

Patent Right	Date	January 16, 2020	Court	Osaka District Court, 21st Civil Division
	Case number	2017(Wa)6334		
<p>- A case in which the court upheld the Plaintiff's claim to seek payment of compensation for damages in a case of patent infringement related to hair cosmetics, in consideration of the amount of the Defendants' expenses that should be deducted from the sales amount of the infringing products.</p>				

Summary of the Judgment

In this case, the Plaintiff, who has the patent right for an invention titled, "Non-aqueous hair cosmetics and hair treatment method," made a claim against the Defendants, who manufacture and sell hair cosmetics (hereinafter referred to as the "Defendants' Products"), for an injunction against the manufacturing and sale, etc. of the Defendants' Products and disposal thereof based on Article 100 of the Patent Act and also made a claim to seek payment of compensation for damages pursuant to Article 102, paragraph (2) of the Patent Act based on the joint tort of patent infringement.

The Defendants disputed whether the Defendants' Products belong to the technical scope of the patented invention and the validity of the Plaintiff's patent at the beginning; however, since it was determined that the request for trial for invalidation filed with the Japan Patent Office should not be accepted, the Defendants withdrew the allegation related to the infringement theory and the court eventually found that the Defendants' Products belong to the technical scope of the Plaintiff's patented invention.

In addition, the Plaintiff alleged that a joint tort is established with the Defendants; however, the shareholders and representative director of the Defendants are identical, and it was not disputed whether the Defendants assume joint and several liability.

Then, the amount of the Plaintiff's damages became a major issue. In this judgment, the court determined as follows concerning the amount of sales by the Defendants and the amount of the Defendants' expenses to be deducted therefrom.

First, the sales amount was calculated by deducting the sales amount of returned products from the sales amount of products shipped during the period for which the Plaintiff demanded compensation for damages.

In addition, concerning the expenses to be deducted, the court approved the deduction of part of raw material costs, utility costs for preparation, costs related to containers, pumps, boxes, etc., freight, customs, and transportation costs, and UV protection effect testing costs as alleged by the Defendants; however, the court did not

approve the deduction of costs equivalent to labor costs for preparation and testing costs paid in the course of research and development of the Defendants' Products.

The court also found slightly less than 9 million yen, which is equivalent to the profit amount of the Defendants, to be the Plaintiff's amount of damages and upheld the claim for an injunction against the manufacturing and sale of the Defendants' Products and disposal thereof and the claim to seek payment of compensation for damages of approximately 10 million yen.