

Trial decision

Invalidation No. 2012-800145

Tokyo, Japan

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The decision on the case of the patent invalidation trial between the above parties on Japanese Patent No. 3530247, entitled "Taste Improver for Alcoholic Beverage and Method Thereof," dated August 27, 2013, came with a court decision of revocation of the trial decision (2013 (Gyo-Ke) 10271, rendition of decision on November 10, 2014) at the Intellectual Property High Court; the case was proceeded further, and another trial decision was handed down as follows:

Conclusion

“The patent for the inventions of claims 1 and 4 in Japanese Patent No. 3530247 shall be invalid.

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

Reasons

No. 1 History of the procedures

The history of the procedures of Japanese Patent No. 3530247 (hereinafter, referred to as "the patent") subjected to the demand for the invalidation trial of the case is as follows:

February 20, 1995	Application of the present invention
March 5, 2004	Registration of establishment
September 6, 2012	Demand for the invalidation trial (the demandant) (A1 to A5)
December 3, 2012	Written correction request/Written reply (the demandee) (B1 to B6)
December 18, 2012	Written amendment (the demandee)
February 12, 2013	Written refutation (the demandant) (A6)
March 4, 2013	Notice of reasons for refusal of correction (the body)
April 5, 2013	Written opinion (the demandee) (B7)
May 24, 2013	Notification of trial examination
June 20, 2013	Oral proceedings statement brief (the demandant) (A7 to A9)
June 20, 2013	Oral proceedings statement brief (the demandee) (B8 to B17)
July 4, 2013 (submission date)	Written statement (the demandant) (A10 to A11)
July 4, 2013	Oral proceeding
July 12, 2013	Written statement (the demandant) (A12 to A16-4)
July 18, 2013	Written statement (the demandant)
July 23, 2013	Written statement (the demandee) (B18 to B22)
August 1, 2013	Written statement (the demandant)
August 27, 2013	First trial decision
November 10, 2014	Rendition of decision (2013 (Gyo-Ke) 10271)
January 29, 2015	Notice of resumption of trial
February 6, 2015	Advance notice of a trial decision

April 13, 2015	Written correction request (the demandee)
June 10, 2015	Written refutation (the demandant)
July 24, 2015	Written reply (the demandee)
August 26, 2015	Notice of conclusion of proceedings

Since the written request for correction dated April 13, 2015 (hereinafter, referred to as the "correction request") was submitted, the written request for correction dated December 3, 2012 shall be deemed withdrawn pursuant to the provisions of Article 134-2(6)).

Hereinafter, in the case that the description portion is identified by a line in the trial decision, the number of lines does not include blank lines. Also, the evidence will be abbreviated as, for example, Evidence A No. 1 as A1.

No. 2 The correction request

1 Contents of correction

The object of the correction request is to request to correct the specification of patent No. 3530247 for each claim or one group of claims as indicated in the corrected description attached to the written correction request; specifically, request to correct as (Correction A-1) to (Correction B-6) below.

(1) Correction regarding to claim 1

(Correction A-1)

In Claim 1 before correction,

the description "[Claim 1] A taste improver for an alcoholic beverage, the taste improver consisting of sucralose."

is corrected to read

"[Claim 1] A taste improver for alcoholic beverage, which causes no decrease in the concentration of alcohol in the alcoholic beverage and suppresses bitterness and burning sensation caused by alcohol in the alcoholic beverage, the taste improver consisting of sucralose." (Underlines indicate corrected portions; the same applies hereinafter.).

(Correction A-2)

In paragraph [0004] of the specification before correction,

the description "a taste improver for an alcoholic beverage, which suppresses bitterness and burning sensation caused by alcohol in the alcoholic beverage in concert with making use of the light taste of alcohol"

is corrected to read

"a taste improver for an alcoholic beverage, which causes no decrease in the concentration of alcohol in the alcoholic beverage, or makes use of light taste of the alcohol, and suppresses bitterness and burning sensation caused by alcohol in the alcoholic beverage."

(Correction A-3)

In paragraph [0005] of the specification before correction,

the description "provide a taste improver for an alcohol beverage, the taste improver consisting of sucralose."

is corrected to read

"provide a taste improver for an alcohol beverage, which causes no decrease in the concentration of alcohol in the alcoholic beverage and suppresses bitterness and burning sensation caused by alcohol in the alcoholic beverage, the taste improver consisting of sucralose."

(Correction A-4)

In paragraph [0007] of the specification before correction,
the description

"In the present invention, sucralose is added to an alcoholic beverage to improve the taste of alcoholic beverage in concert with making use of the light taste of alcohol while suppressing bitterness and burning sensation caused by alcohol."

is corrected to read

"In the present invention, sucralose is added to an alcoholic beverage to improve the taste of alcoholic beverage in concert with causing no decrease in the concentration of alcohol, or making use of the light taste of alcohol, while suppressing bitterness and burning sensation caused by alcohol."

(Correction A-5)

In paragraph [0007] of the specification before correction,
the descriptions

"0.0001 to 0.002%," "0.002%," and "0.0001 to 2%"

are corrected to read

"0.0001 to 0.002 parts," "0.002 parts," and "0.0001 to 2 parts," respectively.

(Correction A-6)

In paragraph [0024] of the specification before correction,
the description

"According to the present invention, sucralose is added to an alcoholic beverage to improve the taste of alcoholic beverage in concert with making use of the light taste of alcohol while suppressing bitterness and burning sensation caused by alcohol in the alcoholic beverage."

is corrected to read

"According to the present invention, sucralose is added to an alcoholic beverage to improve the taste of alcoholic beverage in concert with causing no decrease in the concentration of alcohol, or making use of the light taste of alcohol, while suppressing bitterness and burning sensation caused by alcohol in the alcoholic beverage."

(2) Corrections for a group consisting of claims 2 to 4

(Correction B-1)

In claim 2 before correction,
the description

"[Claim 2] A method for improving the taste of an alcoholic beverage, the method comprising adding sucralose to the alcoholic beverage."

is corrected to read

"[Claim 2] A method for improving the taste of an alcoholic beverage, which causes no decrease in the concentration of alcohol in the alcoholic beverage and suppresses bitterness

and burning sensation caused by alcohol in the alcoholic beverage, the method comprising adding sucralose to the alcoholic beverage."

(Correction B-2)

The same as Correction A-2.

(Correction B-3)

In paragraph [0006] of the specification before correction,
the description

"provide a method for improving the taste of an alcoholic beverage, the method comprising adding sucralose."

is corrected to read

"provide a method for improving the taste of an alcoholic beverage, which causes no decrease in the concentration of alcohol in the alcoholic beverage and suppresses bitterness and burning sensation caused by alcohol in the alcoholic beverage, the method comprising adding sucralose."

(Correction B-4)

The same as Correction A-4.

(Correction B-5)

The same as Correction A-5.

(Correction B-6)

The same as Correction A-6.

2 Allegations of the parties on request for correction of the case

The demandee alleges that Corrections A-1 and B-1 aim at the restriction of the scope of claims and Corrections A-2, A-3, A-4, A-6, B-2, B-3, B-4, and B-6 aim to clarify ambiguous statements, and Corrections A-5 and B-5 aims to correct errors, all of which remain within the scope of the matters disclosed in the description attached to the application, and therefore these corrections do not substantially enlarge or modify the scope of claims of the patent, meeting the requirements of correction.

Against this, the demandant alleges that all of Corrections A-1 to A-4 and A-6 exceed the scope of the matters disclosed in the description attached to the application and therefore the correction for claim 1 shall not be approved, and all of Corrections B-1 to B-4 and B-6 exceed the scope of the matters disclosed in the description attached to the application and therefore the corrections for a group consisting of claims 2 to 4 shall not be approved.

3. Judgment by the body for the request for correction

The body will examine whether Correction A-2 remains within the scope of the matters disclosed in the description attached to the application.

For the description "in concert with causing no decrease in the concentration of alcohol, or making use of the light taste of alcohol" in Correction A-2, "sunawachi (Japanese word, translated to " or" in English herein) " means "[1] <noun> ... [2]

<adverb> (1) instantly, immediately, promptly ... ; (2) there, then ...; (3) (a word used to rephrase the meaning of what was previously said) in other words, namely ... ; (4) (used to connect the lower phrase as a natural consequence of the preceding conditional phrase) therefore, then ..." ("Kojien" sixth edition, published by Iwanami Shoten Co., Ltd.). In the context of the description of Correction A-2, items (3) or (4) are appropriate. Thus, the description of Correction A-2 is understood to mean the technical matter that no decrease in concentration of alcohol is synonymous with making use of the light taste of alcohol, or that no decrease in concentration of alcohol inevitably allows for making use of the light taste of alcohol.

However, the description attached to the application does not describe the technical matter that no decrease in concentration of alcohol is synonymous with making use of the light taste of alcohol, or that no decrease in concentration of alcohol inevitably allows for making use of the light taste of alcohol. As it is also recognized that "the term 'the light taste of alcohol' can be said to be ambiguous" in a court decision of revocation of the trial decision at the Intellectual Property High Court (judgment rendered on November 10, 2014), in the first place, no meaning of the term "light taste of alcohol" is described in the description attached to the application, and the term is not clear even in the light of common general technical knowledge. Thus, even if common general technical knowledge is taken into consideration, the specification attached to the application has no description that can derive the technical matter that no decrease in concentration of alcohol is synonymous to making use of the light taste of alcohol or that no decrease in concentration of alcohol inevitably allows for making use of the light taste of alcohol.

In the written correction request dated on April 13, 2015, the demandee alleges as follows: "As is evident from the description of paragraphs [0003] to [0004] of the specification before correction, specifically 'As a method for improving the taste of alcoholic beverages, dilution with water, carbonated water, fruit juice, or the like or addition of various extracts, flavors, sweeteners, or the like is adopted. However, no method has been established to alleviate bitterness and burning sensation without lowering the concentration of alcohol. The present invention has been made in view of the above problems and intends to provide a taste improver for alcoholic beverage and improving method therefor, which suppress bitterness and burning sensation of the alcoholic beverage caused by alcohol in concert with making use of the light taste of alcohol.', making use of the light taste of alcohol (itself) in the alcoholic beverage of the patent invention is an effect obtained as a result of no decrease in the concentration of alcohol. This is also evident from the description in paragraph [0007] of the description before correction: 'In the present invention, sucralose is added to an alcoholic beverage to improve the taste of alcoholic beverage, or making use of the light taste of alcohol, while suppressing bitterness and burning sensation caused by alcohol.' In other words, it means that 'making uses of the light taste of alcohol' and 'causes no decrease in the concentration of alcohol' are inextricably associated with each other and are substantially identical to each other." (lines 13 to 30 of page 4). The same is also alleged in the written reply dated on July 24, 2015 (from line 9 from the bottom of page 9 to line 12 of page 10).

However, none of the descriptions in paragraphs [0003], [0004], and [0007], mentioned by the demandee, indicates that making use of the light taste of alcohol is the result of no decrease in the concentration of alcohol. As the "light taste of alcohol" is the

taste of alcohol, even if it is necessary that no decrease in the concentration of alcohol is a requisite condition for making use of the taste, it cannot be understood that no decrease in the concentration of alcohol naturally results in making use of the light taste of alcohol. Thus, the allegation of the demandee cannot be accepted.

Thus, Correction A-2 including the technical matter that no decrease in concentration of alcohol is synonymous with making use of the light taste of alcohol or that no decrease in concentration of alcohol inevitably allows for making use of the light taste of alcohol introduces a new technical matter in relation to technical matters led by combining all the descriptions in the description attached to the application. Hence, it cannot be said that the correction remains within the scope of the matters disclosed in the description attached to the application.

Furthermore, Corrections A-4, A-6, B-2, B-4, and B-6 are also those introducing the same technical matter as that of Correction A-2. Thus, it cannot be said that the corrections remain within the scope of the matters disclosed in the description attached to the application.

As described above, it cannot be said that Corrections A-2, A-4, A-6, B-2, B-4, and B-6 remain within the scope of the matters disclosed in the description attached to the application. Thus, the correction of claim 1 and the corrections of a group consisting of claims 2 to 4 in the request for correction are not allowed, because the corrections do not conform to the provision of the proviso to Article 134(2) of Patent Act before the revision in 1994 due to the provisions of Article 1 of Patent Act, of which the provisions then in

force shall remain applicable according to revision supplement Article 6(1) of the Partial Amendment of Patent Act (Act No. 116 of 1994) (hereinafter, referred to as " Patent Act before the revision in 1994").

No. 3 The patent invention

As described above, since the correction of claim 1 and the corrections of a group consisting of claims 2 to 4 in the request for correction are not allowed, the inventions according to claims 1 to 4 of the present patent (hereinafter referred to as "Patent Inventions 1 to 4") are, from the description of the specification attached to the application, the inventions specified by the following matters:

"[Claim 1] A taste improver for alcoholic beverage consisting of sucralose.

[Claim 2] A method for improving the taste of an alcoholic beverage, the method comprising adding sucralose to the alcoholic beverage.

[Claim 3] The method for improving the taste of an alcoholic beverage according to claim 2, wherein 0.0001 to 2.0 parts of sucralose is added to 100 parts of ethyl alcohol contained in the alcoholic beverage.

[Claim 4] The method for improving the taste of an alcoholic beverage according to claim 2, wherein 0.001 to 2.0 parts of sucralose is added to 100 parts of ethyl alcohol contained in the alcoholic beverage.”

No. 4 The demandant's allegation

The demandant demands the decision, "Any patent for the inventions according to Claims 1 to 4 of Patent No. 3530247 shall be invalidated. The costs in connection with

the trial shall be borne by the demandee," and submitted the following means of evidence represented in "2. Means of proof." The demandant alleges the reasons for invalidation as described below. Regarding the reasons for invalidation, the arguments so far are summarized as follows:

1 Gist of reasons for invalidation

(1) Reasons for invalidation 1 (Article 123(1)(iv) of the Patent Act)

A Patent Invention 1

(A) (Reason for invalidation 1-1) ... Terms

"The terms 'burning sensation' and 'feeling of burning' caused by alcohol are not common, and even if the description of the specification of the patent is taken into consideration, it is unclear what kind of taste the present invention intends to improve." (the written demand for trial, lines 25 to 27 of page 6 and lines 17 to 19 of page 7).

"The term 'making use of the light taste of alcohol' is also not common and is unclear even if the description in the specification of the patent is taken into consideration." (the oral proceedings statement brief, lines 8 to 12 of page 4)

Thus, it does not meet the requirement stipulated in Article 36(4) of the Patent Act before the revision in 1994.

(B) (Reason for invalidation 1-2) ... Range of addition amount

"In the specification of the patent, for example, it is described that the taste-enhancing effect of sucralose in alcoholic beverage depends on the taste of the alcoholic beverage itself rather than the alcohol content contained in the alcoholic

beverage; the suitable amounts of sucralose are different between alcoholic beverages that do not impart sweetness such as vodka, sake, beer, whiskey, and alcoholic beverages that impart sweetness, such as cocktails, liqueur, and shochu mixed with soda water; and, in the case of alcoholic beverages that do not impart sweetness, when the concentration of sucralose exceeds 0.002% (which may be a written error of 0.002 parts) relative to 100 parts of alcohol, the sweetness may decrease the preference for alcoholic beverages.

However, the embodiments of the specification of the patent only describe the results of the evaluation of bitterness suppression and burning suppression by addition of sucralose or the like to aqueous alcohol solutions as well as the evaluation of the degree of sweetness and the bitterness-suppressing effect by addition of various concentrations of sucralose to three different alcoholic beverages; namely, a lemon lime alcoholic beverage, fruit juice-containing alcoholic beverage, and plum fizz. Thus, it is completely unknown what the range of sucrose concentration is applied to each of other various alcoholic beverages to improve the taste thereof." (the written demand for trial, lines 11 to 24 of page 17 and lines 1 to 17 of page 18)

"Thus, it does not meet the requirement stipulated in Article 36(4) of the Patent Act before the revision in 1994." (the written demand for trial, last line of page 6 to line 5 of page 7)

(C) (Reason for invalidation 1-3) ... Trial and error

"A person skilled in the art cannot consider that sucralose can improve the taste of various alcoholic beverages that exhibit various tastes depending on the alcohol concentration and other ingredients therein, even taking into consideration the description

of the specification of the patent and the technical common sense at the time of filing; and, even if considerable trial and error are repeated, it is very difficult to implement the present invention” (the written demand for trial, lines 7 to 10 of page 18 and lines 2 from the bottom of page 19 to line 2 of page 20).

“Thus, it does not meet the requirement stipulated in Article 36(4) of the Patent Act before the revision in 1994.” (the written demand for trial, last line of page 6 to line 5 of page 7)

(D) (Reason for invalidation 1-4) ... Generalization

"In order to solve the problems of the invention, even if a person skilled in the art considers the contents of the specification of the patent and the technical common sense at the time of filing, a person skilled in the art cannot recognize that the contents disclosed in the detailed description of the invention can be extended to the full scope of claims or generalized. Thus, the present invention is not described in the detailed description of the invention." (the written demand for trial, lines 20 to 23 of page 7).

“Thus, it does not meet the requirement stipulated in Article 36(5)(i) of the Patent Act before the revision in 1994.”

B Patent Inventions 2 to 4

“The above ‘(1) A (A)’ to ‘(1) A (E)’ are similar even if the categories of the inventions are formally different, and the same can be said for the inventions 2 to 4” (the written demand for trial, lines 11 to 12 of page 18 and lines 3 to 4 of page 20).

(2) Reasons for invalidation 2 (Article 123(1)(ii) of the Patent Act)

On page 11 of the written demand for trial, it is described that "the section of ' (4-3) Comparison between the present invention and Evidence A NO. 1 ' describes a comparison with the invention described in A1 such that 'in the invention described in Evidence A NO. 1, we will consider whether a person skilled in the art can easily conceive of using sucralose in place of thaumatin'" (the written demand for trial, lines 11 to 12 of page 13). Thus, the reason for invalidation can be organized as follows:

Patent Inventions 1 to 4 were easily conceived by a person skilled in the art by using sucralose in place of thaumatin in the invention described in Evidence A No. 1 on the basis of the inventions described in Evidence A Nos. 2 to 5, and thus should not be granted a patent under the provision of Article 29(2) of the Patent Act in force on the filing date of the patent.

Thus, the patent falls under Article 123(1)(ii) of the same Act and should be invalidated.

2 Means of proof

A1 Shiro Ohashi et al., Monthly Food Chemical 10, Food Chemicals Newspaper Inc. October 1, 1985, pages 40 to 47

A2 I. KNIGHT, The development and applications of sucralose, a new high-intensity sweetener, CAN. J. PHYSIOL. PHARMACOL., vol. 72, 1994, pp. 435-439

A3 Japanese Unexamined Patent Application Publication No. S57-186459

A4 Japanese Examined Patent Publication No. H5-34943

A5 Japanese Unexamined Patent Application Publication No. S63-173572

- A6 Japanese Unexamined Patent Application Publication No. H5-271101
- A7 Edited and published by Shogo Itakura, JIS Sensory Evaluation Terms JIS Z 8144-1990, Japan Standards Association, 8th reprint, November 19, 2001, page 6
- A8 Website of Sunstar Inc. (Oral care products, liquid toothpastes/mouth rinse products QA) [Search Date: June 19, 2013], Internet <URL: http://jp.sunstar.com/inquiry/qa/page_02.html>
- A9 SUNSTAR G.U.M product brand site (Product lineup gum/dental rinse) [search date: June 19, 2013], Internet <URL:<http://www.teamgum.net/lineup/rinseeconde/>>
- A10 Re-publication of PCT International Publication No. WO/2002/067702
- A11 Notice of Reason for Refusal of Japanese Patent Application No. 2002-567084, dated July 28, 2008
- A12 Website of Australian Society of Viticulture and Oenology, [search date: unknown], Internet <URL:<http://www.asvo.com.au/training/ASWE%20Taste%20Sensations.pdf>>
- A13 Website of Indian Wine Academy, [search date: July 12, 2013], Internet <URL: <http://www.indianwineacademy.com/dm154item2.asp>>
- A14 Website of Health and Medical of Alcohol Association, [search date: July 12, 2013], Internet <URL:<http://www.arukenkyo.or.jp/health/base/>>
- A15 Food Textbook: Basic Knowledge of Whiskey", Ei-Publishing Co Ltd., October 10, 2010, page 142 (The body's note: "Ei" of "Ei-Publishing Co Ltd." represents a Chinese character used in Japanese writing, consisting of "tree" on the left side and "world" on the right side)

A16-1 Website of Suntory Holdings Co., Ltd., [search date: July 12, 2013], February 10, 1989, News Release, Internet <URL:<http://www.suntory.co.jp/news/5115.html>>

A16-2 Website of Suntory Holdings Co., Ltd., [search date: July 12, 2013], February 10, 1989, Glossary of Whiskey, Internet

<URL:<http://www.suntory.co.jp/whisky/dictionary/atoz/ta.html>>

A16-3 Glossary of Whiskey, [search date: July 12, 2013], Internet

<URL:http://www7b.biglobe.ne.jp/~usquebaugh/whisky_word.htm>

A16-4 Website of Kirin Brewery Co., Ltd., website on February 15, 2001, [search date: July 12, 2013], Internet <URL:http://www.kirin.co.jp/company/news/10/010215_2.html>

No. 5 The demandee's allegation

The demandee demands the decision, "The demand for trial of the case was groundless. The costs in connection with the trial shall be borne by the demandant," and submitted the following documentary evidence B1 to B22 to insist that the discussion by the demandant is unfounded and there is no reason for invalidation against the invention based on Article 29(2), Article 36(4), and Article 36(5)(i) of the Patent Act.

B1 Experiment Report 1 created by Shin Sasagawa, employee of the demandee, created November 22, 2012

B2 The section of "burn" in the Shogakukan Random House English-Japanese Dictionary, Shogakukan Co., Ltd., 16th edition, January 20, 1990, pages 349 to 350

B3 Experiment Report 2 created by Koji Yoshinaka employee of the demandee, created November 30, 2012

- B4 Shiro Ohashi et al., "Taste enhancing effect of natural sweetener Thaumatin," New Food Industry, Vol. 27, No. 3, 1985, pages 33 to 39
- B5 Kunimasa Koga, "Science of whiskey, the more you know the mystery of 'aging' the more you want to drink," Kodansha Co., Ltd., November 20, 2009, pages 184 to 185
- B6 The written statement "The sweet substances known at the time in 1997" (Attached attachments 1 to 9) dated on November 30, 2012 created by Koji Yoshinaka, employee of the demandee
- B7 T. H. Grenby, PROGRESS IN SWEETENERS, ELSEVIER APPLIED SCIENCE, 1989, pages 131 to 132,
- B8 Maruzen food general dictionary, Maruzen Co., Ltd., March 25, 1998, section "Taste" on page 924 and section "Flavor" on page 962
- B9 JIS Sensory analysis – Vocabulary JIS Z 8144-1990, page 6 and page 18
- B10 Encyclopedia of fragrance, Maruzen Co., Ltd., 2nd printing, January 15, 2006, page 610
- B11 Comprehensive dictionary of fragrance, Asakura Publishing Co., Ltd., 2nd edition, April 1, 1999, pages 190 to 191
- B12 Beverage Term Dictionary, Beverage Japan, Inc., June 25, 1999, page 154
- B13 Beverage Term Encyclopedia, Heibonsha Co., Ltd., First edition 23 printing, published March 25, 1985, page 19
- B14 Dictionary of Fragrance, Asakura Publishing Co., Ltd., 8th edition, October 1, 1989, page 214 and page 222
- B15 Kanmei Shokujirin 2nd edition, Jusonbo Co., Ltd., 2nd edition, April 25, 1997, page 970

B16 Comprehensive Food Dictionary, 6th edition, handy version, Dobunshoin Co., Ltd., September 1, 2000, newly revised edition of version 6, 7th edition, section "Shochu" on page 448

B17 Food and Taste, Kenpakusha Co. Ltd., First edition, April 25, 2008, pages 3 to 6 and pages 26 to 27

B18 Kanmei Shokujirin 7th edition of first edition, May 2, 1994, pages 41 to 42, section "Alcoholic beverage" and page 389, section "Shusei (alcohol)"

B19 JIS Sensory Evaluation Analysis - Method (JIS Z 9080: 2004), Japan Standards Association, 1st printing, March 20, 2004, pages 11 to 12 and page 22

B20 Japanese Unexamined Patent Application Publication No. H7-82588

B21 Eri Sasakura, "Study on fragrance ingredients of black tea: Comparative study of top notes of commercial tea", Journal of Japan Society of Home Economics, vol. 21, No. 3, 1970, pages 9 to 14

B22 Japanese Unexamined Patent Application Publication No. 2010-175299

No. 6 Judgment for Reason for invalidation

In the rendition of judgment, for (Reason 1-1 for invalidation) and (Reason 1-2 for invalidation) mentioned in 4, 1, (1), the Intellectual Property High Court ruled on November 10, 2014 as follows:

"Accordingly, the meaning of the term 'the light taste of alcohol' can be said to be ambiguous. As described above, in the practice of the present invention, a person skilled in the art should confirm whether the taste of the entire alcoholic beverage can be improved

while keeping or not decreasing ‘the light taste’. However, since the meaning of ‘the light taste’ is unclear, the confirmation is impossible. The detailed description of the invention can be therefore said to suffer from lack of enablement with respect to the term ‘the light taste of alcohol.’”

"As described in the above 1, the meaning of the term ‘the light taste of alcohol’ is unclear. Thus, a person skilled in the art cannot be able to determine the addition amount of sucralose required for ‘improving the taste of an alcoholic beverage to reduce the bitterness and burning sensation caused by alcohol in the alcoholic beverage while keeping the light taste of the alcohol.’”

Accordingly, the description of the specification of the patent lacks enablement with respect to the addition amount of sucralose. Thus, the trial decision makes a judgment error in that a person skilled in the art can determine the addition amount of sucralose to a wide variety of alcoholic beverages based on the description of the specification of the present invention.

The above decision bind the body with respect to the case of the patent invalidation trial pursuant to the provisions of Article 33(1) of the Administrative Case Litigation Act.

Thus, the detailed explanation of the invention of the patent does not meet the requirement stipulated in Article 36(4) of Patent Act before the revision in 1994 due to the

lack of enablement with respect to the term "the light taste of alcohol" and due to the lack of enablement with respect to the addition amount of sucralose.

No. 7 Closing

As described above, since the patent has been granted on a patent application not complying with the requirements as provided in Article 36(4) before the revision in 1994, the inventions of claims 1 to 4 of the present patent should be invalidated, without examining other reasons for invalidation.

The costs in connection with the trial shall be borne by the demandant under the provisions of Article 61 of the Code of Civil Procedure which is applied *mutatis mutandis* in the provisions of Article 169(2) of Patent Act.

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

September 14, 2015

Chief administrative judge: TORII, Minoru

Administrative judge: KIMOTO, Takashi

Administrative judge: SENJU, Akio