

**The Case Studies of the Procedures
under the New Employee Invention System**

November 2004

Japan Patent Office

This is an unofficial translation.

Introduction

The new employee invention system shall, as a rule, entrust “appropriate remuneration” relating to employee-invention to a “voluntary agreement” between the employers and the employees. However, there are some inappropriate cases to be entrusted to the “voluntary agreement” because inappropriate decision can be decided due to difference in positions of the employers and the employees.

Therefore, under the new employee invention system, where it is considered unreasonable to pay remuneration in accordance with the contract, employment regulation or other stipulations, remuneration calculated by consideration of certain elements shall be “appropriate remuneration” as well as in case of existing employee invention system.

Unreasonableness shall be judged, particularly focusing on the procedural elements among those in the whole process until the remuneration is determined and paid. But, the new employee invention system does not define detailed procedures so that remuneration can be determined in response to various actual situations of the employers and the employees avoiding excessive intervention by setting the law which accompanies actual methods of consultation etc.

On the other hand, “Improvement of employee invention system”, a report summarized by the Intellectual Property Policy Committee, has stated that the Patent Office should compile case studies which indicate when the determination of “remuneration” should be judged to be obviously unreasonable for the purpose of prevent the unreasonable determination of “remuneration” between the employers and the employees.

Furthermore, in Diet proceedings, some members indicated that case studies to which the employers and the employees can refer for taking the procedure should be prepared. Then, some members indicated that an example of regulations to which small and medium-sized enterprises of no experience to set regulations on employee-invention can refer in drawing up such regulations should be prepared.

These case studies are compiled by the Patent Office in a form of Q & A, referring to the questions and the procedural cases collected from industrial/labor world or universities and hearing from the opinions of the intellectuals of the Patent System Subcommittee.

And please keep it in mind that these case studies are not legally binding, and that they were compiled by the Patent Office, a submitter of the bill, to clarify the legal purport of the new employee invention system and offer the cases to which parties concerned can refer in taking the procedure so that the procedure according to the new system can be smoothly taken.

In the future, where new questions arise or precedents relating to actual cases are set, these case studies will be amended as required.

Content

Articles concerning employee inventions

Definition of terms

.Basics

Chapter 1 Generals

- 1. Outline of the new employee invention system**
- 2. Practical meaning of the Patent Law Section 35 (4) and (5)**

Chapter 2 Consultation held between the employers and the employees in setting standards for the determination of the remuneration

- 1. Method to set standards**
- 2. Counterpart of consultation of the employers**
 - 2-1. In case of consultation in a group**
 - 2-2. In case of consultation with a representative**
- 3. How to proceed the consultation**

Chapter 3. Content of standards for the determination of remuneration

- 1. Content of standards**
- 2. Method to calculate remuneration**

Chapter 4. Disclosure of the set standards

Chapter 5. Hearing of the employees' opinions in calculation of the amount of remuneration

- 1. Method to hear opinions**
- 2. How to proceed hearing of opinions**

Chapter 6. Where a contract is concluded between the employers and the employees

Chapter 7. Others

- 1. Amendment of the standards**
- 2. Handling of new employees**
- 3. Handling in universities**
- 4. Others**

II. Applications

Chapter 1. Consultation between the employers and the employees in setting standards for the determination of remuneration

- 1. Interested parties of consultation**
- 2. In case of consultation in a group**
- 3. In case of consultation with a representative**

Chapter 2. Disclosure of the set standards

Chapter 3. Hearing of the employees' opinions in calculation of the amount of remuneration

(ANNEX 1) Report of the Intellectual Property Policy Committee "Improvement of employee invention system"

(ANNEX 2) Additional resolution of the both chambers committee of economy, trade and industry, the 159th regular Diet

(ANNEX 3) The minute of the 159th regular Diet

(REFERENCE) Examples of regulations and contract sheets

Articles concerning employee inventions

Patent Law (Law No.121 of 1959)

(Purpose)

1. The purpose of this Law shall be to encourage inventions by promoting their protection and utilization so as to contribute to the development of industry.

(Requirement of patentability)

29. (1) Any person who has made an invention which is industrially applicable may obtain a patent therefor, except in the case of the following inventions:
 - (i)-(iii) (omitted)
- (2) (omitted)

(Right to obtain patent)

33. (1) The right to obtain a patent may be transferred.
 - (2)-(3) (omitted)

(Employee inventions)

35. In the case of an employer, a legal entity or a national or local government (hereinafter referred to as "the employers"), where an employee, an officer of the legal entity, or a national or local government employee (hereinafter referred to as "the employees") has obtained a patent for an invention which, by the nature of the said invention, falls within the scope of the business of the said Employer, etc. and was achieved by an act(s) categorized as a present or past duty of the said Employee, etc. performed for the Employer, etc. (hereinafter referred to as "Employee invention") or where a successor to the right to obtain a patent for the Employee invention has obtained a patent therefor, the said Employer, etc. shall have a non-exclusive license on the said patent right.
- (2) In the case of an invention by the employees, unless the said invention is an Employee invention, any provision in any contract, employment regulation or any other stipulation providing in advance that the right to obtain a patent for an invention made by the employees or the patent right for the said invention shall vest in the employers or that an exclusive license for the said invention shall be granted to the employers shall be null and void.
- (3) Where the employees in accordance with any contract, employment regulation or

any other stipulation, permits the right to obtain a patent for an Employee invention or the patent right for an Employee invention, to vest with the employers or grants an exclusive license therefor to the employers the said employees shall have the right to receive appropriate remuneration.

- (4) Where a contract, employment regulation or any other stipulation provides for the remuneration provided in the preceding paragraph, the payment of remuneration in accordance with the said provision(s) shall not be what is recognized unreasonable in light of situations including where a consultation between the employers and the employees had taken place in order to set standards for the determination of the said remuneration, where the set standards had been disclosed, and where the opinions of the employees on the calculation of the amount of the remuneration had been heard.
- (5) Where no provision setting forth the remuneration as provided in the preceding paragraph exists, or where under the preceding paragraph, the payment of the remuneration in accordance with the provision(s) is recognized unreasonable, the amount of the remuneration under Paragraph 3 shall be determined in light of the profit to be received by the employers from the invention, burden borne by the employers contribution made by the employers and benefit received by the employees in relation to the invention and any other factors.

Amendment of Patent and other Industrial Property Laws for Reducing Patent Pendency (Law No. 79 of 2004)

Supplementary provisions

(Entry into force)

1. This Law shall enter into force on April 1, 2005. (Omitted hereafter)

(Transitory measures)

- 2.(1) The provisions of the Patent Law Section 35 (4) and (5) amended by the provision of Section 1 shall apply to the remuneration relating to succession of the right to obtain a patent or patent right or setting of exclusive license, while the remuneration relating to succession of the right to obtain a patent or the patent right, or setting of the exclusive license before the entry into force of this law shall be dealt with as heretofore.
- (2) (omitted)

Definition of terms

The Patent Law Section 35 defines **“The Employers”**, **“The Employees”** and **“Employee-invention”** as follows. In these case studies, the above definition will be used.

- **“The Employers”**: an employer, a legal entity, a state or local public entity
- **“The Employees”**: an employee, an executive officer of a legal entity or national or local public official
- **“Employee-invention”**: an invention which, by its nature, falls within the scope of the business of the employers and was achieved by an act or acts categorized as a present or past duty of the employees performed on behalf of the employers.

And in these case studies,

- **“Remuneration relating to employee-invention”** means the remuneration for the employees who has vested the right to obtain a patent or the patent right with respect to an employee invention to the employers or has granted the employers an exclusive license to such invention in accordance with the contract, employment regulation or other stipulations.
- **“Succession of the right relating to an employee invention”** means vesting the right to obtain a patent or the patent right with respect to an employee invention to the employers or granting an exclusive license to such invention.
- **“The employees who are researcher”** means the employees who engage in research and have a lot of chances to develop employee inventions.

In these case studies, an expression of **“judgement of unreasonableness”** is used for determining whether it can be considered unreasonable to “pay remuneration in accordance with the stipulations”.

Elements to be considered in judgement of unreasonableness shall be evaluated by the following expressions;

- **“work in a positive direction toward unreasonableness”**
- **“work in a negative direction toward unreasonableness”**

The former is an expression meaning that in judgement of unreasonableness, “payment of a remuneration in accordance with the stipulations tends to be considered unreasonable” by reference to a relevant element. The latter is an expression meaning that “payment of a remuneration in accordance with the stipulations tends not to be considered unreasonable” by reference to a relevant element.

However, unreasonableness shall be comprehensively determined. So, unreasonableness shall not be denied in comprehensive determination for the simple reason that an element works in a negative direction toward unreasonableness. Furthermore, where an element works in a more negative direction toward unreasonableness, a factor that works in a positive direction toward unreasonableness in other elements may be canceled and unreasonableness can be comprehensively denied.

. Basics

Chapter 1. Generals

1. Outline of the new employee invention system

Q1. What is the purport of the new employee invention system?
--

The primary objective of the employee-invention system is to create incentives for invention by providing a stable environment in which “employers, corporations, the national government or local public organizations (hereinafter ‘the employers’)” can proactively invest in research and development activities on the basis that they are playing an important role in intellectual creation in Japan, and also by ensuring that individual “employees, executives of companies, national public officials or local public officials (hereinafter ‘the employees’)” are appropriately rewarded. The system has industrial policy implications, aiming to encourage research and development activities and to increase investment in them in Japan, and has the objective of coordinating the interests of employers and employees as the means to achieve those aims.

Specifically, while Japanese Patent Law stipulates that the right to obtain a patent originally belongs to the inventor, it grants the right of legal non-exclusive license to the employers (Patent Law, Section 35(1)), because a certain employers’ contribution, such as employing the employees, providing research facilities and bearing the cost of research and development, is essential to the employees’ inventions. It also allows reserved succession of the right to obtain a patent or the right to a patent granted, or the establishment of an exclusive license for the employers (Patent Law, Section 35(2)).

On the other hand, the law provides the right to demand payment of “adequate remuneration” to the employees who have actually created the invention, in return for allowing the employers to succeed to the right to obtain a patent or the right to a patent granted or the establishment of an exclusive license for the employers (Patent Law, Section 35(3)). This right to demand “adequate remuneration” is granted in order to encourage inventions by ensuring that employees receive remuneration for the assigning of patent rights.

These provisions are aimed at coordinating the interests of the employees who made the invention, and of the employers who supported the employees.

Q2. What is the basic idea of the new employee invention system?

Regarding remuneration for an employee invention, it is necessary to arouse an incentive for research and development by increasing the employers' predictability of the remuneration and satisfaction of the employees on evaluation of the invention. In addition, this remuneration shall be allowed to determine flexibly with the reflection of the conditions which each employee is situated. These conditions include fullness or freeness of the content and environment of research and development and recognition including employee's treatment, as well as different circumstances depending on industry sectors of the employers, such as business environment or strategies of research and development of the employers.

So, it is appropriate to entrust the determination of remuneration, as a rule, to "voluntary agreement" between both parties concerned. Therefore, where remuneration for succession of the right relating to an employee invention is regulated by the contract, employment regulation or other stipulations, the stipulated remuneration shall be, as a rule, "appropriate remuneration".

However, in some cases, unreasonable determination can be decided due to difference in positions of the employers and the employees. So, there may be some cases where it is inappropriate to entrust the determination of remuneration for succession of the right relating to an employee invention to the "voluntary agreement". Therefore, where an environment or conditions under which it is appropriate to entrust the determination of remuneration to the "voluntary agreement" are not developed, the remuneration cannot be respected even if it has been determined in accordance with the contrast, employment regulation or other stipulations. Accordingly, where it is recognized unreasonable to pay remuneration in accordance with the stipulations, the remuneration calculated by reference to certain elements, as well as the existing employee invention system, shall be "appropriate remuneration".

For respecting the voluntary agreement between the employers and the employees and avoiding an excessive intervening of the law as far as possible, unreasonableness shall be judged with the stress of the procedural element, such as the situations of consultation between the employers and the employees, in the overall process from decision of the stipulations by the voluntary agreement to payment of the remuneration. This may facilitate thorough consultation between the employers and the employees

As a result, it is expected that an environment where research and development will be activated by cooperation of the employers and the employees will be established.

Q 3 . How is the new employee invitation system is different from the existing one?

In the existing system, the amount of the remuneration calculated by the court based on the previous Patent Law Section 35 (4)¹ was considered to be “appropriate remuneration” even if a remuneration relating to an employee invention had been regulated by the employment regulation, etc. (employment regulation or other stipulations provided in advance by the employers).²

In contrast to the existing system, under the new employee invention system, where a remuneration relating to an employee invention is determined in accordance with the contract, employment regulation or other stipulations, the determined remuneration shall be considered to be “appropriate remuneration” unless payment of the remuneration in accordance with the stipulations is recognized unreasonable. This is the most different point.

In addition, even under the new employee invention system, where a remuneration is not defined in the contract, employment regulation or other stipulations, or where they are defined but payment of a remuneration in accordance with the stipulations is considered unreasonable, the amount of “appropriate remuneration” shall be, as well as the existing system, determined with the consideration of the factors such as the amount of profits to be received by the employers from the invention. However, the new employee invention system clarifies the factors to be considered in this case more than the previous Patent Law 35 (4) with respect to the elements to be considered in this case.

¹ The previous Patent Law 35 (4) stipulates that “The amount of the remuneration as provided in the preceding paragraph shall be determined in light of the profit to be received by the employers from the invention and the degree of contribution made by the employers to the making of the invention.”

² In 57 MINSHU 477 (Sup. Ct. April 22, 2003) , it stated that “Where the employment regulation include the provision on remuneration to be paid by the employers to the employees but the amount of remuneration is less than the amount decided by the above provision, the employees who succeeded the right to obtain a patent, etc. with respect to an employee invention to the employers in accordance with the employment regulation, etc. can demand payment of the remuneration corresponding to the deficit.

2. Practical meaning of the Patent Law Section 35 (4) and (5)

Q1. Explain practical relationship between the Patent Law Section 35 (4) and (5).

The Patent Law Section 35 (4) clarifies that the “appropriate remuneration” provided by the Patent Law Section (3) can be determined in accordance with the contract, employment regulation or other stipulations and its requirement.

On the other hand, the Patent Law Section 35 (5) shall be applied to a case where a remuneration relating to an employee invention is not stipulated in the contract, employment regulation or other stipulations, or a case where the stipulations do not meet the requirements stipulated in the Patent law Section 35 (4). Therefore, the Patent Law Section 35 (5) shall not be applied where the requirements of the Patent Law Section 35 (4) are met.

Therefore, the “appropriate remuneration” under the Patent Law Section 35 is decided as follows:

1. According to the Patent Law Section 35 (4), the remuneration stipulated in the contract, employment regulations and other stipulations shall be the “appropriate remuneration” unless it is considered unreasonable to pay a remuneration in accordance with the said stipulations”.
2. The remuneration stipulated by the provision of the Patent Law Section 35 (5) shall be the “appropriate remuneration” where a remuneration relating to an employee invention has not been stipulated in the contract, employment regulation or other stipulations or where payment of remuneration in accordance with the contract, employment regulation or other stipulations is recognized unreasonable according to the Patent Law Section 35 (4).

Q 2 . What is the practical meaning of the provision of the Patent Law Section 35(4) and (5) saying that “the payment of remuneration in accordance with the said provision(s) ”?

“The payment of remuneration in accordance with the said provision(s)” means the whole process until the determination of the amount of money to be paid for remuneration relating to an employee invention in accordance with the contract, employment regulation or other stipulations to the payment. For example, where the standards for the remuneration are set and the remuneration is paid in accordance with the set standards, the above provision shall mean the whole process from the

procedure of setting of the relevant standards to payment of the remuneration following its decision by application of the standards. And where remuneration is paid based on the contract concluded for each invention, the provision means the whole process from the procedure of conclusion of the contract to payment of the remuneration.

The whole process shall include each of procedural elements with the meaning of what kinds of procedures have been taken and each of substantive ones including the content of the standards that decides remuneration and the finally decided amount of remuneration. However, in judgement of unreasonableness, substantive elements shall be considered in a more complimentary way, compared to the procedural ones.

Judgement about “the payment of remuneration in accordance with the said provision(s)” shall be made for each employee-invention.

Q 3. The Patent Law Section 35 (4) stipulates “situations of consultation”, “situations of disclosure” and “situations of hearing of opinions”, but what are their practical meanings?

“Situations of consultation”, “situations of disclosure” and “situations of hearing of opinions” exemplify the procedural elements that are particularly stressed and considered in the whole process until a remuneration relating to an employee invention is decided and paid. These are exemplified to clarify the purpose to emphasize the procedural elements.

“Consultation” of the “situations of consultation” means the whole consultation on setting of the standards for determining remuneration, held between the employers and the employees (or his/her representative) who develops an employee-invention targeted for application of the standards.

“Disclosure” of the “situations of disclosure” means, where the standards for determining remuneration has been set, enabling the employees who develops an employee invention targeted for application of the standards to refer to the standards as required.

“Hearing of opinions” of the “situations of reception of opinions” means hearing opinions, complaints, etc. on calculation of the remuneration from the employees who is the inventor of the relevant employee invention when the amount of the remuneration relating to a specified employee invention is actually calculated in accordance with the contract, employment regulation or other stipulations which define the remuneration relating to employee inventions.

In addition, the “situations” of the consultation, disclosure and hearing of opinions

are defined as those meaning that not only alternative determination of presence of consultation, etc., that is, whether consultation, etc. is held or not, but also the whole situations of consultation, etc. in a case where consultation, etc. is held shall be elements to be considered.

Q 4. What are included in the “etc.” of “considering the situations of consultation, ...conditions of disclosure, ... conditions of hearing of opinions etc.” in the provision of Patent Law Section 35 (4)?

In judgement of unreasonableness under the Patent Law Section 35 (4), “payment of remuneration in accordance with the stipulations”, that is, the whole process until a remuneration relating to a specified employee invention is determined in accordance with the contract, employment regulation or other stipulations and paid, shall be comprehensively judged. Therefore, all various situations and elements shall be targeted for consideration, but among them, the procedural ones shall be stressed and considered in determination.

“etc.” of the “considering ... etc.” includes procedural elements required for judgement of unreasonableness other than the exemplified ones and all of the substantive ones such as the content of the standards and the amount of remuneration to be paid finally.

Q 5. The Patent Law Section 35 (5) stipulates that “where payment of remuneration in accordance with the stipulations is recognized to be unreasonable”. How is this unreasonableness judged?

Judgement of unreasonableness shall be made by comprehensive judgement of “payment of remuneration in accordance with the stipulations”, that is, the whole process until the amount of money to be paid is determined in accordance with the contract, employment regulation or other stipulations for remuneration relating to a specified employee invention, and paid based on the Patent Law Section 35 (4). In the comprehensive judgement, the procedural elements shall be stressed and considered in the whole process, with the substantive elements considered in a supplementary way. In general, where the procedure itself is not recognized unreasonable, the possibility of being judged unreasonable in the comprehensive judgement is low even if the amount of remuneration is low. But, where the amount of remuneration calculated finally is extremely low, it is considered that there is a possibility to be considered unreasonable in comprehensive judgement.

In addition, in judgement of unreasonableness, one element that works in positive direction toward unreasonableness does not always directly lead to affirmation of comprehensive unreasonableness as a result.

Chapter 2. Consultation held between the employers and the employees in setting the standards for determining remuneration

1. Form to set the standards

Q 1. The standards must be set?

The standards for determining remuneration shall not be always set. For example, it may be more favorable in some cases to decide succession of the right or its remuneration by every employee invention in the contract between the employers and the employees without stipulating in advance the reserved succession of the right relating to an employee invention and the standards for determining remuneration because of the reasons including low frequency of employee inventions.

Q 2. Can the same employers set more than one standard?

Several standards can be set.

For example, where groups of different types of the employees, such as management/non-management positions and researchers/non-researchers, exist or where difference of the office and the research area exist among the employees, , different standards can be set for individual groups.

In addition, a different standard can be set for a different employee invention invented by the same employees, depending on the content, etc. of the invention.

Q 3. Shall “the standards for determining remuneration” in Section 35(4) be stipulated in the “contract, employment regulation or other stipulations” on the succession, etc. in Section 35(3)?

There are no restrictions for the form of “the standards for determining remuneration” in the Patent Law Section 35 (4), so it is not necessary to be stipulated in the same “contract, employment regulation or other stipulation” which stipulate succession of the rights, etc. For example, it is possible to stipulate only succession by employment regulation and stipulate the standards for determining remuneration by another contract. Furthermore, parts of the standards can be stipulated by other regulations.

Q 4. Can “the standards” be stipulated by the labor contract or working regulations?

It is generally interpreted that the “contract, employment regulation or other stipulations” provided by the Patent Law Section 35 include a labor contract and working regulations.

In this case, it is true that the stipulation in those standards entry into force under labor law, where the labor contract or the working regulations is established effectively. However, this should not always mean that unreasonableness on the Patent Law is denied. Unreasonableness of the standards is judged based on the Patent Law Section 35(4) away from the efficiency of the standards. Therefore, unreasonableness should not be always denied even where the standards are stipulated in labor contract or working regulation.

Q 5. Where “ the standards” is stipulated by a labor contract, how is it evaluated?

Even where the standards for determining remuneration is stipulated by the labor contract and remuneration determined by the relevant standard is paid, judgement of unreasonableness shall be comprehensively made by reference to “the situations of consultation between the employers and the employees in setting of the standards for determining remuneration, situations of disclosure of the relevant set standards, situations of reception of employees’ opinions on calculation of the amount of remuneration, etc.”, provided in the Patent Law Section 35 (4). So, unreasonableness shall not be denied immediately only because the requirements of the labor contract for entry into force (preparation in writing and signing or signing/sealing of both parties concerned) that is stipulated in Section 14 of the Labor Union Law are met.

However, since the labor contract is assumed to be concluded on even ground between labor and management, it is considered that actual consultation between the employers and the representative of the labor union will be held in many cases under the conditions where a gap caused by the different positions of the employers and the employees has been remarkably corrected. In these cases, it is considered that the situations of the consultation will work in a negative direction toward unreasonableness in the relation between the employers and the employees who entrusts the consultation to the representative of the labor union.

Q 6. When “ the standards” is stipulated in working regulations, how is it evaluated?

In the Section 90 of the Labor Standards Law, it is provided that “in drawing up or changing the working regulations, the employer shall receive the opinion of either a

labor union organized by a majority of the workers at the workplace concerned where such a labor union exists or a person representing a majority of the workers where no such labor union exists.”

This means that, where the working regulations including the standards of remuneration of an invention have been prepared, it is interpreted that “the standards” has been set by employers who hear person’s opinions representing a majority of the workers, etc..

However, since “hearing of opinions”, defined in Section 90 of the Labor Standards Law, and “consulting” are different from each other, the “situations of consultation” will not work immediately in a negative direction toward unreasonableness even if the opinions have been heard in accordance with Section 90 of the Labor Standards Law.

2. Counterpart of the consultation of the employers

Q1. With whom the employers shall make a consultation? (which employees?)

“The employees” of the “consultation between the employers and the employees in setting of the standards for determining remuneration”, provided by the Patent Law Section 35 (4), are the employees to whom the relevant standards shall be applied. The employees are actually assumed to be a researcher, but is not limited to them.

Actually, since the standards has been generally set in advance before development of an employee invention to which the standards will be applied, the employers reconsidered to consult the employees, assumed by the employers to be a target of application of the relevant standards, at the stage of setting of the standards for decision of remuneration.

Therefore, where the standard is applied to all employees, all employees shall be counterpart of the “consultation”.

However, in individual actual case, it shall be determined whether a consultation in setting of the standards was held or not in each relation to the employee who is an inventor of the relevant employee invention,.

Q 2 How is a case evaluated, where the standards were set after negotiation with the employees but the standards are applied to the employers who were not the counterpart of the employers on the negotiation? ?

Where the set standard is applied to the employees who were not the counterpart of the employers on the negotiation, it is evaluated that consultation with the relevant employee has not been held.

2-1. In case of consultation in a group

Q 1. Where the standards to be applied to more than one employee are set, is a negotiation in a group, not with an individual, included in “consultation”?

“Consultation” shall not be necessarily held with each employee. Therefore, a negotiation in a group corresponds to “consultation”. For example, negotiation by gathering employees or that in a group via electronic bulletin board or electronic meeting at in-house intranet corresponds to “consultation”.

Q 2. Where negotiation is held by gathering of the employees, is consultation considered to be held in relation to the employees who presented but expressed no opinions?

For the employees who presented the negotiation, except for the employees who were actually given no chance to say, consultation may be, as a rule, considered to have been held.

Q 3. Where the rate of the employees who are researchers is low to all employees, how is a consultation with the employers by gathering of the employees evaluated in judgement of unreasonableness?

“Consultation” of the Patent Law Section 35 (4) does not require consultation with the researchers separated from other employees.

Therefore, the fact that simultaneous consultation by gathering of the employees who are researchers and other employees will not work in a positive direction toward unreasonableness. However, in some cases such as where gathering of many types of the employees resulted in that the employees who are researchers could actually have no chance to say, those circumstances will work in a positive direction toward unreasonableness in relation to the employees who are relevant researchers.

Q 4. Where some of the employees reject the request of the employers to gather more than one employee for negotiation to set the standards, and demand negotiation with the individual employee, is it considered as “consultation” even if individual negotiation is not held?

Though “consultation” of the Patent Law Section 35 (4) means whole negotiation between the employers and each employee to whom a relevant standard is applied,

there is no particular restrictions on methods of negotiation. Therefore, a simultaneous negotiation between the employers and more than one employee and a negotiation of the employers with each employee are both included in “consultation”.

When the employers refuse the request of a specified employee to make an individual negotiation, and as a result, no negotiation with a relevant employee is held, the “consultation” provided by the Patent Law Section 35 (4) is not considered to be held. Therefore, in general, an individual negotiation is required to be held in response to a request of a relevant employee for being considered that consultation was held.

Q 5. We had a negotiation with the employees in a group, but everyone expresses a different opinion and we cannot obtain a conclusion. We want to complete the negotiation with a compromise. To what extent the consultation should be held?

Where consultation reaches a stalemate with a conflict of claims without resolution of difference in opinions, in spite of faithful and thorough negotiation between the employers and the employees, it is considered that the situations of the consultation will not work in a positive direction toward unreasonableness even if the employer breaks off the consultation.

2-2. In case of consultation with a representative

Q 1. Is a negotiation with a representative of the employees included in “consultation”?

“Consultation” in the Patent Law Section 35 (4) means whole negotiation made between the employers and the employees to whom a relevant standard is applied, but there are no particular restrictions on its methods. Therefore, negotiation via a representative is included in “consultation”. However, a relevant representative is required to represent formally the employees targeted for “consultation.” Where the relevant representative does not formally represent the employees, “consultation” is not considered to have been held between the employers and the employees

Q2. Where a negotiation via a representative is held, what case is considered to be the one where a representative represents formally the employees?

This means a case where the relevant employees entrust consultation with the employers to a relevant representative (gives the right to consult). This is considered to include not only explicit entrust but also implicit entrust.

For example, some cases where the specified employee did not clearly take objection to advanced notification saying that the representative who represents the relevant employee would consult with the employers can be considered that the relevant employee entrust implicitly the right of the employee for consultation to the representative.

Q 3. Can negotiation between the employers and the representative of the employees, who has been selected by majority vote, be considered to be consultation in relation to the employees who voted against the relevant representative?

As a rule, since the employees who was against selection of the relevant representative is not considered to entrust consultation to the relevant representative, “consultation” is not considered to be held in relation to the relevant employees

However, where a ballot is held after each employees has acknowledged entrust of the right for consultation to a relevant representative selected by a method including majority vote, the negotiation between the relevant representative and the employers shall be considered to be “consultation” between each of the employees and the employers because the relevant representative is considered to be a formal representative also in relation to the employees who voted against the relevant representative.

Q 4. Is negotiation between the employers and a representative selected to represent the majority of the employees considered to be “consultation” also in relation to the other employees who were not involved in selection of the representative?

Where negotiation with a representative who represents the majority of the employees is held, “consultation” is not considered to be held in relation to the employees other than the relevant majority of the employees.

Therefore, another substantive consultation is generally required to be held also between the employers and the employees other than the majority of the employees so that the “consultation” is considered to be held in relation to all employees.

Q 5. Is negotiation between the employers and the representative of the employees who are designated by the employers considered to be “consultation”?

Where a person designated by the employers formally represents the employees for negotiation with the employers on setting of the standards for determining remuneration, negotiation between the employers and relevant designated person is considered to be “consultation” between the employers and the employees.

However, even where the employers designates a representative of the employees for negotiation with the employers, the relevant designated person is not necessarily considered to represent formally the employees. A formal representative is required to be entrusted explicitly or implicitly by each employees to negotiate with the employers on setting the standards for determining remuneration.

Q 6. Is negotiation with the employers and a representative of the labor union which unionizes 100% of the employees who have the right for unionization considered to be “consultation”?

Where the representative of the labor union formally represents all unionized employees for negotiation with the employers on setting the standards for determining remuneration, negotiation between the employers and relevant representative is considered to be “consultation” between all employees and the employers.

However, “consultation” is not considered to be held in relation to the employees who do not have the right for unionization. Therefore, where the standards applied even to the executives are set, another substantive consultation is considered to be required in general between the relevant executives and the employers so that “consultation” is considered to have been held.

Q 7. Where negotiation via a representative of the labor union is held, what case is considered that the representative represents formally individual unionized

employees?

The case considered that the representative represents formally individual unionized employees is a case where the relevant employees entrust consultation with the employers to the representative of the labor union (give the right for consultation). It is considered that this can be not only explicit but also implicit entrust.

For example, where the representative of the labor union notifies each union member of the effect that he/she wants to consult the employers as a representative of each of them and decides how to deal with consultation by inviting each union member to offer an opinion, resulting in no particular objections, it is considered in many cases that each union member entrusts implicitly the right for consultation to the representative of the labor union.

Q 8. Is negotiation between the employers and the representative of the labor union which does not unionize all employees considered to be “consultation”?

Where the representative of the relevant union represents formally all union members for negotiation with the employers on setting the standards for determining remuneration, negotiation between the representative and the employers is considered to be “consultation” between all union members and the employers

On the other hand, “consultation” is not considered to be held in relation to the employees who are not the member of the relevant union. Therefore, where the standards applied even to the employees other than the union members is set, another substantive consultation may be required to be held in general between the employers and the employees other than the union members.

Q 9. In a case where the representative of the labor union who is entrusted to consult with the employers consults with them without hearing the opinion of each union member, is “consultation” considered to be held in relation to each of the relevant union members?

Where the representative of the labor union represents formally all unionized employees for negotiation with the employers on setting the standards for determining remuneration, the above negotiation is considered to be “consultation” of the Patent Law Section 35 (4).

3. How to conduct consultation

Q 1. How is application of the standards on which a negotiation between the employers and the employees did not reach agreement evaluated?

“Consultation” of the Patent Law Section 35 (4) means negotiation between the employers and the employees to whom the relevant standards is applied, but does not include an agreement on the standards set between the employers and each of the employees as the result of the negotiation.

Therefore, unless the negotiation did not reach agreement, where it is considered that the employers and relevant employees had exhaustive discussions, the situations of the consultation will work in a negative direction toward unreasonableness.

However, where the consultation reached agreement between the employers and the employees (or their representative), the fact itself, as the situations of consultation, is considered to work in a more negative direction toward unreasonableness.

Q 2. How is a method to set the consultation time in advance and break off the consultation when the time passes evaluated?

Even if the consultation is broken off by passage of a set time, where it is considered that the employers and the employees had substantively exhaustive discussions within the set time, the situations of consultation will work in a negative direction toward unreasonableness.

However, depending on cases, where a method to set a consultation time in advance and break off the consultation by passage of the set time is adopted, it is not necessarily considered in many cases that they had exhaustive discussions.

In addition, where the employers only reiterates his/her claim without presentation of the data, which will be the grounds of his/her claim and break off the consultation without thorough discussions, the situations of consultation are considered to work in a positive direction toward unreasonableness.

Q 3. How is a case where the employees refused any kind of negotiations even if the employers have requested negotiations on setting of the standards evaluated?

“Consultation” of the Patent Law Section 35 (4) means negotiation between the employers and the employees to whom the relevant standards is applied. Therefore, where a specified employee refuses any kind of negotiations, resulting that no negotiations could be held, “consultation” is not considered to be held in relation to the relevant employee.

However, the facts such as what method of “consultation” is requested by the employers to the employees and furthermore, how the employees responds to the request of “consultation” by the employers can be elements for judgement of unreasonableness. Where a specified employee who was requested by the employers to negotiate and given an occasion of expressing an opinion refused all methods of negotiation, as in the above case, the “situations of the consultation” will work in a negative direction toward unreasonableness.

Q 4. In consultation on setting the standards, what kind of the materials and information can be disclosed and explained by the employers to the employees?
--

In case of setting the standards for determining remuneration, it is needed to be evaluated that the employers and the relevant employees had substantively exhaustive discussions so that the negotiation on setting of the standards, generally as the situations of consultation, will work in a negative direction toward unreasonableness.

It is desirable that both parties concerned understand, as common recognition, the materials and information in relation to setting standards for substantive and thorough discussions.

Information in relation to setting standards includes the followings.

The first is information about the employee invention system (the Patent Law Section 35). Where the degree of understanding of the employees on the amended Patent law Section 35 is low, some measures such as disclosure of information by briefing on this law or distribution of the materials describing the law to the employees can be taken.

Secondly, it may be desirable to disclose information on the efforts of the employers for the research and development. In addition, it is considered that information desirable to be disclosed depends on the circumstance of each of the employers and the employees or the content of the standards, etc., and the examples of information to be disclosed are as follows;

- Content of a draft of the standards prepared by the company
- Treatment of the employees in relation to the research and development
- Conditions of profits that the employers receives in relation to the research and development
- Conditions of cost burden and risks of the employers in relation to the research and development
- Contents of the research and development, fullness or freedom of the environment in relation to the research and development
- The standards of other companies of a like nature, which are disclosed

Where disclosure of trade secrets of a relevant company or those of other companies is considered to be controversial, it is considered that it is not necessary to disclose the relevant information.

Chapter 3. Content of the standards for determining remuneration

1. Content of the standards

Q 1. How much of degree of concreteness is it required for the standards for determining remuneration in order to be recognized as valid standards?

“The standards for determining remuneration” in the Patent Law Section 35 (4) does not have any restrictions such as an actual specified content of definition.

When considering the content of the standards, the standards that determine remuneration by reference to “contribution of an invention to the profits of the company” or “contribution of an inventor to the profits by an invention”, or those ones that determine remuneration without considering the above can be used.

In addition, the standards that determine remuneration by reference to the judicial precedents ruling on remuneration relating to employee inventions under the previous law or those ones that determine remuneration without considering the above can be used.

Q 2. How is it evaluated to define the content that may determine the amount of remuneration lower than that of other companies?

It depends on each case, but since circumstances such as the strategies of research and development or operation of the employers, the research environment under which the employees is situated or treatment of the employees depend on each employers or the employees, unreasonableness may not be necessarily affirmed only by the fact that the amount of remuneration determined by the standards is lower than that of other companies.

2. Method to calculate remuneration

Q 1. Is a case where remuneration according to performance such as amount of sales or profits is not defined as a calculation method of remuneration recognized unreasonable?

As a result of comprehensive judgement, a case where remuneration according to performance is not adopted is not necessarily recognized unreasonable. It depends on each case, but for example, even if a method to pay remuneration according to the expected profits evaluated by monopoly of execution of an invention at the time of patent registration is adopted, it is considered natural that in many cases the payment of the remuneration is not recognized unreasonable as a result of comprehensive judgement with the consideration of the whole process until a remuneration is determined and paid.

Q 2. How is it considered in judgement of unreasonableness if the method to pay a remuneration according to expected profits evaluated by monopoly of execution of an invention at the time of patent registration is adopted as a method of calculation of remuneration and the expected profits and the profits obtained actually by the company loose touch with each other?

Where the method to pay remuneration by evaluation of the expected profits by monopoly of execution of an invention at the time of patent registration is defined as the content of the standards, though depending on each case, in general, even if the expected profits obtained by application of the standards and the profits obtained actually by the company loose touch with each other, there may be only a little possibility of the above fact to work in a positive direction toward unreasonableness in judgement of unreasonableness with respect to payment of remuneration determined by evaluation of the relevant expected profits.

Q 3. How is it considered if the method to pay remuneration in proportion to the performance such as the amount of sales or profits is adopted and the maximum amount is defined in the standards for determining remuneration?

“The standards for determining remuneration” in the Patent Law Section 35 (4) does not have a restriction saying that an actual specified content is required. Therefore, the standards which determine remuneration in proportion to the performance such as the amount of sales or profits and set the maximum amount of remuneration is also considered to be “the standards for determining remuneration”.

The content of “the standards for determining remuneration” will be an element to be considered in a supplementary way in determining whether “payment of remuneration according to the stipulations “, that is, all process until remuneration is decided and paid, is recognized to be unreasonable or not.

Therefore, unreasonableness may not be affirmed in comprehensive judgement only by the fact that the maximum amount is defined in the standards.

However, though depending on each case, for example, where the maximum amount is set by consultation on setting of the standards without considering a case of a great invention which may exceed the maximum amount, it is possible to be evaluated that consultation on this point is not held.

Chapter 4. Disclosure of the set standards

Q 1. Do the methods of “disclosure” have restrictions?

Though “disclosure” in the Patent Law Section 35 (4) means present in general to each employees to whom the relevant standards is applied, the methods of disclosure do not have particular restrictions. For example, there are following practical methods of disclosure to the employees.

- Showing the standards at a place where it is easy for the employees to see it on a steady basis
- Distribution of a document describing the standards to the employees (including bulletin and newsletter)
- Disclosure via the intranet accessible to the employees on a steady basis
- Disclosure via the homepage on the internet on a steady basis
- Other various methods

Q 2. How are the standards disclosed to the employees so that the situations work in a negative direction toward unreasonableness?

In general, if the relevant employees are situated under the conditions where they can see the relevant standards whenever they want to see, it is considered that the situations of disclosure will work in a negative direction toward unreasonableness.

On the other hand, where the relevant employees are situated under the conditions where they have some trouble or difficulty for seeing it, it is considered that the “disclosure” is not performed in relation to the relevant employees or that the situations of disclosure will work in a positive direction toward unreasonableness.

Q 3. By when should be the standards presented to the employees so that the situations will not work in a positive direction toward unreasonableness?

In general, if the relevant employees are situated under the conditions where they can see the relevant standards whenever they want to see, it is considered that the situations of disclosure will work in a negative direction toward unreasonableness. Therefore, even if the standards are not presented specifically, it is considered not to work in positive direction toward unreasonableness.

In addition, if the standards are presented until the right relating to the relevant employee invention is succeeded, it will work in more negative direction toward unreasonableness.

Q 4. Where the standards are disclosed on the PC via in-house intranet and applied to the employees who are not given a computer connected to the intranet, how is this case considered in judgement of unreasonableness?

Where employees who are not given a computer for each of them are situated under the environment where they can easily access to the intranet with a shared computer, or the environment where the relevant employees can see the standards whenever they want, it is considered that there is only a little possibility of the situations of disclosure to work in a positive direction toward unreasonableness.

Q 5. How is it considered in judgement of unreasonableness if the set standards are applied to an employee who saw it via circulation?

Disclosure of the standards itself is considered to be performed in relation to the employees who see it via circulation.

However, where circulation was performed only once and after that, the relevant employees are not situated under the conditions where they can see the relevant standards whenever they want to see, it is considered that the situations of disclosure will work in a positive direction toward unreasonableness.

Q 6. How is external publication of the standards evaluated?

“Disclosure” in the Patent Law Section 35 (4) means whole presentation of the set standards to each of the employees to whom the relevant standards is applied.

Therefore, wide external “publication” is not required as the “disclosure” of the Patent Law Section 35(4).

However, it is considered that wide external “publication” can be disclosure to potential employees (including informally-appointed workers).

In addition, where there is a special circumstance considered that the standards was presented to the new employees before their entrance and that they entered the company, approving the application of the relevant standards to them, there may be also a possibility that they are considered to agree with the standards.

Furthermore, apart from the Patent Law Section 35 (4), it is desirable to disclose the standards or its outline widely outside the company so that the employers can get excellent researchers or researchers can refer to the standards or its outline in selection of their future employers.

Chapter 5. Hearing of employees' opinions on calculation of the amount of remuneration

1. How to hear opinions

Q 1. For “hearing of opinions”, should individual opinion of the employees be actually heard on calculation of the amount of remuneration relating to the individual employee invention?

“Situations of hearing of opinions” in the Patent Law Section 35 (4) means that the employers hear opinions on calculation of the employee invention from the employees who is an inventor of the relevant employee invention. However, not all of the employees have their opinions.

Therefore, even if the employees who is an inventor of the employee invention did not actually express his/her opinion on calculation on the amount of remuneration relating to a specified employee invention, “hearing of opinion” is considered to be done if there is a fact considered that the employers asked for opinions of the relevant employees.

Q 2. Does a method to ask for an opinion of the relevant employees after paying remuneration calculated by the employers to the employees in the meantime correspond to “hearing of opinions”?

“Situations of hearing of opinions” in the Patent Law Section 35(4) means that the employers hears an opinion on calculation of the amount of remuneration relating to an employee invention from the relevant employees who is an inventor of the relevant employee invention, and does not restrict the methods of hearing of opinions.

Therefore, the method to calculate the amount of remuneration after hearing an opinion from the employees in advance shall be considered to be “hearing of opinions”. And the method to ask for an opinion of the relevant employees after paying the remuneration calculated by the employers to the employees in the meantime also shall be considered to be “hearing of opinions”.

Q 3. In case of “hearing of opinions “ from employees, does preparation of a system to receive opinions on the amount of remuneration calculated from the standards, etc. from employees during a certain period, instead of asking for an opinion of the each employees, correspond to “hearing of opinions”?

If it is considered that the employers substantively asked for an opinion of the employees by preparation of a system for receiving opinions on the amount of remuneration calculated from the standards, etc. during a certain period, instead of asking for an opinion of the each employees on calculation of the amount of remuneration relating to a specified employee invention, “hearing of opinions” is considered to be done. However, in this case, it should be needed that the relevant system is well known in the employees.

Q 4. In case of a joint invention, how is it considered if opinions on calculation of the amount of remuneration are heard from a person at the highest level among the co-inventors?

“Situations of hearing of opinions” in the Patent law Section 35 (4) in case of joint inventions shall be evaluated for every co-inventor. However, the methods of “hearing of opinions” include not only the one to hear an opinion from each co-inventor but also the one to hear an opinion summarized by the co-inventors or the one to hear the opinion of each inventor via a representative.

However, where opinions are heard via a representative without hearing from each co-inventor, the representative shall represent formally each co-inventor. In this case, any person at the highest level is not always approved as a formal representative. In addition, where there is some trouble or difficulty in free expression of each co-inventor, caused by hearing of opinions through the representative or where the opinion of each co-inventor may be sank in the whole opinion by “summarizing”, the situations of hearing of opinions can work in a positive direction toward unreasonableness.

Q 5. In case of joint inventions, how is it considered in judgement of unreasonableness if opinions shall not be heard as formal opinions unless they are summarized into one opinion by co-inventors?

Where the opinions of co-inventors are different from each other, if “opinions shall not be heard as formal opinions unless they are summarized into one opinion by co-inventors”, the individual inventor is considered to be situated under the conditions where they are equivalent to being rejected from or have a substantive difficulty in

expressing their opinion freely. In these cases, it is considered that opinions on the relevant employee invention are not heard from the relevant co-inventors, or the situations of hearing of opinions will work in a positive direction toward unreasonableness even when opinions are superficially heard.

Q 6. How is it considered in judgement of unreasonableness under the new employee-invention system if an opinion is not heard from the inventor of an employee invention who retired?

In this case, “hearing of opinions” is not considered to be done in relation to the retired person.

Therefore, it is desirable to ask for an opinion of the retired person on calculation of remuneration relating to the relevant employee invention so that the situations of hearing of opinions will work in a negative direction toward unreasonableness in relation to the relevant retired person.

However, where handling of the employees at the time of resignation is included in the standards or where an agreement was made between the employer and the retired person at the time of his/her resignation, the conditions of hearing of opinions will work in a negative position toward unreasonableness even if an opinion is not heard after resignation.

2. How to conduct hearing of opinions

Q 1. Is it desirable to hear opinions immediately when requested from the employees? Or where the standards defines the time of calculation of remuneration or payment, is hearing of opinions or answer from the employers at the time defined by the relevant standards only needed?

Where the standards for determining remuneration defines the time of hearing of opinions from the employees on calculation of remuneration, this fact shall be considered as one of the elements for comprehensive judgement of unreasonableness.

It depends on each case, but unless there are special circumstances such as difficulty for the employees in expression of opinions at a given time, the situations of hearing of opinions will, as a rule, work in a negative direction toward unreasonableness if opinions are actually heard at the given time from the employees, who have requested hearing of opinions.

Furthermore, it is desirable to hear an opinion whenever the employee who is the inventor of the relevant employee invention requests so that the situations of hearing of opinions will work in a more negative direction toward unreasonableness.

Q 2. How is it considered if the employers hear an opinion from the employees but never answer to him/her? In addition, how is it considered if the employers answer only when recognizing its importance?

Where the employers hears an opinion from the employees but never answers to him/her, it is considered that the situations of hearing of opinions will work in a positive direction for unreasonableness.

Then, where the employers answer only when recognizing its importance, the situations of hearing of opinions will work in a positive direction toward unreasonableness in relation to the inventors who receive no answers.

Q 3. When answering to an opinion of the employees, how does the employers handle the opinion heard from the employees so that the situations of hearing of opinions will work in a negative direction toward unreasonableness?

It is desirable that the employers sincerely examines the opinion from the employees and recalculates the amount of remuneration if it is recognized that the recalculation is needed. In addition, where there are differences of opinions on calculation of remuneration between the employers and the employees, establishment of following systems will work in a negative direction toward unreasonableness;

1. Request of examination of an in-house advisory organization on calculation of remuneration
2. Utilization of external organizations such as an arbitration organization.

Q 4. How is it considered in judgement of unreasonableness if hearing of opinions did not reach an agreement with the employees?

“Situations of hearing of opinions” in the Patent Law Section 35 (4) means that the employers hears an opinion or complaint concerning calculation of the amount of remuneration from the employee who is the inventor of the relevant employee invention. But, individual agreement between the employer and the employee on calculation of the amount of remuneration is not necessarily required.

Therefore, the situations of hearing of opinions may not work in a positive direction toward unreasonableness if the hearing of opinions did not reach an agreement. For example, where the employer deals sincerely with the opinion of the employee, the situations of hearing of opinions will work in a negative direction toward unreasonableness even if hearing of opinions did not reach an agreement.

In addition, where hearing of opinions reached an agreement between the employer and the employee, the situations of hearing of opinions will work in a more negative direction toward unreasonableness.

Q 5. What can be the materials and information to be presented and explained by the employers to the employees in hearing of opinions?

It is considered that the materials and information used for calculation of remuneration relating to each employee invention will be presented and explained. However, the materials and information used for calculation of remuneration may vary, depending on the content of the standards. For examples, the followings can be included as the materials and information;

Example 1. Where expected profits are used as the standards for determining remuneration

- Market scale forecast of a manufacture relating to the invention-in-suit
- Profit ratio forecast of a manufacture relating to the invention-in-suit
- Forecast of contribution of the patent related to the invention-in-suit to profit

Example 2: where a method of determining remuneration accordance to performance (a method to decide remuneration to be paid to the employees in accordance with performance such as sales amount or profits) is adopted as the standards for determining remuneration

- Data on sales amount relating to the invention-in-suit
- Outline of the license agreement and the content of profits such as the licensing fee received by the employers
- Contribution of the patent related to the invention-in-suit to profits and grounds of contribution

Where it is considered to be a problem to disclose the trade secrets of the relevant or other companies, disclosure of the relevant information may not be required.

Chapter 6. Where a contract is concluded between the employers and the employees

Q 1. How is it considered in judgement of unreasonableness if a contract is concluded between the employers and the employees on application of the standards for determining remuneration?

In general, where consultation reached an agreement between the employers and the employees, the situations of consultation will work in a negative direction toward unreasonableness.

However, depending on each case, for example, where conclusion of the contract is not based on the free will of the employees, such as the case where the employers force the employees to seal to a document of the contract without giving time for examination of the standards or information, or without substantive negotiation, the situations of consultation will work in a positive direction toward unreasonableness.

Q 2. How is it considered in judgement of unreasonableness if a contract is concluded between the employers and the employees on remuneration relating to an individual employee invention after completion of the invention considered in determination of unreasonableness?

In general, where the hearing of opinions from the individual employees on remuneration relating to the individual employee invention reached an agreement between the employers and the employees, the situations of hearing of opinions will work in a negative direction toward unreasonableness.

However, depending on each case, for example, where conclusion of the contract is not based on the free will of the employees, such as the case where the employers force the employees to seal to the document of the contract without giving time of examination of remuneration relating to the individual employee invention or information, or without substantive hearing of an opinion, the situations will work in a positive direction toward unreasonableness.

Chapter 7. Others

1. Amendment of the standards

Q 1. Does amendment of the standards require consultation between the employers and the employees?

In amendment of the standards, parts to be amended shall be handled in the same way as setting of the new standards. Therefore, it is desirable that consultation between the employers and the employees shall be held to understand the opinion of the employees in amendment of the standards as well as in setting of the new standards so that the situations will work in a negative direction toward unreasonableness in judgement of unreasonableness of payment of remuneration decided from the standards.

Since the reasons for amendment, the size of parts to be amended depend on each case, the situations will not necessarily act in a positive direction for unreasonableness even where consultation or hearing of opinions is not performed completely in the same way as setting of the standards.

Q 2. Under the new employee invention system, can the amended standards be applied to an employee invention succeeded before amendment of the standards?

The right to demand the “appropriate remuneration “ in the Patent Law Section 35 (3) occurs in the inventor of an employee invention at the time of succession of the right relating to the relevant employee invention. Therefore, the amended standards are not applied immediately after amendment of the previous standards.

However, it can be possible to apply substantively the amended standards by another individual agreement on payment of remuneration according to the amended standards between the employers and the employees who are the inventors of the relevant employee invention. .

In addition, it is considered that the amended standards can be applied to remuneration relating to the employee invention succeeded before amendment unless application of the amended standards to the employee invention succeeded before amendment is against the employee’s interests.

Q 3. What is the desirable frequency of amendment of the standards to let the

situations work in a negative direction toward unreasonableness?

It is considered that the situations of amendment such as whether the standards are amended or not or the length of duration between the amendments are some of the elements, which are included in the items of “etc.” in the provision of the Patent Law Section 35 (4), “considering situations of consultation... situations of disclosure...situations of hearing of opinions, etc.”

It depends on actual cases how the situations of amendment of the standards are considered in judgement of unreasonableness, but in general, they may be considered, based on the following circumstances:

1. Length of duration between amendments of the standards
2. Changes in social conditions such as price levels
3. Whether the fact that the employees demands the employers of amendment of the standards exists or not.
4. Changes in strategies of research and development of the employers, the bases of research and development, business policy and financial standing, etc.
5. If there is a stipulation of the time of amendment in the relevant standards, the content of the stipulation

Among the above, concerning “1. Length of duration between amendments”, the desirable frequency of amendment of the standards cannot be categorically decided because it depends on changes in the environment such as fluctuations in price, changes in the company’s strategies of research/development and new construction or consolidation of bases of research.

2. How to handle new employees

Q 1. How is it considered in judgement of unreasonableness if the standards set before the entrance of new employees are applied to the relevant new employees?

Where a set standards is applied to the new employees who were not the counterpart of the consultation, consultation is not considered to be held in relation to the relevant new employees. However, the reason why consultation was not held in relation to the relevant new employees can be an element to be considered in comprehensive judgement of unreasonableness. For example, compared of the case where consultation was not held though they had been the employees at the time of setting of the standards for determining remuneration with the case where the relevant new employees entered the company after setting of the standards, the situations of the former case is considered to work in a more positive direction toward unreasonableness than the latter one.

Q 2. How is it considered in judgement of unreasonableness if the standards that have been already set are applied to new employees after the employers present the standards to new employees and negotiate with them about the standards?

Where negotiation is held between the employers and new employees, based on the standards that has been already set, “consultation” is considered to be held between the employers and the new employees

In addition, where negotiation between the employers and new employees, reached an agreement that the remuneration is determined by the application of the standards that has been already set, the situations of the consultation will work in a negative direction toward unreasonableness.

Q 3. By when is it necessary to present the standards to new employees?

It is necessary to present the relevant standards to new employers until succession of the right relating to the relevant employee invention so that the situations of disclosure will work in a positive direction toward unreasonableness.

For example, where the standards had been disclosed before entrance of the new employees and the relevant new employees are considered to enter the company, approving application of the relevant standards, it will work in negative direction toward unreasonableness.

3. Handling at universities

Q 1. Should the contract, employment regulation or other stipulations relating to employee inventions be provided also in universities as in case of companies?

Concerning the above, the Patent Law Section 35 does not distinguish universities from companies, and this provision shall be naturally applied to the employee invention of school personnel in the relation between a university and its personnel.

Therefore, where the contract, employment regulation or other stipulations relating to employee inventions are not provided or where payment of remuneration relating to an employee invention in accordance with the stipulations is considered unreasonable, payment of remuneration defined by the provision of the Patent Law Section 35 (5) shall be required.

So, in the relation between a university and its personnel, the requirements of the Patent Law Section 35 (4) shall be met to prevent payment of remuneration relating to an employee invention according to the contract, employment regulation or other stipulations from being judged unreasonable.

Q 2. In universities, consultation is frequently held in the form of a meeting consisting of the representatives of individual departments (dean meeting, etc.) when in-school rules are regulated. Is a meeting of the representatives of the university and individual departments on setting the standards on employee inventions considered to be “consultation”?

Where the representatives of individual departments formally represent each employee of the university in consultation with the university on setting the standards for determining remuneration relating to employee inventions, “consultation” is considered to be held between each employee and the university.

For example, where the representatives proceed consultation and hear opinions on the content of the standards from each employee via the faculty meeting of their departments, or where the representatives were selected with approval of their consultation with the university on setting the standards, the representatives are considered to represent formally each employee of the university in many cases.

Q 3. Where a student who belongs to the laboratory of the university develops an invention relating to their research at the laboratory, does the relevant

invention correspond to an employee invention?

“An employee’s invention” is defined in the Patent Law Section 35 (1) as “an invention which, by the nature of the said invention, falls within the scope of the business of the employers and was achieved by an act or acts categorized as a present or past duty of the employees performed on behalf of the employers”.

A student who does not have an employment relationship with the university is not generally considered to correspond to the employees defined in the Patent Law Section 35. Therefore, an invention developed by the student is not generally considered to correspond to an “employee invention” defined in the Patent Law Section 35 (1).

However, some students who participate in a specified research project may conclude a contract with the university and has the employment relationship with the university. Like this, an invention developed in the relevant research project by the student who has the employment relationship with the university is considered to correspond to the “employee invention”. Therefore, where the contract, employment regulation or other stipulations relating to employee inventions have not been provided or payment of remuneration relating to an employee invention according to the stipulations is recognized to be unreasonable, payment of remuneration defined in the provision of the Patent Law Section 35 (5) shall be required.

The requirements of the Patent Law Section 35 (4) shall be met also in relation to a student who has the employment relationship with the university to prevent payment of remuneration relating to an employee invention according to the contract, employment regulation or other stipulations from being judged unreasonable.

Q 4. How can the right to obtain patent or patent right with respect to an invention developed by a student who belongs to the laboratory of a university be succeeded to the university?

A student who does not have the employment relationship with the university is not considered to correspond to the employees defined in the Patent Law Section 35 (1).

Therefore, the Patent Law Section 35(2) is not generally considered to be applied to an invention developed by a student.

Therefore, succession of the right to obtain a patent or patent right with respect to an invention developed by a student may require another contract relating to succession.

Succession of the right to obtain a patent or patent right with respect to the joint invention developed by a student and school staff to the university requires the above contract for the share of the student, and for the share of the school staff, it can be

defined to succeed the right to the university according to the “contract, employment regulation or other stipulations” which has been set in advance.

4. Others

Q 1. Even where the standards exists, can remuneration different from the amount derived from the standards be decided individually?

Where an agreement between the employers and the employees is made and effective in light of the principles of the civil law, the amount different from the standards can be individually decided.

Q 2. When a general question arises in interpretation/operation of the standards, what is a desirable handling of it?

When a general question arises in interpretation/operation of the standards setting for determining remuneration, it is considered to be desirable to hold consultation again between the employers and the employees on its interpretation or consultation on setting of a new standard in which no questions will arise.

As a method of consultation, for example, a method to present its interpretation by the employers via in-house intranet and invite the employees' opinions about it can be considered.

Q 3. Even where the procedures from setting the standards to final payment of remuneration were taken and no small amount of remuneration was paid, is there a case where payment more than the amount that the employers has already paid to the employees is additionally ordered?

Normally there is not such a case.

Where there is an error in calculation of remuneration based on the standards or where remuneration was calculated without some of information required for calculation of remuneration based on the standards, the amount of remuneration to be rightfully paid by taking the procedures thoroughly from setting the standards for remuneration to final payment of remuneration and the amount of remuneration that was actually paid may not correspond to each other in some cases.

In these cases, payment of "appropriate remuneration" due to unreasonableness of payment of remuneration, based on the Patent Law Section 35 (5), is not ordered, but because the amount to be rightfully paid based on the contract, employment regulation or other stipulations is not paid, the employers will be ordered, as a failure to pay his/her debt, to pay the amount of difference from that which was actually paid.

Q 4. Even where the right to obtain a patent in a foreign country is succeeded, is the Patent Law Section 35 applied?

Where an employer succeeds from an employee the right to obtain a patent in a foreign country, the idea on whether the employee can demand the employer of remuneration for succession of the right to obtain a patent based on the Patent Law Section 35 or not has not been integrated in judicial precedent or academic theory.

If the Patent Law Section 35 is applied to remuneration for succession of the right to obtain a patent in a foreign country, the remuneration shall be decided according to the Patent Law Section 35 (4) or (5).

On the other hand, if the Patent Law Section 35 is not applied to remuneration for succession of the right, the applicable law on succession of the right or remuneration shall be applied.

Like this, under actual conditions where the idea on judicial precedent or academic theory is not integrated, it is desirable to conclude an individual contract.

Q 5. What kinds of the materials are the employers considered to manage and file in relation to determination and payment of remuneration?

In the new employee invention system, where remuneration is decided in accordance with the contract, employment regulation or other stipulations, “appropriate remuneration” to be paid by the employers depends on whether “payment of remuneration in accordance with the stipulations” is recognized unreasonable or not. Therefore, it is desirable for the employers to manage and file wherever possible materials to be a basis of judgement of unreasonableness for future conflicts.

For example, the following materials can be managed and filed;

< Where the standards are set for determining of remuneration >

- Materials showing how the standards was set
- Where consultation was held on setting the standards between the employers and the employees, its minutes, materials used for consultation and the list of participants in the consultation, etc.
- Where a briefing session was held for the employees at the time of setting the standards (or after setting the standards), its minute, the materials used for briefing and the list of participants in the briefing session, etc.
- Where an agreement was made between the employers and the employees on the standards, the materials showing the content of the agreement

- Where the standards were disclosed, its date, methods of disclosure and the materials showing conditions of disclosure

< Calculation of individual remuneration >

- The materials used for calculation of the amount of remuneration
- Where some briefing was done on calculation of the amount of remuneration, the materials on this (notification, briefing materials, etc.)
- Where an agreement was made between the employers and the employees on the amount of remuneration, the materials showing the content of the agreement
- Where an opinion was heard from each employees on calculation of the amount of remuneration, the materials showing the content of objections
- Where an opinion heard from each employees was examined, the materials showing how to examine it and conclusion
- Where an opinion heard from each employees was examined by an organization of the third party, the materials showing how to be examined and conclusion

Part II. Applications

The following the employers and the employees are assumed in Part II. Applications.

<Assumed examples>

Company A:

Category of business: Design and manufacture of machines around household electrical appliances

Capital: 1 billion-yen

Representative directors: 5

Directors: 25

Number of the staff: 1,470

Members of the research staff: 100

In Tokyo Research Institute: 70 (Administrators: 20)

In Osaka Research Institute: 30 (Administrators: 10)

Labor union: 1 union

Number of members out of 50 non-administrators in Tokyo Research Institute: 40

Number of members out of 20 non-administrators in Osaka Research Institute: None

Number of members out of non-administrators other than research staff: 1,000

Company B:

Category of business: Design and manufacture of computer parts

Capital: 10 million-yen

Representative director: 1 (Engaged in R&D and design)

Directors: 2 (Both are engaged in R&D and design)

Number of the staff: 37

Number of the staff engaged in R&D and design: 12

Labor union: None

In "Part II. Applications", "the employees" defined in the Patent Law Section 35 from whom directors are excluded are defined as "staff".

Chapter 1. Consultation held between the employers and the employees when setting the standards for determining remuneration

1. Interested parties of consultation

Q1. Is it evaluated to be “consultation” where a director who is subject to the application of the standards participates in the consultation as a representative of company B when the standards to be applied to the staff and directors engaged in research and development and design are made in company B?

It is possible for staffs and directors to consult standing on a position of the employers even where they are subject to application of the standards if the employers entrust them and it is considered that the consultation is evaluated as “consultation” defined in Patent Law Section 35 (4).

A representative on consultation in the employers’ side is not necessarily a director. If the person is entrusted from the employers, the one who is subject to application of the standards or the one who is not subject to, and the one who is a director or the staff can be a representative and in addition, even the one outside of the company can participate in the consultation representing the employers.

It is considered to be more desirable to send a person who is not subject to application of the standards to participate in the consultation as a representative of the employers generally, because a director who is subject to application of the standards may have his/her own profit contradictory to the profit of the employers’ side though that depends on the situation.

2. In case of consultation in a group

Q 1. Company A showed a draft standard compiled by the company on the in-house intranet. The staff can see the draft and put opinions and questions, if they have, in an opinion box on the in-house intranet.

(1) When company A does not give answers to those opinions at all or does not change the draft standard, although opinions on the draft standard were presented from the staff, is it evaluated as “consultation”?

Judging from the fact that company A did not give answers to those opinions at all or did not change the standard plan in spite of the opinions and questions presented from the employers, it is judged that company A only asked opinions superficially to the staff, so it is not evaluated that the “consultation” was carried out or even when “consultation” was carried out superficially, it is considered to be evaluated that the consultation is equivalent not to be carried out practically.

(2) Is it evaluated as “consultation” when company A examines each opinion put in the opinion box and answers only a part of the opinions?

It is not evaluated that the “consultation” is held in the relation with the staff members who are not answered in spite of presenting opinions or even when “consultation” is held superficially, it is considered to be evaluated that the consultation is equivalent not to be held practically.

However, (1) when answer is given collectively as it is the opinion duplicated in contents with other opinions or (2) answer is not given to meaningless opinions, the other evaluation is given.

On the other hand, it is considered to be evaluated that the “consultation” is held in the relation with the staff members who got answers.

Q 2. Company A showed a company's draft standards on a in-house intranet and adopted a consultation method to propose any opinion to a representative president-director by an E-mail with a signature. However, it is a courageous action for the staff to send an E-mail to a president and especially to express opinions with a signature, as a result, there was nobody who sent an E-mail to a president. How is it evaluated in judgement of unreasonableness when the company's draft is adopted without any amendment under such condition?

Where it is recognized that it is hindered materially or in a difficult condition for

the employees to give opinions to the employers freely, it is not recognized that the consultation is held in the relation between the employers and the employees or it is identified that the consultation is not held substantially even if it is evaluated that the consultation is held superficially, and the situations of the consultation will work in positive direction toward unreasonableness.

In this question, where it is recognized that there exists an obstacle to give opinions freely for the staff in company A because employers need to propose opinions to a representative president-director by an E-mail with a signature when they have opinions on a draft of company A, these situations will work in positive direction toward unreasonableness.

Q 3. Where company A showed a draft compiled by the company without negotiation with the staff on a in-house intranet and asked approval or disapproval for the draft, 1,390 out of 1,400 of the staff and directors other than researcher were in approval, 5 were in disapproval and 5 were no response and 70 out of 100 researchers were in approval, 20 were in disapproval and 10 were no response. Company A adopted the company's draft without any amendment and set the standards.

(1) How is it evaluated in judgement of unreasonableness if the standards are applied to the researchers who were in disapproval?

It is considered that it works in a positive direction toward unreasonableness in judgement of unreasonableness as it is hard to consider that the substantial consultation with company A was held.

However, it is considered that the situation itself that the majority of researchers are in approval of company's draft may be considered as one element that the contents of the standards are appropriate.

(2) How is it evaluated in judgement of unreasonableness if the standards are applied to members of researcher who were in approval or no response?

(On the relation with approved staff)

Where sufficient materials and information are presented to the staff for asking approval or disapproval, though the consultation with company A is not held, and the staff are in approval of the draft of company A, it is considered that the fact has less possibility to work in a positive direction toward unreasonableness, even though the consultation is not held at all.

(On the relation with the staff of no response)

As it is judged company A sets the standards without carrying out the consultation between company A and the employees in this case, it is considered that this fact works in a positive direction toward unreasonableness.

However, when sufficient materials and information are presented to the staff from company A and the opportunity for each staff member to express opinions sufficiently is provided, these circumstances are thought to work in a negative direction toward unreasonableness.

(3) How is it evaluated in judgement of unreasonableness if it is unknown who are in approval, disapproval and no response as approval or disapproval is asked unsigned?

As only a procedure to ask approval or disapproval is carried out without consultation between company A and the employees, it is considered that the fact works in a positive direction toward unreasonableness in the relation with all members of the staff.

However, it is considered that the situation itself that the majority of researchers are in approval of company's draft may be considered as one element that the contents of the standards concerned are appropriate.

3. In case of consultation with a representative

Q 1. An election to elect a representative for determination of the standards to determine the remuneration was carried out by 15 staff members and directors engaged in research and development and design in company B and 10 voted to a director X and 5 to a staff Y. Company B set the standards consulting with a director X. Is such a consultation evaluated as “consultation”, when the standards are applied to the staff members and directors who voted to a director X and when applied to the staff members and directors who voted to a staff Y?

<Where the standards are applied to the staff members and directors who voted to a director X>

As 10 staff members and directors who voted to a director X entrust the consultation with company B to a director X, the consultation between a director X and company B is evaluated to be “consultation” defined in Patent Law Section 35(4).

<Where the standards are applied to the staff members and directors who voted to a staff Y>

It differs depending on the fact if the staff members and directors entrust the right for consultation with company B to a director X. for example,

- (1) Where the staff members and directors agreed that the one who obtained the majority of votes at the time of election (regardless of his or her voter) as the result of the election would consult with the corporation representing himself (or herself), or
- (2) Where the staff members and directors who voted to a staff Y confirmed after the fact that a director X would consult with the corporation as a representative later,

In such cases, it is recognized to entrust the consultation to a director X finally, the conditions of consultation between company B and a director X is considered as “consultation” defined in Patent Law Section 35(4).

In the meantime, when trust is not recognized, the “consultation” defined in Patent Law Section 35(4) is evaluated not to hold between 5 staff members and directors and company B.

Q 2. Company A has conducted the consultation simultaneously and in parallel with both representatives elected from members of the research staff in Tokyo Research Institute and Osaka Research Institute. However, when the opinion proposed by a representative from Tokyo Research Institute is adopted, a representative from Osaka Research Institute does not consent to that, and when the opinion proposed by a representative from Osaka Research Institute is adopted, a representative from Tokyo Research Institute does not consent to that. Therefore, it is tried to decide a compromised plan, which is not evaluated necessarily by both representatives from Tokyo Research Institute and Osaka Research Institute. How is it evaluated in determination of the unreasonableness to break off the consultation with a compromised plan?

It is considered that the conditions of consultation act in positive direction for unreasonableness when company A adopts a compromised plan without thorough consultation with representatives only because it is the compromised plan.

However, it is considered that the conditions of consultation act in negative direction for unreasonableness even when the consultation is broken off by adopting the compromised plan, when it is evaluated that substantial consultation is held between a representative from Osaka Research Institute and company A and between a representative from Tokyo Research Institute and company A.

In addition, company A can decide two standards in the form of the standards for Tokyo Research Institute and standards for Osaka Research Institute.

Q 3. As a representative of 100 researchers, a staff X of the researcher, and as a representative of 1,400 non-researcher staff, a staff Y were elected in company A. Company A started the consultation with representatives X and Y but X and Y were clashed head-on in opinions and there were no signs of settling the consultation. Company A adopted the opinion of Y who was a representative of more staff members to set the standards. How is such consultation evaluated in determination of unreasonableness when this standard is applied to researchers who elected X?

It is considered that the “conditions of consultation” act in negative direction for unreasonableness even when the standard is applied on the remuneration relating to employee invention to be carried out by 100 members of the researcher if the substantial consultation is carried out between company A and a representative X.

For example, when the sufficient consultation is held on reasons and background for not adopting the opinion of X but adopting the opinion of Y between company A and

a representative X and in addition, on advantages and disadvantages when the opinion of Y is adopted and the efforts for finding out a point of compromise is exerted in this question, it is evaluated that substantial consultation is held and the “conditions of consultation” is considered to act in negative direction for unreasonableness.

On the other hand, for example, when company A arrives at the conclusion that the opinion of Y is adopted only because a representative Y stands for more staff members and the consultation is broken off, it is considered that the “conditions of consultation” act in positive direction for unreasonableness.

Chapter 2. Disclosure of the set standards

Q 1. Company A places the standards in Tokyo Head Office so that any member of the staff can see them if he/she comes to Tokyo Head Office but it is not allowed to take out the standards. How is it evaluated in determination of unreasonableness where the standards are applied to the researchers in Osaka Research Institute who have not seen the standards actually under such condition? And, how is it evaluated where the standards are applied to the researchers in Osaka Research Institute who have seen the standards actually?

<Where the standards are applied to the researchers in Osaka Research Institute who have not seen the standards actually>

Company A does not place the standards in Osaka Branch Office, and Tokyo Head Office and Osaka Research Institute are separated far away and it is not allowed to take out the standards. Therefore, it seems very difficult for the staff in Osaka Research Institute substantially to access to the standards.

Accordingly, it is considered that the disclosure is not made in the relation with the researchers who have not seen the standards or that the condition of disclosure acts in positive direction for unreasonableness.

<When the standards are applied to the researchers in Osaka Research Institute who have seen the standards actually>

Even when the standards are applied the researchers who have seen the standards actually, it cannot be approved that it is the conditions in which the standards can be seen always as it is not allowed to take out. Accordingly, it is considered that the condition of disclosure acts in positive direction for unreasonableness in the relation with the researchers.

Q 2. The standards are presented to directors who can participate in a board of directors but not to other 12 staff at all in company B. How is it evaluated where the standards are applied to directors who are subject to the standards? And, how is it evaluated in determination of unreasonableness where the standards are applied to the staff who are not presented the standards?

<Where the standards are applied to directors>

It is considered that the condition of disclosure acts in negative direction for unreasonableness if the relevant directors are in the condition in which they can see

the standards any time they want.

However, it is considered that the conditions of disclosure may not acts in negative direction for unreasonableness if the relevant directors are not in the condition in which they can see the standards any time they want, even where the disclosure of the standards are carried out actually in a board of directors.

<Where the standards are applied to the staff>

It is considered that the “disclosure” defined in Patent Law Section 35(4) is not made in the relation with the staff who are not disclosed the standards. That is to say, the fact act in positive direction for unreasonableness.

Q 3. Company A presented a part “X% will be paid as a remuneration from the company profit by monopolizing the implementation of the invention” but decided not to present a part for considering factors for calculating the exclusive profit to staff and directors as the contents of the standards include various subjects. How is such presentation of the standards evaluated in determination of unreasonableness?

Since a part “X% will be paid as a remuneration from the company profit by monopolizing the implementation of the invention” is an important part as contents of the standards for deciding the remuneration, it cannot be considered that the standards is not disclosed at all.

However, a part for considering factors for calculating the exclusive profit also corresponds to important element in deciding the remuneration. Therefore, the fact that this part is not presented to the staff and directors is considered in comprehensive determination and it is considered that the conditions of disclosure acts in positive direction for unreasonableness.

Chapter 3. Hearing of opinions of the employees in calculation of the amount of remuneration

Q 1. A joint invention was made by three of a representative president-director and 2 directors in company B. Who and from whom can “hearing of opinions” be carried out?

The objects for the hearing of opinions are a representative president-director and 2 directors who are inventors that carried out the joint invention actually.

On the other hand, it is company B that carries out the hearing of opinions but actually it is a person who have representation right or a person entrusted by a person who have representation right .

Q 2. Company A does not hear the opinion directly from an inventor on the calculation of remuneration, the inventor expresses the opinion to a chief in the research institute, the chief in the research institute comprehends and examines by himself/herself and then reports to a head of the research institute with his/her comments. Furthermore, a head of the research institute submits to the head office after he/she examines by himself/herself. Is it evaluated that the “hearing of opinions” is carried out in such a case?

There is a possibility that it can not be evaluated that company A hears the true opinion of an inventor practically, as a chief in the research institute examines the actual opinion of an inventor and adds his/her own comments and a head of the research institute examines by himself/herself in the case of this question. It is considered that the possibility to be evaluated that the hearing of opinions is not carried out in such a case is high.

Q 3. Company B applied the identical standard on the joint invention and decided the remuneration for each of joint inventor. Incidentally, the request for explanation on the calculation basis of the remuneration that company B calculated was given from one of the joint inventors. How is it evaluated in determination of unreasonableness that company B does not explain the calculation basis to the inventors in such a case? And, how is it evaluated when company B does not explain it to other joint inventors who do not request the explanation?

<On the fact that the explanation is not given to inventors concerned>

It is considered that the conditions of hearing of opinions act in positive direction for unreasonableness where company B did not explain it to the inventors in spite of the request from the inventors for explanation on the calculation basis of the remuneration of certain invention that company B calculated as in the case of this question.

<On the fact that the explanation is not given to other joint inventors>

It is considered that the conditions of hearing of opinions act in negative direction for unreasonableness, even though specific explanation was not given to other joint inventors who did not request the explanation, except for cases in which circumstance difficult to request the explanation on calculation basis exists.