

Trial decision

Invalidation Trial No. 2011-800266

Saga, Japan

Demandant

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The case of trial regarding the invalidation of Japanese Patent No. 3,690,864,

entitled "PHOTOCATALYST AND ITS PRODUCTION" between the above parties has resulted in the following trial decision:

Conclusion

Patents regarding the inventions according to Claims 2 to 12 of Patent No. 3,690,864 shall be invalidated.

The costs in connection with the trial shall be borne by the Demande.

Reason

No. 1 History of the procedures

Filing Date	March 29, 1996
Registration Date	June 24, 2005
Written demand for trial (Invalidation Trial No. 2006-80181)	September 11, 2006
Written reply of trial case	December 19, 2006
First trial decision	September 13, 2007
Suit Against Appeal Decision	October 25, 2007
Decision	October 16, 2008
Binding of Decision	October 30, 2008
Second trial decision	July 8, 2010
Written demand for trial (Invalidation Trial No. 2011-800266)	December 26, 2011
Offer for delegation of service of documents (Demandant)	December 26, 2011
Written reply of trial case	March 16, 2012
Written reply	October 16, 2012
Written statement (Demandant)	January 17, 2013
Interrogatories (Demandant)	May 28, 2013
Notification of matters to be examined	May 15, 2013
Oral proceedings statement brief (Demandee)	May 20, 2013
Oral proceedings statement brief (Demandant)	May 20, 2013
Oral proceedings statement brief (II) (Demandee)	June 3, 2013
Examination of witness	June 3, 2013
Oral proceeding	June 3, 2013

No. 2 The inventions according to the claims of the Patent

The decision issued on September 13, 2007 for Invalidation Trial No. 2006-80181 demanded on September 11, 2006 concluded that "The inventions according to Claims 1 to

5 of Patent No. 3,690,864 should be invalidated. The demand for trial with regard to the patents of the inventions according to Claims 6 to 12 of Patent No. 3,690,864 should be rejected." A suit against the trial decision with regard to Claims 1 to 5 was filed with the Intellectual Property High Court (2007 (Gyo-Ke) No. 10367), a court decision was made on October 16, 2008 to the effect that "In the trial decision that the Japan Patent Office made on September 13, 2007 with regard to Invalidation Trial No. 2006-80181, the invalidation decision regarding the patent of the inventions according to Claims 2 to 5 of Patent No. 3,690,864 shall be canceled."

Further, the trial decision regarding Claim 1 was made final and binding on October 30, 2010 owing to the above court decision having become final and binding. The trial decision against the inventions according to Claims 6 to 12 was made final and binding on October 26, 2007 owing to the expiration of the period for filing a suit prescribed in Article 178(3) of the Patent Act.

The inventions according to Claims 2 to 12 of the Patent should be specified by the matters recited in the scope of the claims that have been corrected by the correction demand on April 8, 2009 as in the following:

"[Claim 2]

A method for producing a photocatalyst body, comprising the steps of disposing on a substrate a first layer consisting of a binder that is not decomposed by a photocatalyst, and disposing on the first layer a second layer that is prepared by use of a mixture of the photocatalyst and an amorphous-type titanium peroxide sol.

[Claim 3]

A method for producing a photocatalyst body, comprising the steps of disposing on a substrate a first layer with no photocatalytic function that is prepared by use of an amorphous-type titanium peroxide sol, and disposing on the first layer a second layer that is prepared by use of a mixture of the photocatalyst and an amorphous-type titanium peroxide sol.

[Claim 4]

A method for producing a photocatalyst body in which a photocatalyst is supported and fixed on a support, comprising the steps of preparing a photocatalyst by use of titanium oxide particle or titanium oxide powder, mixing the photocatalyst with an amorphous-type titanium peroxide sol, and drying at room temperature after coating to solidify. (Hereinafter referred to as "Corrected Invention 4")

[Claim 5]

A method for producing a photocatalyst body in which a photocatalyst is supported and

fixed on a support, comprising the steps of preparing a photocatalyst by use of titanium oxide sol, mixing the photocatalyst with an amorphous-type titanium peroxide sol, and drying at room temperature after coating to solidify. (Hereinafter referred to as "Corrected Invention 5")

[Claim 6]

The method for producing a photocatalyst body of Claim 5, using a mixture sol where 30 weight% or less of titanium oxide sol is mixed on the basis of total amount of titanium oxide sol and amorphous-type titanium peroxide sol when titanium oxide sol concentration is 2.70 to 2.90% and amorphous-type titanium peroxide sol concentration is 1.40 to 1.60%.

[Claim 7]

The method for producing a photocatalyst body of Claim 5, using a mixture sol where 20 to 80 weight% of titanium oxide sol is mixed on the basis of total amount of titanium oxide sol and amorphous-type titanium peroxide sol when titanium oxide sol concentration is 2.70 to 2.90% and amorphous-type titanium peroxide sol concentration is 1.40 to 1.60%.

[Claim 8]

The method for producing a photocatalyst body of Claim 5, using a mixture sol where 70 weight% of titanium oxide sol is mixed on the basis of total amount of titanium oxide sol and amorphous-type titanium peroxide sol when titanium oxide sol concentration is 2.70 to 2.90% and amorphous-type titanium peroxide sol concentration is 1.40 to 1.60%.

[Claim 9] The method for producing a photocatalyst body according to any one of Claims 5 to 8, wherein the titanium oxide sol is obtained by subjecting the amorphous-type titanium peroxide sol to heat treatment at 100°C or more.

[Claim 10]

The method for producing a photocatalyst body according to any one of Claims 1 to 9, wherein sodium ion is present on a surface of the substrate and/or the first layer.

[Claim 11]

The method for producing a photocatalyst body according to any one of Claims 1 to 10, wherein a particle consisting of a material of self-emission type ultraviolet irradiation material or phosphorescent-type ultraviolet irradiation material, or a particle in which these irradiation materials are mixed is used with a photocatalyst particle.

[Claim 12]

The method for producing a photocatalyst body of Claim 11, wherein said self-emission type ultraviolet irradiation material or phosphorescent-type ultraviolet irradiation material has a light-emitting wavelength or a phosphorescent wavelength corresponding to excitation wavelength of photocatalyst to be used."

No. 3 Trial which Demandant demanded

The Demandant, Kon Corporation, demanded that the patents according to Claims 2 to 12 of the Patent be invalidated and a cost for trial be borne by Demandee for the following reason, with Evidences A No. 1 to A No. 7, and further submitted Evidences A No. 8 and A No. 9 together with a written statement on January 17, 2013.

Thereafter, Evidences A No. 10 to A No. 17 were submitted together with an Oral proceedings statement brief on May 20, 2013.

(1) Ground for the invalidity (Unclear inventions)

Even if the description of the specification is taken into consideration, the definition the "amorphous-type titanium peroxide sol" in each claim of the Patent is not clear. Therefore, the inventions recited in the scope of the claims of the Patent are not clear. Accordingly, the invention recited in the claims does not conform to the provision of Article 36(6)(ii) of the Patent Act. Therefore, the patent shall be invalidated pursuant to the provision of Article 123(1)(ii) of the Patent Act.

(2) Second Ground for the invalidity (Violation of the requirements of correction)

In Claims 4 and 5 after the correction, the recitation of "according to any one of Claims 1 to 3" is deleted. This expands the scope of claims according to Claims 4 and 5 before the correction. Accordingly, the correction for Claims 4 and 5 does not conform to the provision of the proviso to Article 126(1) of the Patent Act. Therefore, the Patent shall be invalidated pursuant to the provision of Article 123(1)(viii) of the Patent Act.

(3) Third Ground for the invalidity (Usurped application, Part 1)

The Corrected Invention was made not by Yoshimitsu Matsui and Shiro Ogata (hereinafter respectively referred to as "B" and "A") pretending to be the inventors, but by Dr. Hiromichi Ichinose (hereinafter referred to as "C"), the authentic inventor, and his surrounding researchers.

Accordingly, the Patent should be invalidated under the provision of Article 123-1(vi) of the Patent Act.

(4) Fourth Ground for the invalidity (Usurped application, Part 2)

Even if A and B were involved in the inventions, the right to obtain the patent of the Corrected Invention would be exclusively owned by the Saga Prefectural Governor, not by the original applicants, Tanaka Tensha Kabushiki Kaisha (hereinafter referred to as "Tanaka Tensha") and Tao Kabushiki Kaisha (hereinafter referred to as "Tao"), who did not

succeed the right to obtain the patent.

Accordingly, the Patent should be invalidated under the provision of Article 123-1(vi) of the Patent Act.

(5) Fifth Ground for the invalidity (Violation of requirements for joint application)

Even if A and B were involved in the invention, and the Corrected Invention were the joint invention of researchers including A, B and C, the Saga Prefectural Governor would have joint ownership of a right to obtain the patent of the Corrected Invention. Despite such circumstances, applicants of the patent application did not include the Saga Prefectural Governor as a joint applicant.

Accordingly, the patent application did not conform to the provision of Article 38 of the Patent Act. Therefore, the Patent should be invalidated pursuant to the provision of Article 123-1(ii) of the Patent Act.

[Means of proof]

1 Documentary evidences

(1) Evidence A No. 1:

Journal of the Ceramic Society of Japan, Vol. 104, No. 8, pages 715 to 718 (1996), Hiromichi Ichinose and two others "Synthesis of Peroxo-Modified Anatase Sol from Peroxo Titanic Acid Solution"

(2) Evidence A No. 2:

Journal of the Ceramic Society of Japan, Vol. 104, Vol. 10, pages 914 to 917 (1996), Hiromichi Ichinose and two others "Properties of Anatase Films for Photocatalyst from Peroxotitanic Acid Solution and Peroxo-Modified Anatase Sol"

(3) Evidence A No. 3:

The Finish & Paint (Paint Publishing), November issue, 1996, pages 27 to 31, Hiromichi Ichinose, "The development of PTA solution and PA sol and the properties thereof"

(4) Evidence A No. 4: WEB OF KNOWLEDGE, search result

(5) Evidence A No. 5: Excerpt from the website of The Ceramic Society of Japan

(6) Evidence A No. 6: Agreement on the handling of technical guidance-related invention (Kon Corporation)

(7) Evidence A No. 7: Agreement of technical guidance (Saga Ceramics Research Labs

Doc. No. 120)

(8) Evidence A No. 8: Agreement on the handling of technical guidance-related invention (Tanaka Tensha)

(9) Evidence A No. 9: Agreement of technical guidance (Saga Ceramics Research Labs Doc. No. 96)

(10) Evidence A No. 10: Intellectual property High Court Decision 2007 (Gyo-Ke) No. 10278

(11) Evidence A No. 11: Osaka District Court Decision 1999 (Wa) No. 12699

(12) Evidence A No. 12: Tokyo District Court Decision 1999 (Wa) No. 7196

(13) Evidence A No. 13: Intellectual property High Court Decision 2012 (Gyo-Ke) No. 10280

(14) Evidence A No. 14: Invalidation Trial No. 2006-80181 Trial Decision

(15) Evidence A No. 15: Japanese Unexamined Patent Application Publication No. 7-286114

(16) Evidence A No. 16: Japanese Unexamined Patent Application Publication No. 7-171408

(17) Evidence A No. 17: Intellectual Property High Court Decision 2007 (Gyo-Ke) No. 10367

2 Witness

Dr. Hiromichi Ichinose

3037-7, Kuromutahei Arita-Cho, Nishimatsuura county, Saga 844-0022

Saga Ceramics Research Laboratory

Associate Technical Director

Dr. Hiromichi Ichinose took charge of providing Mr. Yoshimitsu Matsui, who claims himself to be an inventor of the Patent Invention, with a technical guidance regarding the Patent Invention.

It is shown below that the Patent Invention became embodied as a result of the technical guidance. Matters for Interrogation are as described in the interrogatories attached hereto.

No. 4 The Demandee's allegation

The gist of Demandee's arguments is as follows, and Demandee claimed for a trial decision to the effect that the demand for trial should be rejected and a cost for trial should

be borne by Demandant.

1 Reply to First Ground for the invalidity (Unclear invention)

Since the "amorphous-type titanium peroxide sol" recited in the scope of claims is definite, the invention recited in the scope of claims of the Patent is clear, therefore, the scope of the claims does not violate the provision of Article 36(6)(ii) of the Patent Act.

2 Reply to Second Ground for the invalidity (Violation of the requirements of correction)

Claims 4 and 5 citing Claims 1 to 3 before correction are formally corrected into dependent Claims, which restrict the scope of the claims.

The recitation of "according to any one of Claims 1 to 3" in Claims 4 and 5 before correction itself obviously means the options of "Claim 1, 2, or 3." Therefore, the correction to delete the part citing Claim 2 or 3 does not expand but rather restricts the scope of the claims.

3 Reply to Third Ground for the invalidity (Usurped application, Part 1)

1) Demandant argues that "the Patent Invention was made by researchers including an authentic key inventor, Dr. Hiromichi Ichinose, and it was not made by Mr. Yoshimitsu Matsui and Mr. Shiro Ogata, claiming themselves to be authentic inventors. Accordingly, the Patent should be invalidated under the provision of Article 123(1)(vi) of the Patent Act." (Invalidation Demand, page 15, line 4 to page 22, line 3).

Further, as stated bellow, "it is clear that the Patent Invention became embodied by Mr. Matsui according to the technical guidance of the Labs. Mr. Ogata was only told the invention from Mr. Matsui. Accordingly, neither Mr. Matsui nor Mr. Ogata can be said to be an authentic inventor of the Patent. Therefore, the Patent was granted to a patent application which was not filed by those who were the inventor or succeeded a right to obtain a patent, and thus the Patent should be invalidated (Article 123(1)(vi) of the Patent Act)." (Invalidation Demand, page 21, line 22 to page 22, line 3).

The argument was based on Demandant's arbitrary speculation and opinion and obviously groundless.

The following argument proves that Demandant's argument in this regard is groundless.

(1) Regarding the argument that "B. Mr. Matsui is the authentic inventor"

1) The fact that "Mr. Matsui is not an inventor" is proved on the basis of the following points.

(a) Mr. Matsui, claiming himself to be an inventor of the Patent Invention, who works for Tanaka Tensha, and he allegedly assigned a right to obtain a patent to Tanaka Tensha. But

Tanaka Tensha asked Saga Ceramics Research Labs for technical guidance with regard to titanium oxide coating on February 16, 1996. As a result, Tanaka Tensha and Labs entered into a contract with each other to the effect that the Labs provides Tanaka Tensha with technical guidance as of the day for a certain period of time. Based on the technical guidance agreement, Dr. Ichinose et al. provided Mr. Matsui with technical guidance. (b) Dr. Ichinose of the Labs had studied Peroxotitanic Acid approximately in February 1996 at the latest.

(c) When the patent application was filed, Mr. Matsui was a glaze engineer working for Tanaka Tensha, and thus is not believed to have been conversant with photocatalyst technology. Further, such technique including a world-class invention may not be developed independently by himself. It can only be said that the Patent Invention became embodied according to the Labs' technical guidance.

2) However, the above Demandant's argument is groundless and not reasonable. First of all, if the argument means that the Patent Invention became embodied by Mr. Matsui owing to the technical guidance from Dr. Ichinose, the inventor should be Mr. Matsui. Therefore, the patent application cannot be a usurped application. The argument about Dr. Ichinose et al. having investigated peroxotitanic acid approximately in February 1996 does not link to the fact that, in relation to the inventor of the Patent Invention, "Mr. Matsui is not an inventor." Further, the argument that Mr. Matsui was not conversant with photocatalyst technology to develop a technique comprising such a world-class invention by himself when the patent application was filed is based on arbitrary speculation and view. It is also a slander on him, and obviously an inappropriate argument. While it is indefinite whether Mr. Matsui as of the filing was a glaze engineer, if he actually was, it is totally in the ordinary course of things for him to investigate a technology causing a surface of ceramics to carry a photocatalyst. Actually, the Patent Invention is utilized in a technological field of Demandant's products, where a photocatalyst is supported on a surface of ceramics.

Accordingly, the Demandant's argument above raised as a ground of "Mr. Matsui is not an inventor" is groundless.

(2) Regarding the argument that "C. Mr. Ogata is not an inventor"

1) In this regard, Demandant argues that "Mr. Ogata was an architect as of the time of the filing of the patent application, and thus did not have a fundamental ability to investigate photocatalysts. It can only be said that Mr. Ogata also could not make such invention, but knew the invention via Mr. Matsui." (Invalidation Demand, page 19, line 24

to page 20, line 1).

2) However, the argument is a groundless and assertive argument that only disparages an individual, and thus it is inappropriate. Since Mr. Ogata is an architect, it is believed that he has created a method for supporting a photocatalyst on a substrate (a method for producing a photocatalyst) with his expert knowledge and made the Patent Invention that researchers, who specialized in only photocatalyst, would have difficulty in conceiving. Furthermore, prior to the application of this case, there were six patent applications (Evidence B No. 3 to B No. 8) filed with an inventor of Mr. Ogata in connection with photocatalyst. The Demandant's argument is simply a speculation, and is obviously groundless. Further, Mr. Ogata had been a party to a civil trial to contest over a right to obtain a patent for a plurality of patent applications, including this case. One court decision (Evidence B No. 9) refers to the fact that Mr. Ogata is an authentic inventor.

Accordingly, the Demandant's argument of "Mr. Ogata is not an inventor" is groundless.

(3) Regarding the argument of "D Regarding Witness"

1) In this regard, Demandant argues that "It is shown below by testimony of a witness, Dr. Ichinose, that the Patent Invention became embodied through the technical guidance." (Trial Demand, page 20, lines 3 to 4), requesting the examination of Dr. Ichinose as a witness.

2) However, Dr. Ichinose is not an inventor since his testimony on the basis of his experience is insufficient to prove that the inventors appeared in the Patent application did not make the invention. Therefore, the request for an examination of Dr. Ichinose as a witness will not prove that the application of the Patent Invention was a usurped application. The request for examination of witness itself is meaningless, and thus not reasonable.

Demandant argues that existence of the technical guidance from Dr. Ichinose of Labs is the evidence which proves that the inventor appeared in the Patent application has not made the invention. First of all, the argument that new technical characteristic of the Patent Invention became embodied through the technical guidance is not reasonable. If the argument is based on the fact that the invention was made on the basis of knowledge known through the technical guidance, the Patent Invention is said to have been made on the basis of knowledge known by the inventor of the Patent Invention. Therefore, the argument itself does not prove that "the inventors of the Patent Invention did not make the invention."

(4) Regarding the argument of "E Regarding burden of proof"

1) In this regard, Demandant argues that "A burden of proof regarding a usurped application should be essentially on Demande." (Written Demand, page 20, lines 6 to 7) and gives an example of the Intellectual Property High Court decision given on June 29, 2009, 2008 (Gyo-Ke) No. 10427 (Evidence B No. 10) ruling that, in an invalidation trial demanded on the ground of a usurped application (Article 123(1)(vi)), "The Patentee should bear the burden of establishing the fact that 'a patent application was filed by an inventor of the Invention or those who had succeeded a right to obtain a patent from the inventor.'"

2) However, as long as it is a demandant of invalidation trial that demands for invalidation trial, it is reasonable for a demandant of invalidation trial to present a reason for invalidity of a patent invention and evidence thereof. If a ground for invalidity is associated with a usurped application, it is entirely natural that a demandant of invalidation trial should provide a ground that proves the patent application is usurped. If the demandant fails to provide a ground for invalidity and establish the reason, it is entirely natural that the demand of invalidation trial itself should be dismissed.

As aforementioned, Demandant cites the Intellectual Property High Court decision given on June 29, 2009, 2008 (Gyo-Ke) No. 10427 (Evidence B No. 10). This court decision has been made for the case where the following facts are determined by showing specific evidences: <1> Since the specification and drawing of the Patent Invention of Demande of the invalidation trial has many common or similar features with the specification of a patent application that Demandant of the invalidation trial has filed separately, it must be thought that the Patent of Demande of invalidation trial has been obtained by those who could know the content of the Patent Invention of Demandant of the invalidation trial; <2> it is not believed that Demande of the invalidation trial who has nothing to do with Demandant of the invalidation trial could know the content of the Patented invention; and <3> it is believed that the reason why the patent application of Demande of invalidation trial was filed by the Demande is because there were circumstances where a third party who was able to know the Patent Invention of Demandant of the invalidation trial needed to keep his/her own name hidden. Accordingly, the court decision may apply to a case where any particular circumstances are established like the case where the Demandant of invalidation trial specifically points out any circumstances to support a usurped application and submits supporting evidences. The judgment of the court decision may not apply to this case.

The court decision gave the trial decision regarding the Invalidation Trial demanded on the ground of a usurped application rules that the Patentee should bear the burden of

establishing the fact that "The patent application was filed by the inventor itself of the Invention according to the Patent or a person who had succeeded a right to obtain a patent from the inventor." The fact that the Applicant has prepared a specification and filed an application shows the fact that "the patent application was filed by the inventor itself of the Invention according to the Patent or a person who had succeeded a right to obtain a patent from the inventor." The court decision also rules that "The fact of filing an application is an important evidentiary fact that makes us presume that the applicant is an inventor or a person who succeeded a right to obtain a patent from the inventor."

Therefore, in the case where "a patent application was filed in a legitimate procedure" in an invalidation trial demanded on the ground of a usurped application, it is reasonable that a demandant of invalidation trial should present a reason for invalidation of a patent invention and evidence thereof except for the case where it is established that there is a particular circumstance that causes a doubt in the fact that the patent application was filed by the inventor itself of the Invention according to the Patent or a person who had succeeded a right to obtain a patent from the inventor. If the invalidation reason is related to a usurped application, it is entirely reasonable that a demandant of invalidation trial should provide a reason why a patent application is a usurped application and establish the reason. The judgment of the court decision is a similar one. Therefore, there is no inconsistency between our argument and the judgment of the court decision.

Since a specification of a patent application based on an invention was prepared according to the invention made by an inventor and then the patent application was filed, it is obvious that the argument regarding invalidity with a usurped application should be groundless until the patent application is proved to be a usurped application .

Additionally, according to the procedure history of the international patent application based on the application of the Patent Invention, the Demandant's argument that the Patent Invention was obviously made by Dr. Ichinose is not reasonable .

Specifically, regarding the Patent, an international patent application (PCT application) was filed on the basis of the patent application (Evidence B No. 11). This PCT application adds the inventions according to "amorphous-type titanium peroxide sol" (Claim 20) and "anatase-type titanium dioxide sol obtained by heating amorphous-type titanium peroxide sol at 100°C or more" (Claim 21) (see the amendment under Article 19 of Evidence B No. 11) and adds Mr. Hiromichi Ichinose as the applicant and the inventor (Evidence B No. 12) by the amendment under Article 19 of Patent Cooperation Treaty (Article 19 amendment). Accordingly, at this point, Dr. Ichinose had recognized the existence and the content of the patent application, and also had recognized the inventor.

Further, the US national phase application of this PCT application (Evidence B No. 13) reflects the amendment under Article 19; however, in response to the first Office Action, Claims 20 and 21 were canceled and simultaneously Mr. Hiromichi Ichinose was omitted from the inventors (Evidence B No. 14 to B No. 16). Further, regarding the inventions according to the cancelled Claim 20 and Claim 21, a continuation was filed as an invention independently made by Dr. Ichinose, and finally he was granted a patent for anatase-type titanium dioxide sol (Evidence B No. 17).

Here, the above US national phase application in which Claims 20 and 21 are canceled has substantially the same content as the patent application. Mr. Hiromichi Ichinose was deleted from the inventor due to the agreement of the inventors including Dr. Ichinose. Thus, this fact supports the fact that Dr. Ichinose is not the inventor of the Patent Invention.

Accordingly, it is obvious that Dr. Ichinose, who Demandant claims as an inventor, is not the inventor of the Patent Invention.

4 Reply to Fourth Ground for the invalidity (Usurped application, Part 2)

1) Demandant argues that "Even if Mr. Matsui and Mr. Ogata were involved in the inventions, the right to obtain a patent for the Patent Invention would be exclusively owned by the Saga Prefectural Governor. The original applicants, Tanaka Tensha and Tao, do not succeed the right to obtain a patent. Accordingly, the Patent should be invalidated under the provision of Article 123(1)(vi) of the Patent Act." (Invalidation Demand, page 22, line 4 to page 24, line 12).

Further, Demandant raises the following items B to F for its reason, and argues as a result "the right to obtain a patent for the Patent Invention would be exclusively owned by the Saga Prefectural Governor. Tanaka Tensha and Tao do not succeed the right to obtain a patent. Accordingly, the Patent was granted to a patent application which was filed by those who were not the inventor and did not succeed a right to obtain a patent, and thus the Patent should be invalidated under the provision of Article 123(1)(vi) of the Patent Act." (Invalidation Demand, page 24, lines 7 to 12).

However, the argument is just the Demandant's interpretive opinion and is obviously not reasonable.

The following clarifies that none of Demandant's argument in this regard has a point.

(1) Regarding the argument of "B Regarding the technical guidance agreement"

1) In this regard, Demandant argues that "Regarding the technical guidance agreement, Demandant cannot submit documentary evidence but at that time Saga

Prefecture used a typical technical guidance agreement, which has the same terms and conditions as the agreement that Demandant entered into later with Saga Prefecture (Evidence A No. 6 and A No. 7). Such documentary evidence is stored in Saga Ceramics Research Labs. Therefore, Demandant delegates document service as per the attached document. Further, the content of the technical guidance of contractual coverage is established by the witness." (Invalidation Demand, page 22, lines 16 to 23). Specifically, "At that time, Saga Prefecture used a typical technical guidance agreement." Therefore, "the right to obtain a patent for the Patent Invention would be exclusively owned by the Saga Prefectural Governor. The original applicants, Tanaka Tensha and Tao, do not succeed the right to obtain a patent."

2) However, when the patent application of the Invention was filed, there is no evidence proving that the inventor of the Invention and the Saga Prefectural Governor had filled in a form of "a technical guidance agreement" regarding the ownership of the Patent Invention. If the agreement existed, they should have agreed with, as of making the invention, the technical guidance agreement, and Saga Prefecture should have succeeded a right to obtain a patent. Nevertheless, there is no fact proving that the right was succeeded.

Accordingly, the Demandant's argument is groundless and not reasonable.

(2) Regarding the argument of "C Regarding the technical guidance agreement"

1) In this regard, Demandant argues that "The technical guidance agreement has the following content. The original applicants, Tanaka Tensha and Tao, do not succeed the right to obtain a patent."

(a) A right to obtain a patent according to the invention obtained in connection with the technical guidance (hereinafter referred to as "technical guidance-related invention") and a patent right obtained on the basis of the former shall belong to the Saga Prefectural Governor (hereinafter referred to as "the Governor") except for the following cases (b) and (c).

(b) When a member of Tanaka Tensha files a patent application of an invention made independently according to a technical guidance-related invention, in advance, the Governor should agree that the invention has been made independently by the member .

(c) When a member of the Labs and a member of Tanaka Tensha jointly make a technical guidance-related invention, the Governor and Tanaka Tensha will file a joint patent application.

(d) The end of the technical guidance period is March 30, 1996.

(e) A person in charge of technical guidance is Dr. Hiromichi Ichinose

2) It is unreasonable, however, to specify in the agreement that "the Governor's prior consent is necessary" for the invention that a member of Tanaka Tensha has made independently even though the invention was made according to the technical guidance. Further, it is also unreasonable that there is the term to have a right to obtain a patent for the invention obtained in connection with the technical guidance and to have a patent right obtained on the basis of the former right shall belong to the Saga Prefectural Governor.

Even if there were the agreement as above for the Patent Invention, there is no fact that the Patent Invention was made according to the technical guidance based on the above agreement. Further, even if there were such fact, a member of Tanaka Tensha is not a member of Saga Prefectural Government. Therefore, the invention made by a member of Tanaka Tensha is not an employee's invention. Therefore, as of the Patent Invention being made, a right to obtain a patent should have been succeeded from the inventor to the Saga Prefectural Governor in order to have the right to obtain a patent belong to the Saga Prefectural Governor. As for the Patent Invention, however, such fact cannot be found.

Accordingly, the Demandant's argument is groundless in this regard and thus is not reasonable.

(3) Regarding the argument of "D Regarding the content of technical guidance"

1) In this regard, Demandant argues that "Dr. Ichinose provided Mr. Matsui, the inventor of Tanaka Tensha, with a technical guidance according to the technical guidance agreement. As aforementioned, the method for producing amorphous-type titanium peroxide sol of the Patent Invention and its nature are totally the same as those of peroxotitanic acid solution described in the Ichinose article. Demandant never agrees that amorphous-type titanium peroxide sol of the Patent Invention means peroxotitanic acid solution; however, it is obvious that at least a major part of the Patent Invention relies on the content of the technical guidance." (Invalidation Demand, page 23, lines 12 to 19).

Specifically, Demandant argues that "it is obvious that at least a major part of the Patent Invention relies on the content of the technical guidance," because Dr. Ichinose et al. provided technical guidance for the inventor of Tanaka Tensha, Mr. Matsui, and the method for producing amorphous-type titanium peroxide sol of the Patent Invention and its nature are totally the same as those of peroxotitanic acid solution described in Ichinose's paper.

2) Demandant admits that there is a contradiction in the argument that "the amorphous-type titanium peroxide sol of the Patent Invention means peroxotitanic acid solution." The Demandant's argument that "it is obvious that at least a major part of the Patent Invention relies on the content of the technical guidance" itself is groundless.

Further, the argument that the fact that "a patent invention based on a technical guidance was made" means that the inventor of the patent invention was Mr. Matsui, a member of Tanaka Tensha,. Accordingly, the technical guidance made by Dr. Ichinose et al. does not obviously become an evidence that the application of the patent invention was a usurped application.

(4) Regarding the argument of "E Regarding the consent of the Governor"

1) In this regard, Demandant argues that "Regarding the fact that the Patent Invention was made independently by Mr. Matsui, there is no prior consent of the Governor." (Invalidation Demand, page 23, lines 21 to 22).

2) However, as is discussed in the above item (2), the argument of "the technical guidance agreement" itself is groundless and meaningless, and thus Demandant's argument is meaningless.

(5) Regarding the argument of "F Ownership of the right to obtain a patent of the Patent Invention"

1) In this regard, Demandant argues that "the major part of the Patent Invention was obtained through the technical guidance from the Labs. Therefore, at least the Patent Invention corresponds to 'the invention obtained in connection with the technical guidance; as specified in the technical guidance agreement, i.e., 'technical guidance-related invention.' Further, the core part of the Invention was obtained through the technical guidance. Therefore, it cannot be said that Mr. Matsui et al. have independently made the invention. Moreover, there is no consent of the Governor. Accordingly, a right to obtain a patent exclusively belongs to the Saga Prefectural Governor." (Invalidation Demand, page 23, line 24 to page 24, line 5).

2) However, the Demandant's argument above is groundless and not reasonable, as is described in the above items (1) to (4).

5 Reply to Fifth Ground for the invalidity (Nonconformance to joint application requirement)

1) Demandant argues that "Even if the Patent Invention was a joint invention by a member of Labs and Mr. Matsui, the Saga Prefectural Governor has joint ownership for a right to obtain a patent. Accordingly, the patent application was not filed jointly by each co-owner, and thus the Patent should be invalidated." (Invalidation Demand, page 24, line 13 to page 26, line 6).

Further, Demandant raises the following reasons B to E and argues as a conclusion that "if the Patent Invention was a joint invention by Mr. Matsui et al. and a member of Labs, the Saga Prefectural Governor has a joint ownership of the right to obtain a patent for the Patent Invention. The patent application was not filed jointly by all the co-owners. Therefore, it violates the provision of Article 38 of the Patent Act, and thus the Patent should be invalidated under the provision of Article 123(1)(ii) of the Patent Act." (Invalidation Demand, page 26, lines 1 to 6).

2) However, the argument is just the Demandant's interpretive opinion and obviously is not reasonable.

The following clarifies that none of Demandant's argument in this regard has a point.

(1) Regarding the argument of "B The content of technical guidance agreement and the content of technical guidance"

1) In this regard, "As for these, see the above."

2) Accordingly, as Demandee has already presented a counterargument in the above, none of the argument is reasonable.

(2) Regarding the argument of "C Ownership of the right to obtain a patent of the Patent Invention"

1) In this regard, Demandant argues that "the major part of the Patent Invention was obtained through the technical guidance from the Labs. Therefore, even if the inventors declared in the patent application of Mr. Matsui et al. were involved in making the Patent Invention, at least the Patent Invention shall correspond to 'the invention obtained in connection with the technical guidance' as specified in the technical guidance agreement; i.e., 'technical guidance-related invention.' Further, since the core part of the Invention was obtained through the technical guidance, at least the Patent Invention was a joint invention made by inventors including Dr. Ichinose et al on the basis of the involvement of the member of Labs. Accordingly, the right to obtain the Patent was co-owned by the Governor and Tanaka Tensha." (Invalidation Demand, page 24, line 23 to page 25, line 6).

2) However, such argument does not become evidence of the ownership of "the right to obtain a patent" of the Patent Invention in association with "the technical guidance agreement." Therefore, the Demandant's argument above is based on its own speculation and opinion, and thus is not reasonable.

(3) Regarding the argument of "D The description of deed of assignment"

1) In this regard, Demandant argues that "In the process of the application of the Patent, Tiotechno submitted a deed of assignment dated July 19, 2001 with the Japan Patent Office in accordance with notification of change in applicant submitted on October 19, 2001. The deed of assignment reads, in part, 'It is hereby certified that the right to obtain a patent of the above patent application is co-owned by Saga Prefecture, Tao International Corporation, and me, and my share has been assigned to you.', which was sealed by Tanaka Tensha. Further, Tao International Corporation is the company taking over Tao. As seen above, until July 2001, the employees of Tanaka Tensha and Tao had recognized that Saga Prefecture shared the right to obtain a patent for the Patent Invention. However, the Japan Patent Office notified on December 6, 2001 that the notification of change in applicant lacking the agreement of assignment from Saga Prefecture was illegal. Therefore, Tiotechno formally amended the notification of change in applicant on January 23, 2002 and prepared and submitted a deed of assignment excluding Saga Prefecture as a co-owner. It is obvious from this that Saga Prefecture exclusively owns or shares a right to obtain a patent." (Invalidation Demand, page 25, lines 8 to 25).

2) However, the above "deed of assignment" was corrected in the prosecution of the patent application. Thus the argument of the prosecution history does not become evidence of "Saga Prefecture exclusively having or sharing a right to obtain a patent."

7-7 Reply to "Conclusion"

1) Demandant argues in the "Conclusion" that "the patent inventions according to Claims 2 to 12 of the Patent do not conform to the provision of Article 36(6)(ii) of the Patent Act and are thus not patentable. Therefore, the Patent shall be invalidated pursuant to the provision of Article 123(1)(ii) of the Patent Act.

Further, the correction for Claims 4 and 5 violates the proviso to Article 126(1) of the Patent Act. Therefore, the Patent should be invalidated pursuant to the provision of Article 123(1)(viii) of the Patent Act. Moreover, the inventions according to Claims 2 to 12 of the Patent should be invalidated pursuant to the provision of Article 123(1)(vi) or Article 123(1)(ii) of the Patent Act. Accordingly, Demandant requests for a trial decision in accordance with the object of the demand." (Invalidation Demand, page 26, lines 8 to 19).

2) However, as aforementioned, none of the reasons raised by Demandant as "The reason why the subject patent should be invalidated" in the demand for invalidation trial of the case has a point.

Accordingly, the demand for the Invalidation Trial should be rejected.

8. Means of proof

Evidence B No. 1: Excerpt of "Kagaku Jiten" edited by Michinori Ohgi and three others, published by Tokyo Kagaku Dojin Co. Ltd. (May 10, 1995)

Evidence B No. 2: Japanese Unexamined Patent Application Publication No. 9-71418

Evidence B No. 3: Japanese Unexamined Patent Application Publication No. 09-187721

Evidence B No. 4: Japanese Unexamined Patent Application Publication No. 09-220477

Evidence B No. 5: Japanese Unexamined Patent Application Publication No. 09-223582

Evidence B No. 6: Japanese Unexamined Patent Application Publication No. 09-234376

Evidence B No. 7: Japanese Unexamined Patent Application Publication No. 09-248426

Evidence B No. 8: Japanese Unexamined Patent Application Publication No. 09-252992

Evidence B No. 9: Court decision 2000 (Wa) No. 16721

[Item 4 of the list of patents is the patent application. Items 1 to 3 and 5 to 6 of the list of patents are Evidence B No. 3 to B No. 8.]

Evidence B No. 10: Court decision 2008 (Gyo-Ke) No. 10427

Evidence B No. 11: WO97-36677

Evidence B No. 12: WIPO website

Evidence B No. 13: U.S. patent application No. 08-952983, the specification, etc.

Evidence B No. 14: Response letter to the Office Action dated September 15, 1999 in U.S. patent application No. 08-952983

Evidence B No. 15: PETITION TO CHANGE INVENTORSHIP

Evidence B No. 16: U.S. Patent No. 6,107,241 [U.S. patent application No. 08/952983]

Evidence B No. 17: U.S. Patent No. 6,429,169 [the continuation of U.S. patent application No. 08/952983]

Evidence B No. 18: Saga Ceramics Research Lab, Heisei-7 nen-do business report

Evidence B No. 19: Japanese Unexamined Patent Application Publication No. 1-224220

Evidence B No. 20: Japanese Unexamined Patent Application Publication No. 63-35419

Evidence B No. 21: Patent No. 2,938,376

No. 5 Judgment by the body

1. Provenance of documentary evidence

Evidence A No. 8 and Evidence A No. 9 are documentary evidence, the service of which was delegated at the time of demand of the invalidation trial. They were not sent from Saga Prefecture from the viewpoint of fairness in response to the delegation of the service of a document by JPO. However, they were disclosed by the Demandant's request for the disclosure of an official document pursuant to the code of information disclosure in

Saga Prefecture, a copy of which was attached to the written statement on January 17, 2013 and submitted. The submission of Evidence A No. 8 and Evidence A No. 9 does not become the replacement of ultimate fact, nor does it correspond to the change of the statement of the demand provided in Article 131bis of the Patent Act. Therefore, the judge admits the provenance of these documents.

2. Facts to be found from evidence

According to documentary evidence with undisputed provenance and the testimony of Hiromichi Ichinose (hereinafter sometimes referred to as "the witness") that is supposed to be of authentic provenance, the judge finds the following matters as fact.

(1) The witness had studied Peroxotitanic Acid approximately in February 1996 at the latest.

(2) Tanaka Tensha applied for technical guidance with regard to titanium oxide coating agent to Saga Ceramics Research Laboratory (hereinafter sometimes referred to as "Labs") on February 16, 1996. As a result, Tanaka Tensha and Labs entered into an agreement with the content of Evidence A No. 8 and Evidence A No. 9 on February 16, 1996 to the effect that the Labs provides Tanaka Tensha with technical guidance for a period from February 19, 1996 to March 30, 1996. Based on the technical guidance agreement, the witness provided Mr. Matsui with technical guidance.

(2a) The whole text of Evidence A No. 8 is set forth as below:

"Appendix 1

Agreement on the handling of technical guidance-related invention

Saga Ceramics Research Laboratory (hereinafter referred to as 'Party X') and Tanaka Tensha Co. Ltd (hereinafter referred to as 'Party Y') confirm the following points in providing technical guidance with respect to 'the manufacturing of coating and its raw materials.'

(Ownership of patent right, etc.)

Article 1 A right to obtain a patent according to the invention obtained in connection with the technical guidance (hereinafter referred to as 'technical guidance-related invention') and a patent right obtained on the basis of the former right shall belong to the Saga Prefectural Governor (hereinafter referred to as 'the Governor') except for the cases as provided in Articles 2 and 3.

(Independent application)

Article 2 If Party Y is filing a patent application for a technical guidance-related invention made independently by a member of Party Y, it is necessary to obtain the prior consent of the Governor in that the invention has been made independently.

(Joint application)

Article 3 The Governor and Party Y shall file a joint application if a member of Party X and a member of Party Y jointly make a technical guidance-related invention.

(Instruction of implementation for third party)

Article 4 In the case where it is recognized as necessary for the public interest to have a person other than Party Y (hereinafter referred to as 'third party') implement an invention according to the technical guidance-related invention of Party Y for which the Governor may co-own a right pursuant to the provision of Article 2 or a patent invention obtained on the basis of the former (hereinafter referred to as 'Party Y's patent invention, etc. '), the Governor may instruct Party Y to grant a license for Party Y's patent invention, etc. within the scope of the specified condition to a third party appointed by the Governor.

(Grant of license to third party)

Article 5 In the case where it is recognized that an invention for which the Governor may co-own a right pursuant to the provision of Article 3 or a patent invention obtained on the basis of the former right (hereinafter referred to as 'shared patent invention, etc. ') corresponds to any of the following conditions, the Governor may grant a license for the shared patent invention, etc. to a third party.

(1) When Party Y does not implement the shared patent invention, etc. without legitimate reason on or after the second year after the completion of technical guidance.

(2) When it is necessary for the public interest to have a third party implement the shared patent invention after the completion of the technical guidance.

The Governor may solely grant a license regardless of the provision of Article 73(3) of the Patent Act when the Governor is granting a license to a third party pursuant to the preceding paragraph.

(License fee)

Article 6 Party Y must pay a license fee as provided separately in the license agreement to the Governor in carrying out the shared patent invention, etc. The license fee to be collected in this case is determined in accordance with the share of the Governor according to the right.

2 The license fee to be collected from a third party with regard to the shared patent right, etc. will be distributed to the Governor and Party Y in accordance with their shares according to the right.

(Patent maintenance fee, etc.)

Article 7 Party Y must bear any cost including the application cost for shared patent right, etc. and patent maintenance fee.

2 Party Y must submit 'a deed of assignment' to Party X to the effect that its own share of the right be assigned to Party X, unless Party Y bears the cost including the application fee and patent maintenance fee provided in the preceding paragraph.

(Provision applied mutatis mutandis)

Article 8 The provisions from Article 1 to the preceding article are applied mutatis mutandis to a design patent and a right to obtain a design patent as well as to a utility model patent and a right to obtain a utility model right.

(Consultation)

Article 9 In addition to what is provided for in the preceding terms, other necessary matters with regard to the handling of technical guidance outcome will be determined through consultation between Party X and Party Y.

In order to testify the execution of this agreement, two copies of the agreement are prepared, and Party X and Party Y respectively hold one of the two copies

February 16, 1996

Party X Address: 3037-7, Chubuhei Arita-Cho, Nishimatsuura county, Saga
Name: Saga Ceramics Research Lab Director
Junichi Kawaguchi seal

Party Y Address: 2351-231, Chubuhei Arita-Cho, Nishimatsuura county, Saga
Tanaka Tensha Co. Ltd
Name: Representative Director Hisataka Tanaka seal"

(2b) The whole text of Evidence A No. 9 is set forth as below:

"Template No. 2 (related to Article 4)

Saga Ceramics Research Labs Doc. No. 96

February 16, 1996

To Tanaka Tensha Co. Ltd

Representative Director Hisataka Tanaka
Saga Ceramics Research Lab Director
Junichi Kawaguchi seal

Agreement on technical guidance (Notice)

The application for technical guidance on 'the manufacturing of coating technique and its raw materials' on February 16, 1996 shall be approved pursuant to the provision of Article 4(1) of the handling manual with regard to the technical guidance by the Test and Research Institutes of Saga Prefecture, Commercial and Technical Labor Department.

Note

1. In receiving the technical guidance, you should comply with the handling manual with regard to the technical guidance by the Test and Research Institutes of Saga Prefecture, Commercial and Technical Labor Department.
 2. In changing the application matter, ceasing the implementation of receiving the technical guidance, and any other modification to the content of the application, you should receive the prior approval from the Labs.
 3. Regarding the handling of the invention and the patents, etc. in association with the implementation of the technical guidance, you should rely on the agreement on the handling of technical guidance-related invention.
 4. In case where the technical guidance is ceased due to the business convenience of the Labs, you shall have no right to make an objection.
 5. Technical guidance institute: February 19, 1996 to March 30, 1996 (Decision note: it may be a typo for technical guidance period.)
 6. Person in charge of technical guidance: Fine Ceramics Section fellow Hiromichi Ichinose"
- (3) The technical knowledge of Mr. Matsui on photocatalyst was at entry level as of the start of the technical guidance.
- (4) The sign in the last line of Evidence B No. 13 was the one by the witness.
3. Determination of the Applicant according to the Patent
- (1) a. The filing date of the patent application was March 29, 1996, which was during the period of the technical guidance.
- b. The witness had studied Peroxotitanic Acid approximately in February 1996 at

the latest.

c. The technical knowledge of Mr. Matsui on photocatalyst was at entry level as of the start of the technical guidance.

d. Regarding the Patent, an international patent application (PCT application) was filed on the basis of the patent application (Evidence B No. 11). This PCT application adds the inventions according to "amorphous-type titanium peroxide sol" (Claim 20) and "anatase-type titanium dioxide sol obtained by heating amorphous-type titanium peroxide sol at 100°C or more" (Claim 21) (see the amendment under Article 19 of Evidence B No. 11) and adds the witness as the applicant and the inventor (Evidence B No. 12) by the amendment under Article 19 of Patent Cooperation Treaty (Article 19 amendment). In the US national phase application (Evidence B No. 13) of this PCT application, there is a signature of the witness as an inventor as well as those of Mr. Matsui and Mr. Ogata.

In view of the aforesaid a. to d., it is recognized that a technical guidance provided by the witness was associated with embodiment of the Patent Invention. It cannot be seen that the invention according the Patent has been made without the technical guidance provided by the witness, and thus it is obviously regarded as a "technical guidance-related invention."

(2) Article 2 of the "Agreement on the handling of technical guidance-related invention" of Evidence A No. 8 is as follows.

"(Independent application)

Article 2: If Party Y files a patent application of an invention relating to a technical guidance-related invention made independently by a member of Party Y, it is necessary for the Prefectural Governor, in advance, to agree that the invention has been made independently."

Since Demandee argues that the Patent was a technical guidance-related invention and the invention was made independently from the Labs, Demandee should have obtained the prior consent of the Governor according to the provision of Article 2.

However, Demandee argues that the provision that the prior consent of the Governor is necessary for an invention that a member of Tanaka Tensha has independently made by oneself according to a technical guidance is unreasonable. Further, he argues that the term in the Agreement that a right to obtain a patent for an invention made relating to a technical guidance and a patent right obtained on the basis of the right shall belong to the Saga Prefectural Governor is unreasonable.

Even if there were the above agreement regarding the Patent Invention, there would

be no fact that the Patent Invention was made according to the technical guidance stated in the above agreement. Further, even if there were such a fact, a member of Tanaka Tensha is not a member of the Saga Prefectural Government. Therefore, the invention made by a member of Tanaka Tensha is not regarded as an employee's invention. Therefore, as of the Patent Invention being made, a right to obtain a patent should have been succeeded from the inventor to the Saga Prefectural Governor in order to have the right to obtain a patent belong to Saga Prefectural Governor. As for the Patent Invention, however, such fact cannot be found." Demandee finds fault with the agreement, and only argues that the right to obtain a patent should have been succeeded from the inventor to the Saga Prefectural Governor but there is no such fact, regardless of the fact that the Patent should have been essentially co-owned by Saga Prefecture. Demandee has not proved that the consent of the Governor was obtained.

(3) Consequently, Saga Prefecture has a right to obtain the Patent and at least shall be an applicant of the Patent.

Nevertheless, since the patent application for the Patent was filed only by Tanaka Tensha Co. Ltd and Kabushiki Kaisha Tao, actually, it is obvious that the patent application for the Patent was not filed by the rightful applicants, who essentially co-own the Patent.

4. Summary of Judgment

As described above, the Patent was granted in violation of the provision of Article 38 of the Patent Act and thus falls under the provision of Article 123(1)(ii) of the Patent Act.

No. 7 Closing

As aforementioned, since the Patent falls under the provision of Article 123(1)(ii) of the Patent Act, without considering the remaining Third and Fourth Grounds for the invalidity (the First and Second Grounds for the invalidity were withdrawn by Demandant (see the examination record at the Oral proceeding)), the Patent should be invalidated.

Therefore, the trial decision shall be made as described in the Conclusion.

July 3, 2013

Chief administrative judge: MATSUMOTO, Mitsugu

Administrative judge: KIMURA, Koichi

Administrative judge: NAKAZAWA, Noboru