14 days.
* The sales for August 2023 in the prior instance were calculated on a pro-rata basis for 17 days.

Regarding [1] above, the Plaintiff also claimed the amount of damage during the period between December 1, 2024 and the date of conclusion of the oral argument and argued that the initial date for the calculation of delay damage for the same month should be December 23, 2024.