Trial decision

Invalidation No. 2014-800186

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The case of trial for regarding the invalidation of Japanese Patent No. 4619344, entitled "Aerosol device" between the parties above has resulted in the following trial decision.

Conclusion

The appeal of the case was groundless.

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

Reason

No. 1. Purport of demand and reply

According to the entire import of the trial, the demandant requested a trial decision that the patent for the invention according to Claims 1 to 3 of Patent No. 4619344 is invalid, the costs in connection with the trial shall be borne by the demandee, while the demandee requested a trial decision whose content is the same as the conclusion.

No. 2. History of the procedures

Principal history of the procedures is as follows:

November 10, 2006	application for the patent
November 5, 2010	establishment of the patent right (Japanese patent No. 4619344)
November 14, 2014	written demand for trial
December 26, 2014	written request for the examination of a witness, statement of matters for examination
January 22, 2015	notification of matters to be examined
February 9, 2015	demandee/oral proceedings statement brief
February 19, 2015	the first oral proceedings, examination of evidence (examination of parties)
March 4, 2015	written statement (demandant)
April 7, 2015	written reply
June 1, 2015	notification of matters to be examined June 5, 2015 demandee/oral proceedings statement brief
June 5, 2015	demandant/oral proceedings statement brief

June 10, 2015	notification of matters to be examined (2)
June 23, 2015	demandee/oral proceedings statement brief (2)
June 23, 2015	demandant/oral proceedings statement brief (2)
June 23, 2015	the second oral proceedings

No. 3. The patent Invention

The inventions relating to Claims 1 to 3 of the patent (hereinafter the inventions relating to Claims 1 to 3 of the patent are referred to as "the invention 1" to "the invention 3") are as follows described in the scope of claims.

<<The Invention 1>>

The aerosol device for cleaning the inside of an engine, includes an aerosol can body and an inlet tube. The aerosol body is a hollow container, and is configured by arranging a nozzle for ejecting cleaning liquid at an upper end of the container containing the cleaning liquid. The inlet tube is wholly or partially transparent or translucent, has a length of at least one meter, includes one end connected to the nozzle, and is formed by arranging two or more spray holes in different positions in a circumferential direction near the other end, in a direction orthogonal to the advancing direction of the cleaning liquid.

<<The Invention 2>>

The aerosol device described in Claim 1 is configured to keep the nozzle pressed down once it is pressed, and to continuously eject cleaning liquid for 5 to 20 minutes.

<<The Invention 3>>

The aerosol device described in Claim 1 or Claim 2 is configured to arrange the spray holes so as to spray the cleaning liquid at an ejection angle of 30-120 degrees.

No. 4 Gist of allegation of the parties and means of proof

1. Gist of demandant's allegation and means of proof

(1) Gist of demandant's allegation

The demandant alleges that the invention relating to the patent was jointly invented by the demandant and the demandee, and the demandee filed an application independently, thus the demandee should not be granted a patent for the invention in accordance with the provisions of Article 38 of the Patent Act, and the patent must be invalidated because Article 123-1 (2) of the Patent Act is applicable. (6. (3) in the written demand for trial (hereinafter referred to as "the written request"), and section 1 for the parties in the second oral proceedings record)

(2) Evidences

The evidences submitted by the demandant are as follows.

The evidences A No. 1-No. 5 were submitted at the time of request for trial, and the evidences A No. 6-No. 16 were submitted later.

The demandant offered the demandant SASAKI, tsutomu for the examination of the parties.

Evidence A No. 1: copy of the written opinion (No. 416107)
Evidence A No. 2: copy of e-mail from the demandant as of September 7, 2008
Evidence A No. 3: copy of the written opinion OGAWA_xx
Evidence A No. 4: copy of e-mail from the demandee as of September 7, 2008
Evidence A No. 5: copy of e-mail from the demandee as of September 8, 2008
Evidence A No. 6: copy of Certificate of All Historical Matters
Evidence A No. 7: copy of notification of retirement annuity payment
Evidence A No. 8: copy of close-out statement
Evidence A No. 9: copy of articles of incorporation of Japan integrated works Co., Ltd.
Evidence A No. 10: copy of e-mail from the demandee as of September 28, 2007
Evidence A No. 11: copy of estimate
Evidence A No. 12: copy of receipt
Evidence A No. 13: copy of the first-period account ledger
Evidence A No. 14: copy of the second-period account ledger
Evidence A No. 15: copy of summary of operations for engine cleaning system (draft)
Evidence A No. 16: copy of a note, entitled "sale of combustion chamber cleaner"

(3) Gist of allegation

The gist of demandant's allegation is as follows.

The number of lines does not include blank lines. Circled numbers are indicated by "Circle 1" and the like.

A. The written request

(A) History of the development of the patent (the written request p. 3 l. 28-p.4 l. 2)

"The demandant and the demandee, who are officers of Japan integrated works Co., Ltd., have advanced development of an engine cleaner, which is a product thereof, before establishment of the company. The demandant mainly developed the product, and the demandee took the procedure for the application to the Japan Patent Office or made a

contact with a patent attorney.

The demandee applied for a patent, as a right holder, on November 10, 2006 for the patent without permission from the demandant. The application was refused on July 10, 2008, and later the patent was admitted by submitting written amendment and opinion, through trials.

The draft of the written opinion (Evidence A No. 1) submitted in the processes has been added or corrected significantly by demandant in response to the requests from the demandee (Evidence A No. 2-No. 5). Not only the demandee but also the demandant made a large contribution to the invention of the patent.

Therefore, the patents of the case are invented by both demandant and demandee."

(B) Registration of patent under the name of the demandee (the written request p. 4 l. 4-l. 9)

"However, as the demandant entrusted the demandee, who was the president, with the procedures of application for registration of the patent, application for the patent right was registered by the demandee independently as an inventor, an applicant, and a patent holder without permission from the demandant.

The patent registration violates Article 38 of the Patent Act, falls under Article 123-1(2), and should be invalidated."

B. Oral proceedings statement brief (as of June 5, 2015) (hereinafter referred to as "Demandant's brief (1)")

(A) History of the development (Demandant's brief (1) p.2 l. 7-p.3 l. 11)

"1 (1) The demandant, the demandee, and ENDO, Yasuyuki have advanced development of an engine cleaner which is a product of Japan integrated works Co., Ltd. established later, before the filing date of the patent.

(2) The roles of the above three persons on the development of the engine cleaner in Japan integrated works Co., Ltd. are described as follows.

A. Regarding the demandant

The demandant has given various advice based on knowledges obtained as an employee of a chemical company, in response to a request from the demandee, throughout the patent application, on the combination of cleaner ingredients essential for sampling experimental data and manufacturing a product of the engine cleaner.

The patent could not be commercialized alone. The demandant developed a nozzle manufacturing method independently. The demandant also designed and

developed a machine to be used for manufacturing the nozzle. Thus, Japan integrated works Co., Ltd. established by the demandant and the like started business through an affiliated company of JAPAN OIL SERVICE CO., LTD.

B. Regarding the demandee

The demandee has taken the procedures to apply for the patent and has collected experimental data.

C. Regarding ENDO

ENDO has collected the experimental data as well as operating business and procuring parts.

Before joining in Japan integrated works Co., Ltd., he worked for a company that specializes in painting and coating, engaged in development of a piston for motor sports or coating for a fuel battery, and worked with commodities, such as aerosol. He has a great deal of knowledge about products existing in the market.

He presented an existing product which is locked by pulling a trigger of a spray can, regarding the patent, and took the opportunity to employ it to the patent.

(3) The demandant served as a special technical advisor in Du Pont Kabushiki Kaisha, also during the application for the patent, from January, 2004, and conferred with ENDO and the demandee about once a month for establishment of Japan integrated works Co., Ltd. and development of an engine cleaner, including the patent, as well as engaging in the development through exchanging e-mail."

(B) Regarding invention relating to Claim 1

a. Regarding using an aerosol can (demandant's brief (1) p. 3 l. 19-l. 27)

"At first, the demandee created a device for attaching a filter for removing white smoke to an exhaust duct, but it was refused by HONDA.

During a discussion between ENDO and the demandee on a new cleaning device, an aerosol can, which is one of ideas to be substituted for a large-scale mechanical device is developed.

Then, ENDO repeated verification and examination on manufacturing a spray can as an engine cleaner, and creating a prototype, in connection with his former job, and the aerosol can was decided to be used for the engine cleaner."

b. Regarding the inlet tube having a length of at least one meter (demandant's brief (1) p. 3 l. 30-p.4 l. 5)

"As for the patent, in order to clean the inside of an engine room with an engine in operation, a spray can containing a combustible material should keep an appropriate distance from the engine at a high temperature, and the length of at least one meter was

derived, necessarily. ...The length of about two meter was assumed, however, the limitation "at least one meter long" was added in consideration of a third party who may apply for another similar patent.

The above came up during a discussion between ENDO, the demandant, and the demandee."

c. Regarding the spray hole (demandant's brief (1) p. 4 l. 7-l. 11)

"For making a difference from another existing inlet tube, the limitation is added that the inlet tube has two or more spray holes formed in a direction orthogonal to the advancing direction.

The above came up during a discussion between ENDO, the demandant, and the demandee."

(C) Regarding invention relating to Claim 2 (demandant's brief (1) p. 4 l. 13-l. 20)

"...A nozzle configured to be locked by pressing the nozzle, and to continuously spray the content for a long time without continuously pressing the nozzle exists in the market.

ENDO was engaged in aerosol cans or the like in his former job, has a knowledge about the nozzle, and made a suggestion to utilize the system for the patent."

(D) Regarding invention relating to Claim 3 (demandant's brief (1) p. 4 l. 22-p. 4 l. 26)

"The angle of the spray hole described is supposed to be required generally for supplying cleaner completely, because a nozzle was not complete as a product.

The above came up during a discussion between ENDO, the demandant, and the demandee."

(E) Others (demandant's brief (1) p. 4 l. 28-p. 5 l. 12)

"The claims of the patent were formed by combining existing technologies. However, they could not be completed unless the demandant gave advice on technical aspects and cleaner ingredients to the demandee from the middle of development to preparation of a written opinion after the application.

The demandant has advanced development of the engine cleaner, including the patent, to be commercialized in Japan integrated works Co., Ltd. established by the demandant, the demandee, and ENDO. The demandant has focused on product development in order to put the business of the company on track early without paying special attention to ownership of the right at the time of application.

In the application for the patent, the demandee submitted the application alone

with explanations about reduction in cost for the application and without clear agreement from the demandant and ENDO, on the other hand, the cost is paid from Japan integrated works Co., Ltd. after establishment.

Therefore, it is obvious that the patent does not belong to only the demandant."

C. Oral proceedings statement brief (as of June 23, 2015) (hereinafter referred to as "demandant's brief (2)")

(A) History of the development of the patent (Demandant's brief (2) p.2 l. 10-l. 24)

"...When HONDA made a request for the development, MITSUBISHI MOTORS had already started test marketing of an engine cleaning system. HONDA presented a summary of operations (Evidence A No. 15) prepared by MITSUBISHI MOTORS in the development, to a manufacturer.

In the summary of operations (Evidence A No. 15) presented on October 2005, a system which is very similar to the patent is presented, the system using a pressure regulating valve and an inlet hose connected to a can containing cleaner, as an injector device. A basic idea that the injector device is suspended on a hood, when in use, to separate the can containing the cleaner from the hot engine, or that an inlet tube has a predetermined length is presented as pictures.

ENDO obtained the summary of operations via the manufacturer, and presented it to the demandant and the demandee on around October 2005. The demandee proceeded with the development of a white smoke filter, which is unrelated to the patent, at that time."

(B) Regarding invention relating to Claim 1

a. Regarding using an aerosol can (demandant's brief (2) p. 2 l. 27-p. 3 l. 2)

"In the summary of operations (Evidence A No. 15) of the engine cleaning system of MITSUBISHI MOTORS, presented by HONDA, the injector device containing the cleaner is substituted with an aerosol can in this patent.

During examining a material presented by HONDA, ENDO and the demandee offered an aerosol can as an alternative. Then, after ENDO repeated verification and examination on manufacturing a spray can as an engine cleaner, and creating a prototype, in connection with his former job, the aerosol can was decided to be used for the engine cleaner."

b. Regarding the inlet tube having a length of at least one meter (demandant's brief (2) p. 3 l. 4-l. 19)

"In the summary of operations (Evidence A No. 15) leading to the development

of the patent, as for the length of the inlet tube, it is obvious that the injector device is suspended on a hood to be spaced from an engine, as a heat source, in order to clean the engine in operation.

Due to high temperature of the aerosol can, ENDO, the demandant and the demandee derived a conclusion necessarily that the inlet tube needs a predetermined length, in order to keep a distance between the aerosol can and the engine, during a discussion.

The demandee alleges that the length of the inlet tube has the objective of stabilizing the amount of content to be sprayed by use of internal pressure of the tube. However, experiments during the development have shown that the content cannot be sprayed in a stable misty state only with an outlet arranged in the inlet tube, before and after the development of the patent. The demandant developed a nozzle different from the patent, having a gate structure which can adjust a flow rate and stably eject the content in a misty state.

Therefore, the reason stated by the demandee is only an addition."

(C) Regarding invention relating to Claim 2 (demandant's brief (2) p. 3 l. 21-l. 28)
"The patent invention 2, the structure of the nozzle configured to be locked by pressing the nozzle, and to continuously spray the content for a long time without continuously pressing the nozzle, was presented by ENDO as a nozzle in the market, from the beginning of the development, and was employed.

The nozzle is configured to spray the content for 5 to 20 minutes by adding leeway to the time required for a long spray can (about 820 ml), which has been supposed to be used at the beginning of development of the patent and has been used as a prototype, to completely eject the content, in consideration of differences depending on the outside temperature or conditions of use."

(D) Regarding invention relating to Claim 3 (demandant's brief (2) p. 3 l. 30-p. 4 l. 3)

"At the beginning of development of the patent, an inlet tube with a spray hole having an angle of 90 degrees was used in experiments repeatedly. However, a nozzle was incomplete as a product. The angle was supposed to be required generally for supplying cleaner completely, at the beginning of the development.

The above came up during a discussion between ENDO, the demandant, and the demandee."

(E) The time when the invention was completed (demandant's brief (2) p. 4 l. 5-l. 8)

"In April 24, 2006, ENDO had already offered an engine cleaner using the aerosol device of the patent to Mugen corporation (Evidence A No. 16), and the patent was almost completed at that time."

D. Demandant column in the second oral proceedings record
3 A basic structure of using an aerosol can is described in 2) a) in Evidence A No. 15. However, there is no description about using the aerosol can.

2 Gist of demandee's allegation and means of proof
(1) Gist of demandee's allegation

The demandee alleges that there is none of the reasons for invalidation in the patent regarding the invention relating to Claims 1 to 3.

(2) Evidences

The evidences submitted by the demandee are as follows.

Evidence B No. 1: copy of a facsimile as of September 3, 2013
Evidence B No. 2: copy of contents-certified mail as of September 3, 2013
Evidence B No. 3: copy of contents-certified mail as of September 24, 2014
Evidence B No. 4: copy of patent registry
Evidence B No. 5: copy of "document of records on statements of witnesses" in the case of the invalidation No. 2014-800186
Evidence B No. 6: copy of e-mail sent from the demandee to the demandant (as of October 25, 2006)
Evidence B No. 7: copy of e-mail sent from the demandee to the demandant (as of February 12, 2007)
Evidence B No. 8: copy of e-mail sent from the demandee to the demandant (as of February 13, 2007)
Evidence B No. 9-1: copy of a label of a combustion chamber cleaner
Evidence B No. 9-2: copy of an invoice of a delivery company
Evidence B No. 9-3: copy of e-mail sent from SUMICO LUBRICANT CO., LTD. to the demandee (November 13, 2006)
Evidence B No. 10: copy of a notebook of the demandee (as of August 5, 2006)
Evidence B No. 11: copy of written amendment of proceedings as of February 18, 2009 in the stage of examination on the patent
Evidence B No. 12: copy of experimental data (as of October 24, 2006)

Evidence B No. 13: copy of written demand for trial of the case of Invalidation No. 2014-800187
Evidence B No. 14: copy of publication relating to Japanese Patent Application No. 2006-304691 of the patent (Japanese Patent No. 4619344) of the case
Evidence B No. 15: copy of the notebook of the demandee (as of September 15, 2006)

(3) Gist of allegation

The gist of demandee's allegation is as follows.

A. Oral proceedings statement brief (as of February 9, 2015) (hereinafter referred to as "demandee's brief (1)")

(A) Regarding reasons of the demand of the written demand for trial and evidences (demandee's brief (1) p. 2 l. 5-l. 14)

"In the demand for trial, according to the written demand for trial and evidences submitted from the demandant, evidences are inappropriate or incomplete for validating the reason of the demand. ... If you alleges the reason for the invalidation indicating violation of the provisions of Article 38 of the Patent Act, you should clearly specify a party other than the demandee who has "a right to obtain a patent", and submit appropriate evidences.

However, according to the evidences submitted (Evidences A No. 1-No. 5), all materials are formed after the application, and it is obvious that the invalidation cannot be validated by means of the materials.

B. Written reply

(A) Regarding succession of the right to obtain a patent (written reply p. 4 l. 17-l. 19)

"The demandee, who is a real inventor of the patent, applied for a patent without succession of the right to obtain a patent to anyone else. Therefore, there cannot be the violation of joint application."

(B) The reason why the demandant does not correspond to the inventor of the patent invention (written reply p. 4 l. 25-p. 6 l. 9)

"The reason is that the demandant made the following statements in the examination of the case (paragraphs "0055" to "0056") ...

(i) The above statements show only a general risk of heating, in handling an aerosol can, without describing a technical reason for numerical limitation (at least one meter) in specific requirements of the patent invention, ... and do not correspond to the technical reason for the numerical limitation (at least one meter).

(ii) If the demandant had engaged with creative activities, such as experiments, the demandant would have not made only such a general statement, and would have made a statement about major part of the invention.
(iii) The reason for the numerical limitation is, as described in [0022] of the specification at the initial application, "... in order to allow a tip of an inlet tube 3 to reach the inside of an internal combustion engine," specifically, to allow the inlet tube to reach just before a throttle valve. In detail, as described in [0031] of the specification at the initial application, it is based on a minimum length required for "... inserting the inlet tube to about 5 cm before the throttle valve." Finally, the cleaner is to reach the inside of the internal combustion engine in a misty state."

(C) Absence of substantial cooperative relation in the invention of the patent between the demandant and the demandee (written reply p. 6 l. 20-p. 8 l. 22)
The following statements are included in paragraphs "0060" to "0067" ... in the examinations of the case.
"0060"
...
"0061"
...

The above replies do not show substantial cooperative relation, and do not indicate that the demandee engaged with the development of the patent invention before the application.
The demandant makes the following statement.
"0063"
...
"0134"
...

The above two statements of the demandant indicate that the demandee employed a "spray can" constituting the main part of the patent invention, and affirm that the demandee conceived, materialized and completed the invention.

"0064"
...

A person engaged with the invention as an inventor would have alleged technical matters involved. However, the demandant did not submit any evidences showing the involvement as an inventor in both written demand for trial and

examinations as described above.

Therefore, the demandant does not correspond to a creator of the patent invention, has no right to obtain a patent, and does not correspond to an assistant according to the involvement.

(D) Regarding demandant's allegation that the demandee applied for a patent without permission (written reply p. 9 l. 15-p. 11 l.1)

"The expression, "without permission," alleged by the demandant is obviously not true.

We will refuse the allegation on the basis of evidences, as described below.
... Evidence B No. 6 is a picture of e-mail sent from the demandee to the demandant on October 25, 2006. ...
... Evidence B No. 7 is a picture of e-mail sent from the demandee to the demandant on February 12, 2007. ...
... Evidence B No. 7 is a picture of e-mail sent from the demandee to the demandant on February 13, 2007. ... The e-mail was sent with data of the specification at the initial application in Microsoft Word format on February 13, 2007 because the demandee failed to attach the data to the e-mail sent from the demandee to the demandant on the previous day (p. 6-p. 20).
... According to the above e-mail exchanges, the demandee made contact with the demandant closely about information on the patent application before and after the filing date of the patent. Thus, the demandant's allegation that the demandee applied for the patent without permission is obviously improper. In addition, the demandant could have asked the demandee to take a procedure to change an applicant in the process of the written opinion and the written amendment of proceedings, definitely.
... At the examination in the trial for invalidation, the demandant made only ambiguous replies or statements based on vague memory in response to questions about a period before the filing, as described in paragraph "0022", "before the filing, ... I submitted the material ... I can remember having some discussions."
"0025"
... as stated above, the demandant recognized that the demandee would apply for the patent alone before the filing.

Thus, the expression "without permission" alleged by the demandant cannot be accepted.

C. Oral proceedings statement brief (as of June 5, 2015) (hereinafter referred to as

"demandee's brief (2)")
(A) History of developing and commercializing engine cleaner, and main roles of the three (demandee's brief (2) p. 3 l.8-p. 4 l. 5)

"Before filing, an engine cleaner (product name "combustion chamber cleaner") as a product had been already completed, and the demandee developed the product. Evidences B No. 9-1 to No. 9-3 are added to prove the fact.

...

A. Regarding the demandant

The demandant did not engage in technical development on the engine cleaner.

B. Regarding the demandee

The demandee played a role in "conceiving, materializing, research, product development, test, mass-production technical development, product design, development of execution method, and market development" on the engine cleaner, as well as "patent application, procedures for obtaining the patent, and technical development (use of an aerosol can, test of a prototype, or the like).

C. Regarding ENDO

ENDO played a role in contacts with SUMICO LUBRICANT CO., LTD. for commissioning manufacture, on the engine cleaner (product name "combustion chamber cleaner") based on the specifications designated by the demandee."

(B) Regarding invention relating to Claim 1

a. Regarding using an aerosol can (demandee's brief (2) p. 4 l.17-p. 5 l. 13)
"The demandee conceived of "using an aerosol can."

The above is based on Evidence B No. 5 (paragraph (0134) in "document of records on statements of witnesses" in the case of the invalidation No. 2014-800186).

As for the date when the demandee conceived of "using an aerosol can," the product of the patent has been completed on August 5, 2006 at the latest. Evidences B No. 9-1 to No. 9-3, and Evidence B No. 10 are submitted for proving the fact.

The Evidence B No. 10 is a copy of Evidence B No. 10 submitted as an attachment in written reply of another Invalidation No. 2014-800187. As described for the Evidence B No. 10 submitted in the written reply, the date written in the notebook of the demandee validates the date when the demandee conceived of it.

Evidences B No. 14 and No. 15 include the descriptions about experiments on NISSAN Skyline GT-R (RB26) on September 15, 2006 and HONDA Integra (B18C) on the next day, September 16, to prove the date when the invention of the patent is established. Evidence B No. 12 proves the date when the product employing a

configuration of the invention is completed. As described in a date field "DATA" located in a lower column of "POWERTest" in the uppermost left column in the evidence, an experiment in GARAGE KITA-KANTO Co., Ltd. (Moro Kanuma Tochigi) on October 24, 2006 is indicated. In the experiment, HONDA Stepwagon is used to measure data of an output graph and compression pressure. The effects of a patent product of the case are compared before and after use.

Therefore, the product using the aerosol can relating to the patent has been completed at that time at the latest."

b. Regarding the inlet tube having a length of at least one meter (demandee's brief (2) p.5 l. 16-p.6 l. 7)

"The reason why the inlet tube has at least one meter long, stated by the demandant in the examination on the other day, is that "it cannot be installed in an engine room due to a risk of explosion."

However, the fact that it is dangerous to bring a pressure container, such an aerosol can, into contact with a high-temperature object can be easily recognized by a person other than the person skilled in the art, generally.

The real reason for at least one meter is to be satisfied definitely in the aspect of ensuring security, in the patent invention, and is determined on the basis of the following technical effects.

First, in order to exert technical effect of the aerosol device of the patent, a tip of the inlet tube needed to reach a position located 5 cm before a throttle valve of an engine.

The pressure of the aerosol can is reduced due to continuous spraying. In order to attain longer stable spraying, the demandee found that longer continuous spray time can be ensured and the amount to be sprayed per unit time can be stabilized by using internal pressure of the inlet tube, through various experiences and experiments.

Thus, the length of the inlet tube having a length of at least one meter was determined by the technical effects as well as for safety. The important matter could be recognized by a creator of the invention. However, the demandant did not make any statement that there is a technical meaning in the length of at least one meter of the inlet tube, in the examination, as described above. It can be said that the demandant has no right to obtain a patent, or the demandant is not an inventor, accordingly."

c. Regarding spray hole (demandee's brief (2) p. 6 l. 12-p. 8 l. 2)

"On this point, ... if the spray hole is formed to spray the content in an advancing

direction, mist collides with the throttle valve and sticks thereto, and then it is liquefied.

In order to solve the above problem, the demandee conceived the idea that the spray hole is formed in the inlet tube. First of all, an open hole at the tip is closed, and the demandee conceived of an original method of machining a hole in a direction orthogonal to the advancing direction, which is the most troublesome in machining. The demandee had conducted alone various developments for easy and inexpensive mass production by means of the method before the above date.

...

The most controversial problem was a method of making a hole in a direction orthogonal to the advancing direction. The demandee had employed a solution including an original method of making a hole by a stapler which cannot be employed by person skilled in the art generally.

As shown in a table in p. 5 of written amendment of proceedings submitted on February 19, 2009, the demandee solved the problem of uneven amount of cleaning liquid in cylinders of a multi-cylinder engine by using the method of making the spray hole in a direction orthogonal to the advancing direction of the cleaning liquid.

... However, the demandee had solved the difficulty of machining before the above date with a technology based on a unique idea which could not be conceived by the person skilled in the art.

Specifically, a stationery product "stapler" is used, thereby enabling any one can form a hole without any cost. ...

As the demandant stated "the demandee employed a method using a stapler ..." in "(circle 3) history of development of the patent in the written demand for trial of Invalidation No. 2014-800187," the demandee recognized that the demandee had already used the method of making a spray hole with a stapler. The fact is proved by submitting Evidence B No. 13.

The demandee conducted experiments on various cars by use of a nozzle tube obtained by the method of making a hole with a stapler.

Redundantly, as for specifying the date of the experiments, Evidences B No. 10, No. 12 and No. 15 are submitted. According to the description (Evidence B No. 10) in the notebook of the demandee in the description for implementation of the above A, the demandee had started development of mass-production technology by means of the stapler in at latest August, on arrival of materials of the product. Although it is difficult to specify the exact date, the demandee had already conducted an experiment on NISSAN RB 26 inline 6 engine on September 15, 2006, as described in the notebook of Evidence B No. 15, and on 1.8 L engine mounted on Integra made by Honda Motor

Co., Ltd. on at latest September 16, 2006. As described in Evidence B No. 12, the demandee verified the effect of the product of the patent, by using equipment of a chassis dynamo owned by GARAGE KITA-KANTO Co., Ltd., on STEPWAGON of Honda Motor Co., Ltd. on October 24, 2006. Therefore, the above shows that the inlet tube having a spray hole formed in a direction orthogonal to the advancing direction of the cleaning liquid had been developed by the demandee at latest before the date."

(C) Regarding invention relating Claim 2 (demandee's brief (2) p. 8 l. 6-l. 18)
"On the above point, in order to output the content continuously for 5 to 20 minutes with one push, various conditions are adjusted in consideration of limitation of flow rate due to the change in pressure or fluid friction, pressure in the aerosol can, and an inner diameter or length of a pipe line.

The reason for needing long-time spraying is ... the area (not volume) for a combustion chamber of an engine and the time in consideration of the capacity of the aerosol can described in Claim 2. The burden of a worker would be increased due to long-time permeation of the cleaning liquid and longer work time. In order to achieve stable spraying, continuous spraying is maintained with one push."

(D) Regarding invention relating to Claim 3 (demandee's brief (2) p. 8 l. 22-p. 9 l. 1)
"On the above point, the demandee obtained excellent spray state by changing a spray angle described in Claim 3 from 30 degrees to 120 degrees, through many experiments by changing various conditions, in order to prevent troubles due to unevenness of the amount of cleaning liquid as shown in "table of spray amount test" in the middle column in the written amendment of proceedings p. 5 in Evidence B No. 11.

... The date was specified on September 15, 2006, on the basis of the date described in the notebook of Evidence B No. 15 having obtained data described in an application of Evidence B No. 14. On the basis of experimental data of Evidence B No. 10, the spray characteristics were specified at latest on October 24, 2006."

D. oral proceedings statement brief (as of June 23, 2015) (hereinafter referred to as "demandee's brief (3)")
(A) The purport of allegation, "Before filing, an engine cleaner (product name "combustion chamber cleaner") as a product had been already completed, and the demandee materialized it." (demandee's brief (3) p. 2 l. 21-p. 3 l.2)
"Specifically, the "combustion chamber cleaner" belongs to the technical scope of the patent invention, and is formed by the demandee contributing to research and

development of the product including conceiving of the idea and materializing it. Evidences B No. 9-1 to No. 15 were submitted to specify the date of completing the product. They were submitted to prove that the demandee completed the product independently from the demandant.

In this case of the patent invalidation, although it is necessary for the demandant to prove that the demandant had a right to obtain a patent of the invention before filing, there is no evidence for objectively determining that the demandant had a right to obtain a patent at the time of filing.

The name "combustion chamber cleaner" is the name of the product of the patent invention, and is included in a general expression "engine cleaner" having the most general meaning."

(B) Fact to be proved of Evidences B No. 9-1 to No. 15 (demandee's brief (3) p.3 l. 10-p. 4 l. 30)

"Thus, in the column of August 5 in the notebook of Evidence B No. 10, there is a description that a "carbon cleaner" was received, and a description "#13 ketone system" exists in the column. "One to KITA-KANTO" also exists. In the notebook of Evidence B No. 15, there is a description that tests were conducted on RB26 (engine type) on September 15 and Ingegra (model name) on September 16 and 17. In Evidence B No. 12, there is a description that a test was conducted on STEPWAGON, K20A on October 24. In the right middle column of the graph in Evidence B No. 12, a description "#13" exists. The above proves that the product name "combustion chamber cleaner" (described as "carbon cleaner ", which is a prototype at that time, in the notebook) has been used for the tests, because the carbon cleaner "#13" ketone system described in the column of August 5 in Evidence B No. 10 is considered to be used continuously due to temporal relation.

The purport of submission of Evidence B No. 11 is described below.

The drawing based on a picture described in an upper part in p. 7 of the evidence shows a spray state of a nozzle of the product name: "combustion chamber cleaner" used in the tests, including a picture and illustration for detail description. The drawing is a reference material for proving employment of a component, "arranging two or more spray holes in different positions near the other end, in a direction orthogonal to the advancing direction of the cleaning liquid" described in the above (1) C.

The purport of submission of Evidence B No. 13 is described below.

According to the description "... by insertion, like a stapler" described in the history of development of the patent in the written demand for trial p. 3 (circle 3) of

another case (Invalidation No. 2014-800187), the demandant acknowledges that the demandee has employed "a manufacturing method of making a hole with stapler", and the demandant obviously acknowledges that the demandee has introduced the component, "arranging two or more spray holes in different positions near the other end, in a direction orthogonal to the advancing direction of the cleaning liquid".

Regarding the above point, in the notification of matters to be examined (2), it was pointed out that "It seems to be improper to prove the contribution to the creation of the patent invention." However, the invention does not exhibit the effect with the components independently, while exhibits the effect with overall configuration by specifying a length of the inlet tube from the aerosol can or a position of a hole formed at the tip of the spray nozzle, in order to stably spray the cleaning liquid for a long time in an excellent mist state from a limited pressure container, such as the aerosol can.

However, problems on machining difficulty or cost still existed in "arranging two or more spray holes in different positions near the other end, in a direction orthogonal to the advancing direction of the cleaning liquid" for distribution as commodities. The demandee introduced the manufacturing method, to solve a problem on productivity as well. Thus, the method of making a hole with stapler is a purport to prove that the demandee has engaged in development and materialization of the patent invention."

E. Demandee column in the second oral proceedings record
4 Regarding using the aerosol can, according to "factory air supply" described in Evidence A No. 15-1), Evidence A No. 15 does not employ the aerosol can.

No. 5 Testimony of demandant

The demandant SASAKI, tsutomu stated as follows under oath in the trial court of Japan Patent Office on February 19, 2015. Paragraph numbers are based on a transcription document.

1. Examination by an attorney of the demandant
(1)
0006 According to the statements so far, a chemical system or a system for developing a device is possibly needed for the business. What kind of job did you do before you are involved in Integrated works and before establishment of the company?

I worked for Du Pont and engaged in development.
0007 Du Pont is, the .....

A chemical company. It is an integrated chemical company.

0008 Well, you have sufficient chemical knowledge and have experienced a lot of technical developments, by your personal background, don't you?

I recognized as such.

(2)

0013 ....

.... I heard that the idea of "using a spray can" was conceived when ENDO brought it and talked with OGAWA.

0014 Do you mean that you did not engage in the development at that time?

I had known it, but it was a preparation stage, about one year before the establishment of the company. I had known it from before, and I understood it.

...

0016 Well, when you started to join in the matter of the aerosol device, the parties had not conduct any experiments or make a prototype yet, right?

Yes, but from an early stage, a spray can available at that time was used, ... cleaners are just about the same. The spray can be made at that time was based on them. ENDO made a sample of the spray can with the use of the cleaners.

0017 Specifically, what did you do .....?

I was asked some questions at that time. Many companies used ketones for increasing cleaning performance. But it was problematic to use ketone alcohol for sealant used in a car and an engine, ... and I used to treat materials in the former company, and did not want to use a material violating the Narcotics Control Law. It will be harmful to the body if such materials are inhaled. I suggested the two not to use it.

0018 You mean that you gave advice on components to be used in the cleaner, to decide the configuration of the spray can, right?

I think that the configuration of the spray can was finally decided in consideration of business after filing.

2. Examination by an attorney of the demandee

(1)

0057 Did you use a gasoline engine or a diesel engine when black smoke was emitted?

I guess that it is a gasoline engine. I heard that a lot of black smoke was emitted when the engine was cleaned with a cleaning device.

...

0063 Who conceived of the invention?

As far as I have heard, there are some engine cleaners worth several hundred thousand yen, on the other hand, a lot of black smoke was emitted with the use of an engine cleaner which was manufactured by a manufacturer which had been ordered to manufacture an engine cleaning device by HONDA, and OGAWA was asked to give advice for making a filter to handle the black smoke.

At that time, the idea "using a spray can" was conceived for the first time. But, the configuration had not been decided yet. I heard that it was enough to reduce the device to the spray can as a result.

0064 As you say "I heard...", who decided the overall configuration? For example, the length should be at least one meter, or a nozzle hole is formed to the outside on the side, in detail.

Who conceived of individual specific technical ideas for the first time? For example, the length of a supporter should be at least one meter, a nozzle at the tip should be formed not at the center but on the side, or the like, not for detail experiments.

I consider that those are conceived through discussions. I remember that no one insisted his own idea to us or we did not accept it. So, I cannot say clearly.

0065 You mean you contributed to materialization, right?

You gave advice on materialization, right?

I don't know how to describe it, but during the discussions of the three, maybe that's natural, we were in good cooperative relations at least at that time, and we talked various specifics.

...

0068 You made a request for trial to allege that you are the inventor and have a patent right, did you?

Basically, I wonder whether I can talk individually, but it does not matter who the inventor is, in terms that "patent is needed for the success of business of the company," or "do our best," individually. The patent owner should perform for the company, in any way.

3. Examination by collegial body

(1)

0119 Before the product is materialized, you did a lot of trials. Do you remember when and how the tests were conducted?

For example, OGAWA went to various repair factories for "conducting some cleaning tests," and ??data were provided there at that time. ENDO negotiated with a company of spray can for examining "how to make a spray can," and prepared an environment to start a "first trial." Sample products were actually made, and I answered some questions "It's bad, isn't it?" about problems of the products .... I was so busy at that time, but I remember I tried to make time.

...

0122 You said you went to repair factories for conducting tests. Do you remember the number of times or frequency of the tests in the factories actually?

I don't know that wholly, and it was not so frequent for me ....

0123 You said "for me ...," so you mean you went there and conducted the tests actually together, right?

I was taken to see "this is the place where the tests were conducted."

...

0126 I see. What kind of data did you obtained, specifically? For example, temperature change?

Basically, according to the discussions of ENDO's customer, it was preferable to discharge the cleaning liquid from the spray can within about 20 minutes. If a hole is made in a straight tube of the spray can, the amount of liquid to be discharged would be large at only the beginning and would be reduced gradually after that. It means reduction of internal pressure.

I developed the invention of the second patent in order to solve the above problem by holding it for 20 minutes so as not to reduce the internal pressure significantly and stopping it there.

...

0130 You said "I found that it was the best," and what data leads you to evaluate it as the best?

The best .....

0131 I mean, as for air conditioning, for example, people feel comfortable at more than 20 degrees. What is the data you evaluated it as the best based on?

Fog was stabilized for 20 minutes remarkably and there was no significant change in flow rate during that. The data we expected at that time was obtained.

(2)

0134 I see.

You said that the three discussed during the development. Do you remember who conceived of the idea of using a spray can first?

I would say, it was OGAWA who said "How about a spray can?"

0135 I see.

Then you developed ideas on the tube or the direction of the outlet. Do you remember the person who conceived of each of the ideas?

I heard that the tube was obtained from a manufacturer that made the spray can. The tube was made of polyethylene. The polyethylene tube is very popular, inexpensive, and easy to machine. I think it was inevitable. A trigger of the spray can is generally configured to discharge the content only during the time where a button is pressed. ENDO found a trigger configured to be locked by pressing a button strongly, and suggested using it ....

0136 Do you remember the person who suggested increasing the length of the tube?

I would say, I did not make a suggestion on the length of one meter.

0137 You did not?

No. But, we three recognized that the spray can is flammable and "cannot be installed in an engine room" due to the risk of explosion, and needs to keep distance. It can be easily supposed that we needed to decide whether the length should be one meter or 50 centimeters, accordingly.

No. 6 Judgement by the body on the reasons for invalidation

We confirm interpretation of joint inventor first before judgement on violation of Article 38 of the Patent Act (violation of joint application) of the inventions 1-3 as the reasons for invalidation.

The joint inventor means plural persons who creatively contribute to completion of characteristic portions of an invention, in a process of conceiving an idea and materialization for solving the problem (for example, Intellectual Property High Court 2007 (Gyo-Ke) 10278).

From the above viewpoint, we will examine the characteristic portions of the inventions, and whether or not the demandant creatively contributed to completion of the characteristic portions of the inventions.

1. Regarding characteristic portions of the inventions 1 to 3

The inventions 1 to 3 are invented for solving the problem in paragraph [0008], on the assumption of the problems of "the existing aerosol device" and "the combustion chamber cleaning device of the existing internal combustion engine" described in paragraphs [0002] and [0007] of the specification.

As indicated in No. 3. 2. in the notification of matters to be examined as of June 1, 2015, the characteristic portions of the invention 1 are "using an aerosol can", "an inlet tube having a length of at least one meter", and "at least two spray holes arranged in different positions near the other end of the inlet tube, in a direction orthogonal to the advancing direction of the cleaning liquid".

The characteristic portion of the invention 2 is "a nozzle configured to be kept pressed down once it is pressed, and to continuously eject cleaning liquid for 5 to 20 minutes."

The characteristic portion of the invention 3 is "the spray holes arranged so as to spray the cleaning liquid at an ejection angle of 30-120 degrees."

2. Regarding creative contribution of the demandant to completion of the characteristic portions of invention 1

We will examine whether or not the demandant creatively contributed to completion of the three characteristic portions of the invention 1.

(1) Regarding "Using an aerosol can" (hereinafter referred to as "characteristic portion 1-(1)")

The demandant alleges that the characteristic portion 1-(1) developed during a discussion between the demandee and ENDO (No. 4. 1. (3) B. (B) a. and No. 4. 1. (3) C. (B) a.).

In the examination of evidence (examination of the parties) held on February 19, 2015 (hereinafter referred to as "examination of the parties), the demandant stated, "... I heard that the idea of "using a spray can" was conceived when ENDO brought it and talked with OGAWA." (See No. 5. 1. (2)) in response to the question "0063 Who conceived of the invention?", and stated, "I would say, it was OGAWA who said "How about a spray can?" (See No. 5. 3. (2)) in response to the question "0134 Do you remember who conceived of the idea of using a spray can first?" The demandant did not make a statement that he gave some specific advice on using a spray can, or the

aerosol can.

The above testimony supports the demandee OGAWA as a person who conceived of the idea of using an aerosol can, on the other hand, does not support the creative contribution of the demandant to completion of the characteristic portion 1-(1), obviously.

We will examine whether or not the demandant creatively contributed to completion of the characteristic portion 1-(1), on the basis of Evidences A No. 1- No. 16.

Evidences A No. 1-No. 5 show that the demandant gave advice on how to write a written opinion or the like, in response to a request from the demandee, in the procedure after patent application, however, the evidences are formed after filing. The evidences do not directly or indirectly show the creative contribution of the demandant, such as giving specific advice on the characteristic portion 1-(1) before filing.

Evidence A No. 6 relates to the date when Japan integrated works Co., Ltd. is established. Evidences A No. 7 and No. 8 relate to the date when the demandant withdrew from Du Pont Kabushiki Kaisha. Evidence A No. 9 relates to the presence of provisions on the handling of patent in Japan integrated works Co., Ltd. Evidences A No. 10 to No. 14 relate to costs for applying for the patent. Evidence A No. 15 relates to a trigger of development of the patent. Evidence A No. 16 relates to the date when the patent is completed. The evidences do not directly or indirectly show the creative contribution of the demandant, such as giving specific advice on the characteristic portion 1-(1) before filing.

Thus, we do not find the fact that the demandant creatively contributed to the completion of the characteristic portion 1-(1), according to Evidences A No. 1-No. 16.

Therefore, it is recognized that the demandant did not creatively contribute to the completion of the characteristic portion 1-(1).

(2) Regarding "an inlet tube having a length of at least one meter" (hereinafter referred to as "characteristic portion 1-(2)")

The demandant alleges that the characteristic portion 1-(2) developed during a discussion between ENDO, the demandant, and the demandee (No. 4. 1. (3) B. (B) b. and No. 4. 1. (3) C. (B) b).

In the examination of the parties held on February 19, 2015, the demandant stated, "I would say, I did not make a suggestion on the length of one meter" in response to the question, "0136 Do you remember the person who suggested increasing the length of the tube?" (See No. 5 3. (2)). The demandant did not make a statement that

he made some specific advice.

The above testimony does not support creative contribution of the demandant to completion of the characteristic portion 1-(2), obviously.

Evidences A No. 1 to No. 16 do not show specific contents of "the discussion between ENDO, the demandant, and the demandee," and do not directly or indirectly show the creative contribution of the demandant, such as giving specific advice on the characteristic portion 1-(2) before filing.

Thus, we do not find the fact that the demandant creatively contributed to the completion of the characteristic portion 1-(2), according to Evidences A No. 1-No. 16.

Therefore, it is recognized that the demandant did not creatively contribute to the completion of the characteristic portion 1-(2).

(3) Regarding "at least two spray holes arranged in different positions near the other end of the inlet tube, in a direction orthogonal to the advancing direction of the cleaning liquid" (hereinafter referred to as "characteristic portion 1-(3)")

The demandant alleges that the characteristic portion 1-(3) developed during a discussion between ENDO, the demandant, and the demandee (No. 4. 1. (3) B. (B) c).

In the examination of the parties held on February 19, 2015, the demandant stated, "I consider that those are conceived through discussions. I remember that no one insisted his own idea to us or we did not accept it. So, I cannot say clearly" (See No. 5. 2. (1)) in response to the question, "0064 ... who decided the overall configuration? ... For example, the length of the nozzle should be at least one meter, or a nozzle hole is formed to the outside on the side, in detail." The demandant did not make a statement that he made some specific advice on the position of the spray hole.

The above testimony does not support creative contribution of the demandant to completion of the characteristic portion 1-(3), obviously.

Evidences A No. 1 to No. 16 do not show specific contents of "the discussion between ENDO, the demandant, and the demandee", and do not directly or indirectly show the creative contribution of the demandant, such as giving specific advice on the characteristic portion 1-(3) before filing.

Thus, we do not find the fact that the demandant creatively contributed to the completion of the characteristic portion 1-(3), according to Evidences A No. 1-No. 16.

Therefore, it is recognized that the demandant did not creatively contribute to the completion of the characteristic portion 1-(3).

(4) Summary

The reason alleged by the demandant and evidences submitted cannot invalidate the patent relating to the invention 1.

3. Regarding creative contribution of the demandant to completion of the characteristic portion of the invention 2

The characteristics portion of the invention 2 is, as described above, "the nozzle is configured to keep the state once it is pressed, and to continuously eject cleaning liquid for 5 to 20 minutes" (hereinafter referred to as " characteristic portion 2").

The demandant alleges that the characteristic portion 2 was suggested by ENDO, and the nozzle configured to be locked when pressed once and to continuously eject the content had been available in the market (No. 4. 1. (3) B. (C) and No. 4. 1. (3) C. (C)).

In the examination of the parties held on February 19, 2015, the demandant stated, "...A trigger of the spray can be generally configured to discharge the content only during the time where a button is pressed. ENDO found a trigger configured to be locked by pressing a button strongly, and suggested using it ..." (See No. 5. 3. (2)) in response to the question, "0135 ... You developed ideas on the tube or the direction of the outlet. Do you remember the person who conceived of each of the ideas?" The demandant did not make a statement that he made some specific advice on the characteristic portion 2.

The above testimony supports ENDO as a person who suggested the nozzle configured to be locked when pressed once and to continuously eject the content, while does not support creative contribution of the demandant to completion of the characteristic portion 2, obviously.

Evidences A No. 1 to No. 16 do not directly or indirectly show the creative contribution of the demandant, such as giving specific advice on the characteristic portion 2 before filing.

Thus, we do not find the fact that the demandant creatively contributed to the completion of the characteristic portion 2, according to Evidences A No. 1-No. 16.

Therefore, it is recognized that the demandant did not creatively contribute to the completion of the characteristic portion 2.

Thus, the reason alleged by the demandant and evidences submitted cannot invalidate the patent relating to the invention 2.

4. Regarding creative contribution of the demandant to completion of the characteristic portion of the invention 3

The characteristics portion of the invention 3 is, as described above, "the spray holes arranged so as to spray the cleaning liquid at an ejection angle of 30-120 degrees" (hereinafter referred to as "characteristic portion 3").

The demandant alleges that the characteristic portion 3 developed during a discussion between ENDO, the demandant, and the demandee (No. 4. 1. (3) B. (D) and No. 4. 1. (3) C. (D)).

In the examination of the parties held on February 19, 2015, the demandant did not make a statement that he gave some specific advice.

Evidences A No. 1 to No. 16 do not directly or indirectly show the creative contribution of the demandant, such as giving specific advice on the characteristic portion 3 before filing.

Thus, we do not find the fact that the demandant creatively contributed to the completion of the characteristic portion 3, according to Evidences A No. 1-No. 16.

Therefore, it is recognized that the demandant did not creatively contribute to the completion of the characteristic portion 3.

Thus, the reason alleged by the demandant and evidences submitted cannot invalidate the patent relating to the invention 3.

5. Regarding involvement of the demandant in development of the product relating to the inventions 1 to 3

The demandant alleges, "The patent could not be completed without any advice from the demandant to the demandee, from the middle of development to preparation of the written opinion, on technology and the cleaner components" (No. 4. 1. (3) B. (E)).

Regarding the advice on the cleaner components, it can be supposed that the demandant worked for Du Pont Kabushiki Kaisha before filing the patent and has been given advice based on chemical knowledge, from the description in Evidences A No. 7 and No. 8 or the testimony of the demandant (See No. 5. 1. (1)).

However, the cleaner components are irrelevant to the characteristic portions of the inventions 1 to 3.

The demandant did not testify about the detail content of the advice other than the cleaner components, and did not submit any evidence showing the detail content of the advice.

The demandant made hearsay statements on the characteristic portions of the inventions 1 to 3, such as, "I heard that the idea of "using a spray can" was conceived when ENDO brought it and talked with OGAWA" (See No. 5. 1. (2)), "...I guess that it is a gasoline engine. I heard that a lot of black smoke was emitted when the engine

was cleaned with a cleaning device" (See No. 5. 2. (2)), and "...At that time, the configuration had not been decided yet. I heard that it was enough to reduce the device to the spray can as a result" (See No. 5. 2. (2)). We do not find the fact that the demandant engaged in and creatively contributed to creation of the characteristic portions of the inventions 1 to 3, according to Evidences A No. 1-No. 16.

The demandee submitted the evidences, such as the notebook of the demandee of Evidences B No. 10 and No. 15, and experimental data of Evidence B No. 12, and alleges that the demandee had contributed to creation of the characteristic portions of the inventions 1 to 3 before filing the patent, while the demandant has not made allegations denying the above allegation nor submitted any evidence.

We have to acknowledge that the demandant involved in the development of the product relating to the inventions 1 to 3, only for the advice based on chemical knowledge on the cleaner components, and did not creatively contribute to the characteristic portions of the inventions 1 to 3, while joining in discussions.

6. Regarding other demandant's allegations

The allegations of the demandant, "as the demandant entrusted the demandee, who was the president, with the procedures of application for registration of the patent, application for the patent right was registered by the demandee independently as an inventor, an applicant, and a patent holder without permission from the demandant" (No. 3. 1. (3) A. (B)), and "The demandant has focused on product development in order to put the business of the company on track early without paying special attention to ownership of the right at the time of application. The demandee submitted the application alone with explanations about reduction in cost for the application and without clear agreement from the demandant and ENDO, on the other hand, the cost is paid from Japan integrated works Co., Ltd. after establishment" (No. 4. 1. (3) B. (E)) is supposed to be the purport of allegation, "The patent holder of the patent is Japan integrated works Co., Ltd." (hereinafter referred to as "other allegation").

However, the reason for invalidation is, as shown in No. 4. 1. (1), "the invention relating to the patent was jointly invented by the demandant and the demandee, and the demandee filed an application independently, thus the demandee should not be granted a patent for the invention in accordance with the provisions of Article 38 of the Patent Act", while the "other allegation" is irrelevant to the reason for invalidation, and improper.

Thus, the "other allegation" cannot be accepted.

No. 6. Conclusion

As described above, the demandant cannot be recognized as a joint inventor of the inventions 1 to 3. None of the reasons for invalidation alleged by the demandant on the inventions 1 to 3 has reasons.

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 the Patent Act.

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

September 16, 2015

Chief administrative judge: CHIBA, Shigenari
Administrative judge: WATANABE, Toyohide
Administrative judge: WATANABE, Makoto