Trial decision

Invalidation No. 2014-800104

Tokyo, Japan
Demandant LEXT, P.C.

Tokyo, Japan
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The case of trial regarding the invalidation of Japanese Patent No. 5449730 ,entitled "Agent for improving menopausal disorder and supplement" between the parties above has resulted in the following trial decision:

Conclusion

The correction shall be approved as requested.

The patent regarding the invention according to Claims 1 and 2 of Japanese Patent No. 5449730 was invalidated.

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

Reason

No. 1 History of the procedures

Relating to Japanese Patent No. 5449730 of the case, the application was filed

on September 29, 2008 with a document stating that the applicant seeks the application of Article 30(1) of the Patent Act before revision by the Patent Act of 2011. Thereafter, "Proving Document for seeking Application of Provision of Exceptions to Lack of Novelty of Invention" relating to publication on June 11, 2008 which was filed through an electric telecommunication line (http://www.pla-ocean.com/, and, http://www.pla-ocean.com/about/index.html) was submitted, and the establishment of patent right was registered on January 10, 2014.

The demandant demanded a trial for invalidation of the case, relating to the inventions according to Claims 1 and 2 of the Patent, on June 18, 2014; and the demandee submitted the written reply and demanded request for correction on September 5, 2014. Thereafter, oral proceedings were executed on December 12, 2014, and before the oral proceedings, the demandant and demandee submitted oral proceedings statement briefs on November 28, 2014.

Preliminary trial decision was conducted on December 25, 2014; however, the demandee did not demand request for correction.

No. 2 Request for correction

(1) Request for correction

In the September 5, 2014 request for correction, the object of the request is "Requesting to correct the description and scope of claims of Japanese Patent No. 5449730 to the corrected description and scope of claims attached to written request for correction of the case, for each claim," and the matters of correction are found as follows.

A. Correction A

The corrected matter 1 is to correct "comprising citric acid" of Claim 1 according to the scope of claims to "comprising citric acid and syrup."

B. Correction B

The Correction B is to correct "a supplement comprising at least one of isoflavone and ginseng or extract thereof" described in paragraph [0010] of the description attached to the application, to "a supplement being a soft drink which comprises isoflavone and ginseng or extract thereof, and comprises champignon extract,

citric acid, and syrup."

(2) Propriety of request for correction

Since the Correction A limits the supplement described in Claim 1 before correction to the supplement comprising "syrup," the purpose of correction is restriction of the scope of claims, the correction is made within the scope of the matters described in the description attached to the application, and the correction does not substantially enlarge or alter the scope of claims.

Further, the Correction B is to correspond to the expression to the corrected scope of claims, the purpose of correction is the clarification of an ambiguous statement, the correction is made within the scope of the matters described in the description attached to the application, and the correction does not substantially enlarge or alter the scope of claims.

Therefore, since Correction of the case falls under the provisions of the proviso to Article 134-2(1) of the Patent Act and Article 126(5) and (6) of the Patent Act which is applied mutatis mutandis pursuant to the provisions of Article 126(9) of the Patent Act, the correction shall be approved.

No. 3 Overview of the party's allegation

1. Overview of the demandant's allegation

According to written demand for trial and oral proceedings statement brief, overview of reasons for invalidation alleged by the demandant is as follows and the demandant submitted Evidences A No. 1 to A No. 20.

(1) Reasons for invalidation 1

As described in Evidence A No. 1, since the invention according to Claim 2 of the application is an invention that was made publicly available through an electric telecommunication line prior to the filing of application of the Patent, the invention according to Claim 2 of the application should not be granted a patent under the provisions of Article 29(1)(iii) of the Patent Act.

(2) Reasons for invalidation 2

Since the invention according to Claim 1 of the application is an invention that

a person ordinarily skilled in the art would have been easily made based on the invention described in Evidences A No. 1 and A No. 2 and well-known arts, the invention according to Claim 1 of the application should not be granted a patent under the provisions of Article 29(2) of the Patent Act.

<Evidence>
Evidence A No. 1: website of mail-order sales "kenko-wakaba," production introduction page of "Pla Ocean"
(http://www.kenko-wakaba.com/product/MZP001.html), September 23, 2008

Evidence A No. 2: Japanese Unexamined Patent Application Publication No. 2008-13441

Evidence A No. 3: Japanese Unexamined Patent Application Publication No. 2000-262244

Evidence A No. 4: Japanese Unexamined Patent Application Publication No. 2007-186483

Evidence A No. 5: Japanese Unexamined Patent Application Publication No. 2005-229855

Evidence A No. 6: Japanese Unexamined Patent Application Publication No. H9-56368

Evidence A No. 7: Japanese Unexamined Patent Application Publication No. H7-267977

Evidence A No. 8: Japanese Unexamined Patent Application Publication No. 2008-17815

Evidence A No. 9: Japanese Unexamined Patent Application Publication No. 2007-244325

Evidence A No. 10: "the 5th Edition of Iwanami Dictionary of Physics and Chemistry," Iwanami Shoten Co., Ltd., 5th edition and 6th impression, October 15, 2002, "600 protease"

Evidence A No. 11: The society of Cosmetic Chemists of Japan ed., "Encyclopedia of Cosmetics", Maruzen Publishing Co., Ltd., 2nd impression, September 25, 2004, pages 468 to 499, "menopausal"

Evidence A No. 12: "Nanzando Medical Dictionary", Nanzando Co., Ltd., 17th edition and 4th impression, August 31, 1992, page 1480, "ginseng"

Evidence A No. 13: Japanese Patent No. 3691497

Evidence A No. 14: website "Teaching how to prevent wrinkles and sagging more effectively", page "difference between hydrolyzed collagen and collagen, and which is the component imparting firmness to skin?"
(http://houreiinfo.seesaa.net/article/362812122.html)

Evidence A No. 15: website "Cosmehouse", page "water-soluble collagen and collagen"
(http://cosumehouse.com/component/972/)

Evidence A No. 16: website "VITA-BEAUTE", page "hydrolyzed collagen, vitabeaute"
(http://www.vitabeaute.co.jp/about/kollagen.html)

Evidence A No. 17: website "Cosmetic-info.jp", page "hydrolyzed collagen"
(http://cosmetic-info.jp/jcln/detail.php?id=3104)

Evidence A No. 18: "Announcement of new material, placenta-like substance derived from salmon, sale as end-product in pharmacy and the like, Kyowa Yakuhin", Health Life Business, May 1, 2008, No. 441, page 4

Evidence A No. 19: "Announcement from Kyowa Yakuhin about sea placenta SOP as a next-generation antioxidant", Health Industry Marketing News, May 8, 2008, No. 700, page 3

Evidence A No. 20: website "blog written by president", page "May 31 2008, 20:20, Launch event about Pla Ocean"
(http://blog.livedoor.jp/evergreenmfc/archives/2008-05.html)

2. The demandee's allegation

The demandee alleges that reasons 1 and 2 for invalidation alleged by the demandant have no reasons, and submitted Evidences B No. 1 to B No. 5 as a means of proof.

<Evidence>

Evidence B No. 1: Apology for publication without permission of "Pla Ocean" by Verude Japan Co., Ltd.

Evidence B No. 2: copy of a statement of delivery from Kyowa Yakuhin Co., Ltd. to Verude Japan Co., Ltd.

Evidence B No. 3: copy of a bill from Kyowa Yakuhin Co., Ltd. to Verude Japan Co., Ltd.

Evidence B No. 4: E-mail from the contact person at the time of the application of the Patent to a patent attorney of the applicant

Evidence B No. 5: release about selling a new product from Kyowa Yakuhin Co., Ltd. to customers

No. 4 The Invention

It is found that the inventions according to Claims 1 and 2 of the Patent are as follows, which are described in the corrected scope of claims attached to the September 5, 2014 request for correction.

[Claim 1]

A supplement being a soft drink which comprises peptide obtained by treating salmon ovary with protease as a main component, comprising isoflavone and ginseng or extract thereof, and comprising champignon extract, citric acid, and syrup.

[Claim 2]

A supplement which comprises peptide obtained by treating salmon ovary with protease as a main component, comprises collagen and hyaluronic acid, and comprises hydrolysate of silk, shark cartilage extract, vitamin B1, vitamin B2, vitamin B6, Vitamin

B12, and vitamin C.

(hereinafter the inventions according to Claims 1 and 2 are referred to as "the Invention 1" and " the Invention 2," respectively.)

No. 5 Judgment by the body

1. Reasons 1 for invalidation
(1) Matters described in Evidence A No. 1

It is found that Evidence A No. 1 describes the following matters, and the matters were made publicly available through an electric telecommunication line on September 23, 2008 prior to the filing of the patent application (Underlines are given by the body.).

(1-A)

""Pla Ocean" is a drink for supporting beauty and health in which hydrolysate of salmon ovary peptide (SOP) as a main component, collagen, hyaluronic acid, five kinds of vitamin, and the like are blended."

(1-B)

"Product Name: Pla Ocean
Manufacturer: Kyowa Yakuhin Co., Ltd.
Name: soft drink
Content: 50 ml × 10
Raw material: glucose-fructose syrup, hydrolyzed collagen (derived from scales), galactooligosaccharide syrup, hydrolysate of salmon ovary (placenta-like substance), hydrolysate of silk, champignon extract, shark cartilage extract, vitamin C, citric acid, preservative (sodium benzoate Na), hyaluronic acid, malic acid, sweetener (sucralose), vitamin B1, vitamin B6, vitamin B2, and vitamin B12
Nutrient components: see below."

(1-C)

"What is hydrolysate of salmon ovary, salmon ovary peptide (SOP)?

Salmon ovary peptide (SOP) is obtained by enzymolysis (producing peptides) and concentration of salmon ovary from Hokkaido using a method obtaining a patent."

(1-D)

"Nutrient components:
calorie: 21 kcal, protein: 1.25 g,
lipid: 0 g, carbohydrate: 4.05 g, sodium: 12.5 mg,
.....
hydrolysate of salmon ovary: 200 mg, collagen: 1000 mg, hyaluronic acid 25 mg,
hydrolysate of silk: 40 mg, shark cartilage extract: 20 mg, galactooligosaccharide: 500 mg"

(2) Comparison

According to Evidence A No. 1, it is found that the invention of "soft drink which comprises hydrolysate of salmon ovary as a main component, glucose-fructose syrup, hydrolyzed collagen (derived from scales), galactooligosaccharide syrup, hydrolysate of silk, champignon extract, shark cartilage extract, vitamin C, citric acid, preservative (sodium benzoate Na), hyaluronic acid, malic acid, sweetener (sucralose), vitamin B1, vitamin B6, vitamin B2, and vitamin B12" (hereinafter referred to as "Cited Invention") was made publicly available through an electric telecommunication line on September 23, 2008 prior to the filing of the patent application.

We compare the Invention 2 with the Cited Invention.

"Soft drink" of the Cited Invention corresponds to "supplement" of the Invention 2.

Therefore, the two inventions correspond in
"A supplement which comprises hyaluronic acid, and comprises hydrolysate of silk, shark cartilage extract, vitamin B1, vitamin B2, vitamin B6, vitamin B12, and vitamin C,"
and are different in following features.

<The different features>
Different feature 1

In the Invention 2, the main component is "peptide obtained by treating salmon ovary with protease"; on the other hand, the main component of the Cited Invention is "hydrolysate of salmon ovary."

Different feature 2

The Invention 2 comprises "collagen"; on the other hand, the Cited Invention comprises not collagen but "hydrolyzed collagen."

Different feature 3

The Cited Invention comprises other components; on the other hand, other components are not specified in the Invention 2.

(3) Examination on Different features

A. Different feature 1

It is described in the above (1-C) that hydrolysate of salmon ovary is obtained by enzymolysis (producing peptides) and concentration of salmon ovary. As described in Evidence A No. 10 that protease is hydrolase which generally acts on protein and promotes release of the peptide bond (-CO-NH-), it is a matter of technical common sense that peptides are produced by hydrolyzing protein with protease, and "hydrolysate of salmon ovary" obtained by enzymolysis (producing peptides) of salmon ovary of the Cited Invention corresponds to "peptides obtained by treating salmon ovary with protease" of the Invention 2.

Therefore, the Different feature 1 is not a substantially different feature.

B. Different feature 2

Evidence A No. 1 introduced "Pla Ocean" produced by the demandee, and as described in the above (1-A) and (1-D) relating to Evidence A No. 1, "hydrolyzed collagen" included in the Cited Invention was solely described as "collagen," and it is found that the demandee describes "hydrolyzed collagen" and "collagen" without distinction.

In that case, "hydrolyzed collagen" of the Cited Invention corresponds to "collagen" of the Invention 2.

Therefore, the Different feature 2 is not a substantially different feature.

C. Different feature 3

The Invention 2 is "a supplement comprising" the components described in Claim 2, and it is obvious that the Invention 2 includes the embodiment comprising other components.

Therefore, the Different feature 3 is not a substantially different feature.

D. Demandee's allegation

The demandee alleged that a product disclosed in Evidence A No. 1 was planned for sales on October 1, 2008 and the demandee required customers not to publicly announce the document (Evidence B No. 5); however, Verude Japan publicly announced Evidence A No. 1 on September 23, 2008 (Evidence B No. 1), and

publication in damandee's homepage was publication by itself to carry out public relations of demandee's product and did not accept publication by customer. Evidence A No. 1 was published against the will of demandee and did not become evidence of lack of novelty under the provisions of Article 30(2) of the Patent Act revision by the Patent Act of 2011; the allegation will be examined below.

In Evidence A No. 18 being a newspaper article published on May 1, 2008, it is described that the demandee has sold "Pla Ocean" that is a new drink product of in which 200 mg of salmon ovary peptide (SOP) is blended since April, 2008; this product comprises vitamins, collagen, hyaluronic acid, and chondroitin; and the demandee carried out a launch event for the new product. In Evidence A No. 19 being a newspaper article published on May 8, 2008, the demandee carried out a launch event for the new product of "Pla Ocean" on April 24, 2008, and about 150 persons such as product development personnel participated. In Evidence A No. 20 of "blog written by president," it is described that the demandee carried out a launch event for a product of "Pla Ocean" sold on April, 2008; on May 31, 2008, the products were swamped with orders from participants in special sale after the event; the product comprises, in addition to SOP, collagen, hyaluronic acid, 5 kinds of vitamin, and the like; and "Pla Ocean" was sold to run the product in catalog in the June issue about mail-order sales.

In addition, in "Proving Document for seeking Application of Provision of Exceptions to Lack of Novelty of Invention" submitted with the patent application by the demandee, it is described that raw materials and nutritious components of "Pla Ocean (50 ml × 10)" were publicly announced on an Internet Website on June 11, 2008.

On the other hand, in Evidence B No. 5, "On April lucky day, 2008" and "release about selling a new product" are described, and it is described that "Our company will sell as a new product a soft drink of "50 mL of Pla Ocean" on October 1, 2008" and "Since the product will be sold on October 1, 2008, pay attention to handling the document and the like," and in Evidence B No. 1, "August 29, 2014" and "apology for publication of Pla Ocean without permission," it is described that "Although we knew that the product would be sold on October 1, 2008, we publicly announced the product on our website due to incomplete communication."

Further, the demandee alleged in oral proceedings that "Pla Ocean" described in Evidences A No. 18 to A No. 20 and "Pla Ocean" described in Evidences B No. 1 to

B No. 5 were the same, it could not be confirmed whether the launch event for the new product described in Evidences A No. 18 to A No. 20 was for a specific customer, and it was not obvious for the demandee that all participants participating in the event must have confidentiality.

Since Evidence B No. 1 is an apology for the publication of Evidence A No. 1, "Pla Ocean" described in Evidence B No. 1 is "Pla Ocean" described in Evidence A No. 1. In addition to the demandee's allegation that "Pla Ocean" described in Evidences B No. 1 to B No. 5 is the same as "Pla Ocean" described in Evidences A No. 18 to A No. 20, considering that main components of "Pla Ocean" described in Evidences A No. 18 to A No. 20 overlap with components contained in Evidence A No. 1, "Pla Ocean" described in Evidences A No. 18 to A No. 20 is the same as "Pla Ocean" described in Evidence A No. 1. Further, considering raw material and nutritious ingredients, "Pla Ocean" described in "Proving Document for seeking Application of Provision of Exceptions to Lack of Novelty of Invention" is the same as "Pla Ocean" described in Evidence A No. 1.

As described above, it is found that the demandee sold "Pla Ocean" described in Evidence A No. 1 in April, 2008 and carried out a launch event for the new product; the demandee showed main components of "Pla Ocean" to participants including reporters who would naturally report in newspapers; in the launch event held in May, 2008 it was not obvious that all participants must maintain confidentiality, the demandee showed the main components of the "Pla Ocean" and sold the product; and the demandee publicly announced raw materials and nutritious ingredients of "Pla Ocean" on its homepage on June, 2008.

In this case, on grounds of Evidences B No. 1 and No. 5, the demandee's allegation that the product disclosed in Evidence A No. 1 had been planned to be sold since October 1, 2008 lacks credibility.

Further, according to Evidence B No. 5, although on April lucky day, 2008, the demandant required customers to note to handle the documents about "Pla Ocean" until October 1, 2008, as described above, it is found that the demandee repeated public relations in relation to the product, in conflict with the requirement, from April to June, 2008; and the demandant's allegation that the demandant did not accept the publication of documents about the product for customers including Verude Japan even after

repeating public relations to the product lacks rational basis.

Therefore, the statements cannot be adopted that publication of Evidence A No. 1 in September 23, 2008 was against the will of demandee, and that the demandee's allegation that Evidence A No. 1 did not become evidence of lack of novelty under the provisions of Article 30(2) of the Patent Act revision by the Patent Act of 2011.

(4) Summary

As described above, the Invention 2 is an invention that was made publicly available through an electric telecommunication line, prior to the filing of the patent application, with Evidence A No. 1.

2. Reasons 2 for invalidation

(1) Matters described in respective items of Evidence A

Evidence A No. 2 distributed before the filing date describes the following matters.

(2-A)

"[Claim 1]

An anti-aging agent comprising a component extracted from fish ovary skin.

[Claim 2]

An anti-aging agent according to Claim 1, wherein the component extracted from ovary is a component extracted by treating the ovary with protease.

[Claim 3]

An anti-aging agent according to Claim 1 or Claim 2, wherein the ovary is salmon ovary." (Claims 1 to 3)

(2-B)

"Conventionally, a method has been known, the method comprising the step of pre-treating fish ovary with ozone water, followed by enzymolysis of myofibrillar protein being the constituent protein to extract amino acids and peptides (e.g., see Patent Document 1)." (paragraph [0002])

(2-C)

"In Examples, an anti-aging agent was produced by formulating the extract of salmon ovary into a tablet. The tablet was composed of 245 mg of the ovary extract

and 5 mg of excipient (lubriwax (registered trademark)), and the diameter was 8 mm." (paragraph [0018])

(2-D)

"Further, it is obvious from FIG. 3 that physical condition in 8 weeks after starting to take an anti-aging agent of the embodiment is better than that in 2 weeks after stopping to take the agent." (paragraph [0026])

(2-E)

【図3】

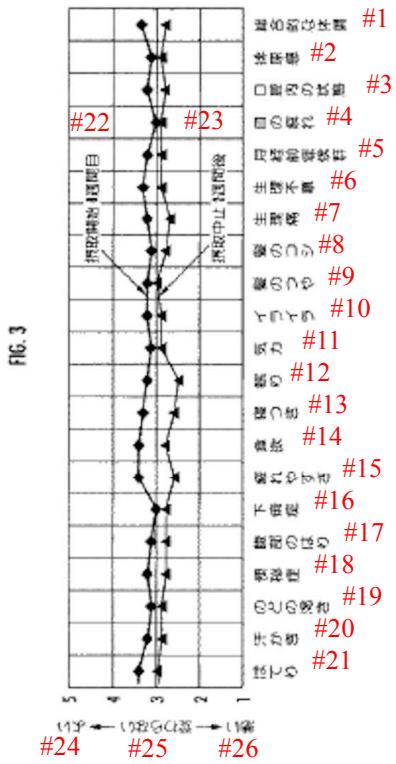

FIG. 3

FIG. 3

#1 overall physical condition

#2 urination

#3 oral condition

#4 fatigue of eye

#5 premenstrual syndrome

#6 menstrual disorder

#7 menstrual pain

#8 thickness of hair

#9 resilience of hair
#10 irritation
#11 energy
#12 sleep
#13 falling to sleep
#14 appetite
#15 fatigue
#16 diarrhea
#17 cramp in stomach
#18 constipation
#19 thirst
#20 perspiration
#21 hot flash
#22 8 weeks after starting to take
#23 2 weeks after stopping to take
#24 good
#25 no change
#26 bad

Evidence A No. 3 distributed before the filing date describes the following matters.

(3-A)

"In that case, soy isoflavones, especially Genistein isoflavone, have physiological action advantageous for the human body, and have an effect for preventing osteoporosis, cancer, circulatory disease, menopausal disorder, and the like." (paragraph [0005])

Evidence A No. 4 distributed before the filing date describes the following matters.

(4-A)

"[Claim 4]

Food and drink comprising Pueraria mirifica and soy isoflavone as active components, for preventing or improving menopausal disorder, improving balance of female hormones, or improving skin aging." (Claim 4)

(4-B)
"...

Since isoflavone is also contained in soy, binding capacity of soy isoflavone is weak for receptor α and strong for receptor β (Kuiper G. G. J. M. et al., Endocrinology, 139, 4252-4263 (1998)), and isoflavone is expected to have an effect for preventing menopausal disorder, osteoporosis, arteriosclerosis, Alzheimers, benign prostatic hypertrophy, cancer, and the like (White. R. W. V. et al., Urology, 63, 259-263 (2004), Ozasa K. et al., Cancer Sci., 95, 65-71 (2004)) (Kurzer M. S., J. Nutr., 133, 1983S-1986S (2003)). ..." (paragraph [0004])

Evidence A No. 5 distributed before the filing date describes the following matters.

(5-A)
"[Claim 7] A food composition for relieving menopausal which comprises 1) 5 to 10 mass% of ascorbic acid and/or a salt thereof, 2) 0.3 to 3 mass% of α-tocopherol, and 3) 10 to 20 mass% of soy isoflavone and a glucoside thereof." (Claim 7)

Evidence A No. 6 distributed before the filing date describes the following matters.

(6-A)
"Ginseng has been known to have an anti-fatigue effect such as nutritional enhancement, is found to have action to promote circulation, is especially effective for various unidentified complaints in poor circulation and menopause, is suitable for women as a health drink, and is widely used as a drink." (paragraph [0007])

Evidence A No. 7 distributed before the filing date describes the following matters.

(7-A)
"[Claim 6] A health product composed of fruit extract of ginseng which is obtained by coating particles composed of a mixture of glucoside powder of ginseng, calcium, and caffeine, with a sugar coating."
(Claim 6)

(7-B)
"[Prior art] Conventionally, ginseng has been known to have a medical component in the root and is used as a crude drug of traditional Chinese medicine, the buds are removed other than for seed, and devoted efforts have been made for growth of the roots." (paragraph [0002])

(7-C)
"...
A product of the invention has the following efficacy.
...
7. Effective for the treatment of enuresis, menopausal disorder, and poor circulation.
..." (paragraphs [0008] to [0009])

Evidence A No. 11 distributed before the filing date describes the following matters.

(11-A)
"Menopausal disorder: various conditions are caused by the reduction of female hormones with menopause as a trigger; the conditions are divided into psychological conditions and physical conditions. The psychological conditions are mainly unidentified complaints such as lack of concentration and a dull life, and include neuropsychiatric diseases such as psychosomatic diseases, neurosis, and menopausal depression. On the other hand, the physical conditions are, for example, dizziness, hot flash, irritation, perspiration, vaginitis, disorder of sexual intercourse, cystitis, urethritis, atrophoderma, loss of hair, and the like." (page 468, line 30 of right column - page 469, line 1 of left column)

(2) Comparison
We compare the Invention 1 with the Cited Invention. "Soft drink" of the Cited Invention corresponds to "a supplement being a soft drink" of the Invention 1. Further, "glucose-fructose syrup" and "galactooligosaccharide syrup" of the Cited Invention are included in "syrup" of the Invention 1.

Therefore, the two inventions correspond in "a supplement being soft drink comprising champignon extract, citric acid, and syrup," and are different in the following features.

<The different features>

Different feature 1

In the Invention 1, the main component is "peptide obtained by treating salmon ovary with protease"; on the other hand, the main component of the Cited Invention is "hydrolysate of salmon ovary."

Different feature 2

The Invention 1 comprises "isoflavone and ginseng or extract thereof"; on the other hand, the Cited Invention does not comprise these components.

Different feature 3

The Cited Invention further comprises other components; on the other hand, in the Invention 1, the other components are not specified.

(3) Examination on Different features

A. Different features 1 and 3

As examined in the above 1(3)a and c, the Different features 1 and 3 are not substantially different features.

B. Different features 2

According to the above (2-A) to (2-E), it is found that Evidence A No. 2 describes that taking amino acids and peptides extracted by treating salmon ovary with protease improves conditions associated with aging such as "irritation," "perspiration," and "hot flash."

Further, as described in the above (11-A) relating to Evidence A No. 11, it is technical common sense that physical and psychological conditions associated with aging such as irritation, perspiration, and hot flash are called "menopausal" conditions.

In this case, a person skilled in the art could recognize naturally that, similar to an anti-aging agent described in Evidence A No. 2, the soft drink of the Cited Invention comprising "peptide treating salmon ovary with protease" as a main component has inhibitory effect for menopausal disorder associated with aging such as irritation, perspiration, and hot flash.

On the other hand, according to the descriptions of Evidences A No. 3 to A No. 7 indicated in the above (1), isoflavone or ginseng is well-known as a component included in a food composition for improving menopausal disorder. Further, adding plural active components to a supplement is technical common sense.

Accordingly, it has easily arrived for a person ordinarily skilled in the art to add

isoflavone and ginseng to the soft drink of the Cited Invention for improving inhibitory effect for menopausal disorder of the Cited Invention.

C. Effect of the Invention 1

In the Description, it is described that rates of changing Kupperman index of test subjects who took prescription A comprising "peptide derived from salmon ovary," "soy extract comprising isoflavone," and "ginseng extract power"; prescription B comprising "peptide derived from salmon ovary"; or prescription C comprising "soy extract comprising isoflavone" and "ginseng extract power" were -8.6, -5.0, and -5.2, respectively (paragraphs [0025] to [0028]), and this result indicated that including "peptide derived from salmon ovary" and "isoflavone and ginseng" improved the inhibitory effect for menopausal disorder (paragraph [0029]).

Comparing rates of changing Kupperman index, the changing rate of prescription A in which the three components of "peptide derived from salmon ovary," "soy extract comprising isoflavone," and "ginseng extract power" are combined is larger than that of prescription B or that of prescription C, but smaller than the total changing rate of prescription B and C, and it is thought that effect in which three components are combined is less than the additive effect.

As examined in the above B, these three components are well-known as components included in a food composition for inhibiting menopausal disorder, and it is not found that the Invention 1 has a prominent effect that a person ordinarily skilled in the art could not predict from the descriptions of Evidences A No. 1 and A No. 2, and well-known arts.

D. Demandee's allegation

The demandee alleges that, relating to the Invention 1, by including "peptide treating salmon ovary with protease" and "isoflavone and ginseng or extract thereof," the inhibitory effect for menopausal disorder is improved, difficulty of drinking with these components is solved by "champignon extract, citric acid and syrup," and creating good taste as a soft drink enables continuous and long-term drinking and the inhibitory effect for menopausal disorder is further improved.

However, since the inhibitory effect of menopausal disorder is examined in the above C, and it is a matter of technical common sense that when citric acid of acid taste and syrup of sweet taste are added to a soft drink, bad taste due to other components is masked and the soft drink acquires a good taste, and the effect of the invention that

enables continuous and long-term drinking and improves inhibitory effect for menopausal disorder, is not an effect exceeding the prediction of a person skilled in the art.

Therefore, the demandee's allegation has no reason.

(4) Summary

As described above, the Invention 1 is an invention that was made publicly available through an electric telecommunication line with Evidence A No. 1, and the invention that a person ordinarily skilled in the art could have easily made based on the description of Evidence A No. 2 and well-known arts.

No. 6 Conclusion

As described above, since the Invention according to Claim 2 falls under the provisions of Article 29(1)(iii) of the Patent Act and the Invention according to Claim 1 violates the provisions of Article 29(2) of the Patent Act, the Patent relating to the Inventions according to Claims 1 and 2 falls under the provisions of Article 123(1)(ii) of the Patent Act and must be invalidated.

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

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

April 14, 2015

Chief administrative judge: IMAMURA, Reeko
Administrative judge: KOBORI, Asako
Administrative judge: KORIYAMA, Jun