

Patent Right	Date	March 26, 2020	Court	Tokyo District Court, 46th Civil Division
	Case number	2017 (Wa) 24598		
- A case in which the court dismissed the Plaintiff's claims filed based on a patent right for an invention titled "Cellulose powder," on the grounds of the violation of the support requirement.				

Summary of the Judgment

In this case, the Plaintiff, the holder of a patent right (the Patent Right) of a patent for an invention titled "Cellulose powder," alleges that Defendant's Products 1 and 2, which are cellulose powders manufactured and sold by the Defendant, and the process used by the Defendant to manufacture these Defendant's Products (the Defendant's Process) fall within the technical scope of the invention covered by the Patent Right. Based on this allegation, the Plaintiff seeks an injunction against the manufacturing, etc. of the Defendant's Products and the use of the Defendant's Process under Article 100, paragraphs (1) and (2) of the Patent Act, demands the disposal of the Defendant's Products, and claims compensation for damages under Article 709 of the Civil Code and Article 102, paragraph (3) of the Patent Act.

In this judgment, the court held as follows. Defendant's Product 2 and the Defendant's Process do not fall within the technical scope of the invention covered by the Patent Right. This invention has a structure of a "cellulose powder characterized in that the average degree of polymerization is 5 to 300 higher than the level-off polymerization degree measured by the viscosity method after the cellulose powder is boiled and hydrolyzed with hydrochloric acid 2.5N for 15 minutes." However, in providing examples, the detailed explanation of the invention in the description does not clearly state the level-off polymerization degree under the abovementioned conditions for hydrolyzation of the cellulose powder, and even in light of the common general technical knowledge available as of the priority date, the detailed explanation of the invention cannot be interpreted as containing the relevant statement (Article 36, paragraph (6), item (i) of the Patent Act). Holding as such, the court determined that the Plaintiff may not exercise the Patent Right pursuant to Article 104-3, paragraph (1) of the Patent Act, and dismissed all of the Plaintiff's claims.