

Date	October 8, 2015	Court	Intellectual Property High Court, Fourth Division
Case number	2015 (Ne) 10097		
– A case in which the court found that "a person who infringes or is likely to infringe the patent right" specified in Article 100, paragraph (1) of the Patent Act does not include a person who incited or was an accessory to a patent infringer.			

References: Article 100, paragraph (1) of the Patent Act

Number of related IP right, etc.: Patent No. 4366672

Summary of the Judgment

The appellee is the holder of a patent (Patent No. 4366672) for an invention titled "detergent" (the "Invention"). The appellee is a company operating an online shopping mall.

This is a case where the appellant alleged that the appellee's act of manufacturing, selling, and importing the defendant's goods constitutes infringement of the patent in question and sought an injunction against the appellee's act of manufacturing, selling, and importing said goods under Article 100, paragraph (1) of the Patent Act.

The court of prior instance dismissed the appellant's claim by holding that the defendant's goods cannot be found to fall under the technical scope of the Invention.

Dissatisfied with this judgment in prior instance, the appellant filed this appeal.

The issue in this case is [i] whether the appellee actually manufactured, sold, and imported the defendant's goods and [ii] whether the defendant's goods fall under the technical scope of the Invention.

In this judgment, the court held as follows in summary with regard to issue [i] and dismissed the appeal.

(1) The appellant failed to prove that the appellee has been manufacturing, selling, and importing the defendant's goods or is likely to do so.

(2) The appellant alleged that the appellee should be held liable for an act of joint tort. Even if it means that the appellee incited or was an accessory to the seller of infringing goods, the appellant may not seek an injunction against the appellee's act of selling the defendant's goods under Article 100, paragraph (1) of the Patent Act.

In other words, Article 100, paragraph (1) of the Patent Act specifies that a patentee or exclusive licensee may demand a person who infringes or is likely to infringe the patent right (a "patent infringer, etc.") to stop or prevent such infringement. "Patent infringer, etc." means a person who worked a patented invention by himself/herself (Article 2, paragraph (3) of said Act) or a person who has committed or is likely to commit an act specified in Article 101 of said Act. It is reasonable to interpret that

"patent infringer, etc." does not include any person who incited or was an accessory to a patent infringer.

The grounds for this interpretation are as follows:

[i] Under the Civil Code, an injunction cannot be sought based on an act of tort. An injunction to "stop or prevent such infringement" specified in Article 100, paragraph (1) of the Patent Act is permitted based on the exclusive rights conferred by a patent specifically under the Patent Act; [ii] On the other hand, in the case of the liability for an act of tort based on incitation or accessoryship, even a person who has not directly infringed another person's right can be held liable from the perspective of protection of victims. Such person is held liable for damages (Article 719, paragraph (2) of the Civil Code) by deeming an act of incitation or accessoryship as an act of joint tort. Therefore, this is different from the right to seek an injunction specified in Article 100, paragraph (1) of the Patent Act, which is based on the exclusive rights conferred by a patent, in terms of the purpose and objective of the system; [iii] there are various types of incitation or accessoryship. If an injunction was granted for every act of incitation or accessoryship in connection with infringement of a patent right, there would be an infinite number of persons against whom an injunction can be sought, making the scope of injunctions excessively wide. Article 101 of the Patent Act concerning indirect infringement can be interpreted to have been established to solve the above-mentioned problem in order to permit a grant of an injunction by deeming only a certain type of act of serving as an accessory to a patent infringer as an act of infringement. Therefore, it would be against the objective of said Article if an injunction is granted for any other act of incitation or accessoryship.

(3) In view of the fact that the appellee may not be found to have worked the Invention and to have committed or be likely to commit an act specified in Article 101 of the Patent Act, the appellant's claim for an injunction against the appellee's act of manufacturing, selling, and importing the defendant's goods is unacceptable.