Trial decision

Invalidation No.2016-800025

Nagasaki, Japan
Demandant ARTECH KOHBOH CO. LTD

Fukuoka, Japan
Patent Attorney ARIYOSHI, Shuichiro

Fukuoka, Japan
Patent Attorney MORITA, Yasuyuki

Nagasaki, Japan
Attorney KAJIMURA, Ryuta

Fukuoka, Japan
Attorney TANAKA, Masatoshi

Fukuoka, Japan
Attorney OTSUBO, Megumi

Fukuoka, Japan
Attorney HORITA, Hiroki

Saitama, Japan
Demandee ECOPOWDER Corp.

Tokyo, Japan
Attorney ONO, Seiji

Tokyo, Japan
Attorney ONO, Hiroyuki

Tokyo, Japan
Patent Attorney SAKATANI, Seiichi

The case of trial regarding the invalidation of Japanese Patent No. 4177719, entitled "ANT PROOF COMPOSITION," between the parties above has resulted in the following trial decision:

Conclusion

The scope of claims of Patent No. 4177719 shall be corrected with respect to Claims 1 to 14 after the correction as in the corrected scope of claims attached to the written correction request.

The trial of the case was groundless.

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

Reason

No. 1 History of the procedures

The patent application of this case was filed on June 24, 2003 (priority claim: June 28, 2002) by the Applicant, Saito Nobuo (hereinafter referred to as "Mr. Saito") with respect to the invention entitled "Ant-Proof composition" (Japanese Patent Application No. 2003-179339), and subjected to the registration of establishment on August 29, 2008 as Patent No. 4177719 (The number of Claims: 7; hereinafter the patent is referred to as "the Patent," and the specification is referred to as "the specification of the Patent" and the claims are referred to as "the claims of the Patent"). Thereafter, this patent right was transferred on November 9, 2009 from Mr. Saito to ECOPOWDER Corp. (hereinafter referred to as "Demandee").

Regarding the Patent, an interested party of Ahtech Kohboh Co., Ltd. (hereinafter referred to as "Demandant") has made a demand for Invalidation Trial of the case. The history of the procedures is as follows:

February 19, 2016 (by Demandant)	submission of the written demand and Evidence A Nos. 1 to 45
May 13, 2016 Demandee)	submission of written response and Evidence B Nos. 1 to 31 (by
May 13, 2016	written correction request (by Demandee)
June 28, 2016 (by the Demandant)	submission of written refutation and Evidence A Nos. 46 to 52
July 21, 2016	decision on acceptance or non-acceptance of amendment

July 21, 2016 inquiry by the body
August 22, 2016 response letter and written statement (by Demandant)
August 23, 2016 submission of the written reply for the trial case (2) and Evidence B Nos. 32 to 36 (by Demandee)
September 30, 2016 notification of trial examination
October 14, 2016 written statement (by Demandee)
November 1, 2016 submission of written statement and Evidence B Nos. 37 to 47 (by Demandee)
November 2, 2016 submission of written statement and Evidence A Nos. 53 to 63-2 (by Demandant)
November 16, 2016 submission of oral proceedings statement brief and Evidence A No. 64 (by Demandant)
November 16, 2016 submission of oral proceedings statement brief and Evidence B Nos. 48 to 53 (by Demandee)
November 30, 2016 oral proceeding
December 14, 2016 submission of written statement and resubmission of Evidence A Nos. 64 to Evidence A 64-9, submission of Evidence A No. 65 (by Demandant)
December 14, 2016 submission of written statement (2) and resubmission of Evidence B No. 17, submission of Evidence B Nos. 54 to 61 (by Demandee)
December 28, 2016 written statement (by Demandee)
December 28, 2016 submission of written statement (3) and Evidence B No. 62 (by Demandee)
February 27, 2017 notice of conclusion of proceedings

No. 2 Judgment by the body regarding the correction
1. Contents of correction

The Demandee submitted a written correction request on May 13, 2016 within a period for Demandee to submit a written answer designated by chief administrative judge when a copy of written demand was delivered and demanded the correction in each group of claims as in the corrected scope of claims attached to the written correction request (Hereinafter referred to as "correction of the case").

The Contents of correction are as follows:
(1) Correction A

In the Claim 1 of the case, "An ant-proof composition comprising a charcoal powder derived from plants, one or two or more selected from the group consisting of a film-forming polymer emulsion, water-soluble polysaccharides and a polyamide resin,

and boric acids." is to be corrected to "An ant-proof composition for the formation of coating, comprising a charcoal powder derived from plants, a film-forming polymer emulsion, and boric acids, wherein the content of said boric acids is 1 to 40 mass%."

(2) Correction B

Claim 2 of the claims of the Patent shall be cancelled.

(3) Correction C

In the Claim 3 of the case, "The ant-proof composition of Claim 1 or 2, wherein a film-forming polymer is acrylic-based polymer or vinyl acetate-based polymer." is to be corrected to "An ant-proof composition for the formation of coating, comprising a charcoal powder derived from plants, a film-forming polymer emulsion, and boric acids, wherein said film-forming polymer is acrylic-based polymer or vinyl acetate-based polymer."

(4) Correction D

Claim 4 of the claims of the Patent shall be cancelled.

(5) Correction E

Claim 5 of the claims of the Patent shall be cancelled.

(6) Correction F

Claim 6 of the claims of the Patent shall be cancelled.

(7) Correction G

Claim 7 of the claims of the Patent shall be cancelled.

(8) Correction H

The following new Claim 8 shall be added to the scope of claims of the Patent: "An ant-proof composition for the formation of coating, comprising a charcoal powder derived from plants, water-soluble polysaccharides, and boric acids."

(9) Correction I

The following new Claim 9 shall be added to the scope of claims of the Patent: "The ant-proof composition of Claim 8, wherein said water-soluble polysaccharides are starch or cellulose ether."

(10) Correction J

The following new Claim 10 shall be added to the scope of claims of the Patent: "The ant-proof composition of Claim 9, wherein said cellulose ether is methylcellulose or hydroxypropylmethylcellulose."

(11) Correction K

The following new Claim 11 shall be added to the scope of claims of the Patent: "An ant-proof composition for the formation of coating, comprising a charcoal powder derived from plants, a polyamide resin, and boric acids."

(12) Correction L

The following new Claim 10 shall be added to the scope of claims of the Patent: "The ant-proof composition of Claim 11, wherein said polyamide resin is amorphous and ethanol-soluble polyamide."

(13) Correction M

The following new Claim 13 shall be added to the scope of claims of the Patent: "The ant-proof composition of any one of Claims 1, 3, and 8 to 12, wherein said charcoal is a white charcoal or a mixture of white charcoal and black charcoal."

(14) Correction N

The following new Claim 14 shall be added to the scope of claims of the Patent: "The ant-proof composition of any one of Claims 1, 3, and 8 to 13, further comprising silica."

2 Judgment

The above matters of correction are considered.

(1) Regarding a group of claims

Regarding Claims 1 to 7 according to the corrections A to N, all of Claims 2 to 7 directly or indirectly refer to Claim 1. Thus, the corrections correspond to Article 45-4 of Regulations under the Patent Act, and complies with the provision of Article 134-2(3) of the Patent Act.

(2) Regarding correction A

The correction A consists of incorporating a language of "ant-proof composition

for the formation of coating," to Claim 1 before correction (Hereinafter referred to as "correction A-1") , correcting "one or two or more selected from the group consisting of a film-forming polymer emulsion, water-soluble polysaccharides, and a polyamide resin" to "a film-forming polymer emulsion" (Hereinafter referred to as "correction A-2"), and incorporating the content of "the content of said boric acids is 1 to 40 mass%" (Hereinafter referred to as "correction A-3").

The corrections A-1 to A-3 are hereinafter considered respectively.

A Purpose of correction

The correction A-1 is to limit the use of ant-proof composition to "formation of coating."

The correction A-2 is to limit the components of "one or two or more selected from the group consisting of a coat-forming polymer emulsion, water-soluble polysaccharides, and a polyamide resin" of the ant-proof composition to "a film-forming polymer emulsion."

The correction A-3 is to limit the content of boric acids in the ant-proof composition to "1 to 40 mass%."

Accordingly, the corrections A-1 to A-3 are aimed at restriction of the scope of claims provided in item (i) of the proviso to Article 134-2(1) of the Patent Act.

B Regarding the substantial expansion and change of the scope of the claims

As discussed in the above item A, the corrections A-1 to A-3 limit the scope of claims, and definitely do not correspond to substantial expansion or change of the scope of the claims. Therefore, the corrections comply with the provision of Article 126(6) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

C Regarding addition of new matter

Regarding the correction A-1, the specification attached to the application discloses in paragraph 0014 that "In the Invention, a composition comprising a film-forming polymer composed of mainly a charcoal powder derived from plants, water-soluble polysaccharides, and a polyamide resin retains boric acids to form a coating on a surface of wood materials, etc." and that the ant-proof composition is for the formation of a coating. Therefore, the correction A-1 has been made within the scope of matters described in the specification or the claims originally attached to the application.

The correction A-2 has definitely been made within the scope of matters described in the specification or the claims originally attached to the application.

The correction A-3 has been made within the scope of matters described in the specification or the claims originally attached to the application, since paragraph 0045 of the specification originally attached to the application has a description of "the content of boric acids is preferably 1 to 40 mass% in the ant-proof composition."

Accordingly, the corrections A-1 to A-3 comply with the provision of Article 126(5) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

(3) Regarding corrections B, and D to G

A Purpose of correction

The corrections B, and D to G are to cancel Claims 2, and 4 to 7 before correction. Therefore, the corrections B, and D to G are aimed at restriction of the scope of claims provisioned in item (i) of the proviso to Article 134-2(1) of the Patent Act.

B Regarding the substantial expansion and change of the scope of the claims, and the addition of new matter

As discussed in the above item A, the corrections B, and D to G cancel Claims 2, and 4 to 7, and definitely do not correspond to substantial expansion or change of the scope of the claims and the addition of new matter. Therefore, the corrections comply with the provision of Articles 126(5) and (6) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

(4) Regarding correction C

The correction C is to dissolve the reference of Claim 3 before correction to Claim 1 before correction and make Claim 3 independent from Claim 1 (Hereinafter referred to as "the correction C-1") and add the language of "ant-proof composition for the formation of coating," to Claim 1 before correction (Hereinafter referred to as "the correction C-2") and correct the following options of Claim 1 before correction: "one or two or more selected from the group consisting of a film-forming polymer emulsion, water-soluble polysaccharides, and a polyamide resin" with "a film-forming polymer emulsion" in accordance with the correction to make Claim 3 before correction become independent from the recitation of Claim 1 (Hereinafter referred to as "the correction C-3").

The corrections C-1 to C-3 are hereinafter considered respectively.

A Purpose of correction

The correction C-1 is to dissolve the reference of a claim to the other claims and make the claim independent from the other claims, which corresponds to a correction for the purpose of dissolving the reference of a claim to the other claims and making the claim independent from the other claims, as provided in item (iv) of the proviso to Article 134-2(1) of the Patent Act.

The correction C-2 is to limit the use of ant-proof composition to "formation of coating," and thus is aimed at restriction of the scope of claims provided in item (i) of the proviso to Article 134-2(1) of the Patent Act.

In accordance with the correction C-1 that makes Claim 3 before correction, which refers to Claim 1 and further recites that "a film-forming polymer is acrylic-based polymer or vinyl acetate-based polymer," independent from the other claims, the correction C-3 limits the recitation of "one or two or more selected from the group consisting of a film-forming polymer emulsion, water-soluble polysaccharides, and a polyamide resin" of Claim 1 before correction to "film-forming polymer emulsion" for technical consistency and clarification, because "acrylic-based polymer or vinyl acetate-based polymer" is a "polymer emulsion," not "water-soluble polysaccharides and a polyamide resin." Thus it corresponds to a correction for the purpose of clarification of ambiguous statement provided in the item (iii) of the proviso to Article 134-2(1) of the Patent Act.

Accordingly, the corrections C-1 to C-3 are corrections for the purpose provided in the proviso to Article 134-2(1) of the Patent Act.

B Regarding the substantial expansion and change of the scope of the claims

The correction C-1 is to dissolve the reference of a claim to the other claims and make the claim independent from the other claims. It is obvious that it does not correspond to substantial expansion or change of the scope of the claims, since the content of the claims is not changed.

It is obvious that the correction C-2 does not correspond to substantial expansion or change of the scope of the claims, since it limits the scope of the claims.

It is obvious that the correction C-3 does not correspond to substantial expansion or change of the scope of the claims, since it technically clarifies the recitation of the claims.

Accordingly, the corrections C-1 to C-3 comply with the provision of Article 126(6) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

C Regarding addition of new matter

The correction C-1 is to dissolve the reference of a claim from the other claims and make the claim independent from the other claims, and thus obviously does not correspond to the addition of new matter.

The correction C-2 is the same correction as the correction A-1 and thus it can be said that it has been made within the scope of matters described in the specification or the claims originally attached to the application for the same reason as that discussed in the above item (2)C.

It can be said that the correction C-3 has been made within the scope of matters described in the specification or the claims attached to the application, because the specification originally attached to the application discloses in paragraph 0029 that "a polymer dispersed into a film-forming polymer emulsion used herein is a film-forming polymer," and discloses as specific examples acrylic-based polymer in paragraph 0030 and vinyl acetate-based polymer in paragraph 0031.

Accordingly, the corrections C-1 to C-3 comply with the provision of Article 126(5) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

(5) Regarding correction H

The correction H is to add a language of "ant-proof composition for the formation of coating" to Claim 1 before correction (Hereinafter referred to as "correction H-1") and correct "one or two or more selected from the group consisting of a film-forming polymer emulsion, water-soluble polysaccharides, and a polyamide resin" with "water-soluble polysaccharides" (Hereinafter referred to as "correction H-2") to make a new Claim 8.

The corrections H-1 to H-2 are hereinafter considered respectively.

A Purpose of correction

The correction H-1 is to limit the use of ant-proof composition to "formation of coating."

The correction H-2 is to limit the components of "one or two or more selected from the group consisting of a film-forming polymer emulsion, water-soluble polysaccharides, and a polyamide resin" of the ant-proof composition to "water-soluble polysaccharides."

Further, Claim 8 after correction is newly added; however, as aforementioned, this is originated from Claim 1 before correction having a constituent component as alternatives of "one or two or more selected from the group consisting of a film-forming polymer emulsion, water-soluble polysaccharides, and a polyamide resin," which are

respectively divided, for restriction, into "a film-forming polymer emulsion" of Claim 1 after the correction, "water-soluble polysaccharides" of Claim 8 after the correction, and "a polyamide resin" of Claim 11 after the correction to make a plurality of claims. This type of correction corresponds to the case where the number of claims is increased as a result of dividing a claim before correction having substantially a plurality of claims into independent claims. Therefore, it cannot be said that the correction may substantially add a new claim. The correction to add Claim 8 is aimed at restriction of the scope of claims (See 2007 (Gyo-Ke) 10335 and 2011 (Gyo-Ke) 10226)

Further, as mentioned below, the corrections to add Claims 9 to 14 correspond to the case where the number of claims becomes increased as a result of dividing a claim before correction having substantially a plurality of claims into independent claims. Therefore, it cannot be said that the corrections substantially add a new claim, but the corrections are aimed at restriction of the scope of claims.

Accordingly, the corrections H-1 to H-2 are aimed at restriction of the scope of claims provided in item (1) of the proviso to Article 134-2(1) of the Patent Act.

B Regarding substantial expansion and change of the scope of the claims

As discussed in the above item A about substantial expansion and change of the scope of the claims, the corrections H-1 to H-2 are to limit the scope of claims, and definitely do not correspond to the substantial expansion or change of the scope of the claims. Therefore, the corrections comply with the provision of Article 126(6) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

C Regarding addition of new matter

The correction H-1 is the same correction as the correction A-1 and thus has definitely been made within the scope of matters described in the specification or the claims originally attached to the application for the same reason as that discussed in the above item (2)C.

The correction H-2 has definitely been made within the scope of matters described in the specification or the claims originally attached to the application.

Accordingly, the corrections H-1 to H-2 comply with the provision of Article 126(5) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

(6) Regarding correction I

The content of Claim 9 after correction according to the correction I is the same as that of the cancelled Claim 4 before correction, which referred to Claim 1 before

correction. The correction I adds a new Claim 9, which refers to Claim 8 after correction that limits the alternatives of Claim 1 before correction to "water-soluble polysaccharides."

A Purpose of correction

Claim 9 added by the correction I has the same content as that of Claim 4 before correction. As discussed in the above item (5)A, the correction H for Claim 8 to which Claim 9 refers is aimed at restriction of the scope of claims. Therefore, the correction I also corresponds to a correction aiming at restriction of the scope of claims as provided in the item (1) of the proviso to Article 134-2(1) of the Patent Act.

B Regarding substantial expansion and change of the scope of the claims

As discussed in the above item (5)B, it is obvious that the correction H in Claim 8 to which Claim 9 refers does not correspond to substantial expansion or change of the scope of the claims, since it limits the scope of the claims. Therefore, it is also obvious that the correction I does not correspond to substantial expansion or change of the scope of the claims. Therefore, the correction I complies with the provision of Article 126(6) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

C Regarding addition of new matter

As is discussed in the above item (5)C, the correction H in Claim 8 to which Claim 9 refers does not correspond to the addition of new matter. Thus the correction I does not correspond to the addition of new matter. The correction definitely has been made within the scope of matters described in the specification or the claims originally attached to the application, and thus it complies with the provision of Article 126(5) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

(7) Regarding correction J

Claim 10 after correction according to the correction J has the same content as that of the cancelled Claim 5 before correction, which referred to Claim 4 before correction. The correction J adds a new Claim 10, which refers to Claim 9 after correction that limits the alternatives of Claim 1 before correction to "water-soluble polysaccharides."

A Purpose of correction

Claim 10 added by the correction J has the same content as that of Claim 5

before correction. As discussed in the above item (6)A, the correction I in Claim 9 to which Claim 10 refers is aimed at restriction of the scope of claims. Therefore, the correction J also corresponds to a correction aiming at restriction of the scope of claims provided in item (i) of the proviso to Article 134-2(1) of the Patent Act.

B Regarding substantial expansion and change of the scope of the claims

As discussed in the above item (6)B, it is obvious that the correction I in Claim 9 to which Claim 10 refers does not correspond to substantial expansion or change of the scope of the claims, since it limits the scope of the claims. Therefore, it is also obvious that the correction J does not correspond to substantial expansion or the change of the scope of the claims. Therefore, the correction I complies with the provision of Article 126(6) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

C Regarding addition of new matter

As discussed in the above item (6)C, the correction I in Claim 9 to which Claim 10 refers does not correspond to the addition of new matter. Thus, the correction J does not correspond to the addition of new matter. The correction J definitely has been made within the scope of matters described in the specification or the claims originally attached to the application, and thus it complies with the provision of Article 126(5) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

(8) Regarding correction K

The correction K is to add the language of "ant-proof composition for the formation of coating" to Claim 1 before correction (Hereinafter referred to as "correction K-1") and correct "one or two or more selected from the group consisting of a film-forming polymer emulsion, water-soluble polysaccharides, and a polyamide resin," which were the alternatives of Claim 1 before correction, with "a polyamide resin" (Hereinafter referred to as "correction K-2") to make a new Claim 11.

The corrections K-1 to K-2 are hereinafter considered respectively.

A Purpose of correction

The correction K-1 is to limit the use of ant-proof composition to "formation of coating."

The correction K-2 is to limit the components of "one or two or more selected from the group consisting of a film-forming polymer emulsion, water-soluble polysaccharides, and a polyamide resin" of the ant-proof composition to "a polyamide

resin."

Accordingly, the corrections K-1 to K-2 are aimed at restriction of the scope of claims provided in item (i) of the proviso to Article 134-2(1) of the Patent Act.

B Regarding substantial expansion and change of the scope of the claims

As discussed in the above item A, the corrections K-1 to K-2 are to limit the scope of claims, and definitely do not correspond to substantial expansion or the change of the scope of the claims. Therefore, the corrections comply with the provision of Article 126(6) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

C Regarding addition of new matter

The correction K-1 is the same correction as the correction A-1 and thus has definitely been made within the scope of matters described in the specification or the claims originally attached to the application for the same reason as that discussed in the above item (2)C.

The correction K-2 has definitely been made within the scope of matters described in the specification or the claims originally attached to the application.

Accordingly, the corrections K-1 to K-2 comply with the provision of Article 126(5) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

(9) Regarding correction L

The content of Claim 12 after correction according to the correction L is the same as that of the cancelled Claim 6 before correction, which referred to Claim 1 before correction. The correction L adds a new Claim 12, which refers to Claim 11 after correction that limits the alternatives of Claim 1 before correction to "a polyamide resin."

A Purpose of correction

Claim 12 added by the correction L has the same content as that of Claim 6 before correction. As discussed in the above item (8)A, the correction K for Claim 11 to which Claim 12 refers is aimed at restriction of the scope of claims. Therefore, the correction L also corresponds to a correction aiming at restriction of the scope of claims as provided in item (1) of the proviso to Article 134-2(1) of the Patent Act.

B Regarding substantial expansion and change of the scope of the claims

As discussed in the above item (8)B, it is obvious that the correction K in Claim 11 to which Claim 12 refers does not correspond to substantial expansion or change of the scope of the claims, since it limits the scope of the claims. Therefore, it is also obvious that the correction L does not correspond to substantial expansion or change of the scope of the claims. Therefore, the correction L complies with the provision of Article 126(6) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

C Regarding addition of new matter

As discussed in the above item (8)C, the correction K in Claim 11 to which Claim 12 refers does not correspond to the addition of new matter. Thus, the correction L does not correspond to the addition of new matter. The correction L definitely has been made within the scope of matters described in the specification or the claims originally attached to the application, and thus it complies with the provision of Article 126(5) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

(10) Regarding correction M

Claim 13 after correction according to the correction M has the same content as that of the cancelled Claim 2 before correction, which referred to Claim 1 before correction. Meanwhile, as aforementioned, the Claim 1 before correction is divided into independent claims of Claims 1, 3, 8, and 11, respectively, which are further limited by Claims 4 to 6 before correction to make Claims 9, 10, and 12. As a result, the correction M adds a new Claim 13 which refers to any one of Claims 1, 3, and 8 to 12 after correction.

A Purpose of correction

Claim 13 added by the correction M has the same content as that of Claim 2 before correction. The corrections A, C, and H to L in Claims 1, 3, and 8 to 12 to which Claim 13 corrected by the correction M refers are aimed at the restriction of the scope of claims and the clarification of ambiguous statement as discussed in the above items (2)A, and (4)A to (9)A. Therefore, the correction M also corresponds to the correction which is aimed at restriction of the scope of claims and clarification of ambiguous statement provisioned in the items (i) and (iii) of the proviso to Article 134-2(1) of the Patent Act.

B Regarding substantial expansion and change of the scope of the claims

As is discussed in the above (2)B, and (4)B to (9)B, it is obvious that the corrections A, C, and H to L in Claims 1, 3, and 8 to 12 to which Claim 13 refers do not correspond to substantial expansion or change of the scope of the claims. Therefore, it is also obvious that the correction M does not correspond to substantial expansion or change of the scope of the claims. Therefore, the correction M complies with the provision of Article 126(6) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

C Regarding addition of new matter

As discussed in the above items (2)C, and (4)C to (9)C, the corrections A, C, and H to L in Claims 1, 3, and 8 to 12 to which Claim 13 refers do not correspond to the addition of new matter. Thus the correction M also does not correspond to the addition of new matter. The correction M definitely has been made within the scope of matters described in the specification or the claims originally attached to the application, and thus it complies with the provision of Article 126(5) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

(11) Regarding correction N

Claim 14 after correction according to the correction N has the same content as that of the cancelled Claim 7 before correction, which referred to Claims 1 to 6 before correction. Meanwhile, as aforementioned, Claim 1 before correction is divided into independent claims of Claims 1, 3, 8, and 11 respectively, which are further limited by Claims 2, and 4 to 6 before correction to make Claims 9, 10, 12, and 13. As a result, the correction N adds a new Claim 14 which refers to any one of Claims 1, 3, and 8 to 13 after correction.

A Purpose of correction

Claim 14 added by the correction N has the same content as that of Claim 7 before correction. As is discussed in the above items (2)A, and (4)A to (10)A, the corrections A, C, and H to M in Claims 1, 3, and 8 to 13 to which Claim 14 refers are aimed at the restriction of the scope of claims and the clarification of ambiguous statement. Therefore, the correction N also corresponds to a correction aiming at the restriction of the scope of claims and the clarification of ambiguous statement as provided in the items (i) and (iii) of the proviso to Article 134-2(1) of the Patent Act.

B Regarding substantial expansion and change of the scope of the claims

As is discussed in the above (2)B, and (4)B to (10)B, it is obvious that the corrections A, C, and H to M in Claims 1, 3, and 8 to 13 to which Claim 14 refers do not correspond to the substantial expansion or change of the scope of the claims. Therefore, it is also obvious that the correction N does not correspond to substantial expansion or change of the scope of the claims. Therefore, the correction N complies with the provision of Article 126(6) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

C Regarding addition of new matter

As discussed in the above items (2)C, and (4)C to (10)C, the corrections A, C, and H to M in Claims 1, 3, and 8 to 13 to which Claim 14 refers do not correspond to the addition of new matter. Thus, the correction N also does not correspond to the addition of new matter. The correction N definitely has been made within the scope of matters described in the specification or the claims originally attached to the application, and thus it complies with the provision of Article 126(5) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act.

3 Summary

As aforementioned, the Correction complies with the provision of Article 134-2(1) and (3) of the Patent Act and complies with the provision of Articles 126(5) and (6) as applied mutatis mutandis pursuant to Article 134-2(9) of the Patent Act. Therefore, the Correction shall be accepted.

No. 3 The Invention

As discussed in the above "No. 2," the Correction of the case has been approved. Thus, the Inventions according to Claims 1, 3, and 8 to 14 of the Patent (Hereinafter referred to "Invention 1," "Invention 3," and "Invention 8" to "Invention 14," collectively referred to as "Invention") are specified by the following matters recited in Claims 1, 3, and 8 to 14 of the scope of claims after correction:

"[Claim 1] An ant-proof composition for the formation of coating, comprising a charcoal powder derived from plants, a film-forming polymer emulsion, and boric acids, wherein a content of said boric acids is 1 to 40 mass%.

[Claim 3] An ant-proof composition for the formation of coating, comprising a charcoal powder derived from plants, a film-forming polymer emulsion, and boric acids, wherein said film-forming polymer emulsion is acrylic-based polymer or vinyl acetate-based polymer.

[Claim 8] An ant-proof composition for the formation of coating, comprising a charcoal powder derived from plants, water-soluble polysaccharides, and boric acids.
[Claim 9] The ant-proof composition of Claim 8, wherein said water soluble polysaccharides are starch or cellulose ether.
[Claim 10] The ant-proof composition of Claim 9, wherein cellulose ether is methylcellulose or hydroxypropylmethylcellulose.
[Claim 11] An ant-proof composition for the formation of coating, comprising; a charcoal powder derived from plants; a polyamide resin; and boric acids.
[Claim 12] The ant-proof composition of Claim 11, wherein said polyamide resin is amorphous and ethanol-soluble polyamide.
[Claim 13] The ant-proof composition of any one of Claims 1, 3, and 8 to 12, wherein said charcoal is a white charcoal or a mixture of white charcoal and black charcoal.
[Claim 14] The ant-proof composition of any one of Claims 1, 3, and 8 to 13, further comprising silica.

No. 4 Object of the demand and summary of the argument and means of Proof submitted by Demandant
1 Summary of Reasons for Invalidation described in the written demand, the written refutation, the written statement on November 2, 2016, and oral proceedings statement brief

The object of the demand as Demandant argued was as follows: "The patent of the inventions according to Claims 1 to 7 of Patent No. 4177719 shall be invalidated. The costs in connection with the trial shall be borne by the demandee." (the written demand, page 3, "6. The object of the demand"). In this regard, the correction of the case was affirmed as discussed in the above "No. 2." Accordingly, the object of the demand as Demandant argued is now as follows: "The patent of the inventions according to Claims 1, 3, and 8 to 14 after correction of Patent No. 4177719 shall be invalidated. The costs in connection with the trial shall be borne by the demandee." (See the 1st oral proceeding record "Demandant 1")

Further, in view of the correction of the case, the Reasons for Invalidation as Demandant argues are generally set forth as below.
(See the written demand, page 79, line 16 to page 93, line 10, the written refutation, page 25, line 9 to page 102, line 10, Decision on acceptance or non-acceptance of amendment, Notification of trial examination "No. 12 (4), (5)," the written statement on November 2, 2016, page 2, line 20 to page 34, line 11, the Oral proceedings statement

brief, page 2, line 17 to page 10, line 17, the 1st oral proceedings record "Demandant 2").

In addition, Demandant withdrew the Reasons for Invalidation 1 to 3 and Demandee agreed to the withdrawal of the Reasons for Invalidation 1 to 3. (See the 1st oral proceedings record "Demandant 3" and "Demandee 3.")

(1) Reasons for invalidation 4

The Inventions 1, 3, and 8 to 14 were easily conceivable by a skilled person in the art on the basis of the invention described in Evidence A No. 46 (main Cited Document) and Evidence A Nos. 1, 2, 5, and 47 to 50 distributed before the priority date of this case, and thus could not be granted a patent under the provision of Article 29(2) of the Patent Act.

Accordingly, the patents of the Inventions 1, 3, and 8 to 14 have been granted in violation of the provision of Article 29 of the Patent Act, and thus correspond to the provision of Article 123(1)(ii) of the Patent Act and should be invalidated.

(2) Reasons for invalidation 5

The Invention was granted a patent for the application by a person who was not the inventor and did not succeed a right to obtain a patent. Therefore, the Invention corresponds to the provisions of Article 123(1)(vi) of the Patent Act before revision, of which the provisions then in force shall remain applicable according to revision supplement Article 2(9) of Heisei 23-nen Law No. 63 (Hereinafter referred to as "Article 123(1)(vi) of the Patent Act before revision") and thus should be invalidated.

2 Evidences Submitted by the Demandant

Means of proof submitted by the Demandant is set forth as below:

(1) Means of Proof submitted together with Invalidation Demand

Evidence A No. 1: Japanese Unexamined Patent Application Publication No. 1-295948

Evidence A No. 2: Japanese Unexamined Patent Application Publication No. 8-143401

Evidence A No. 3: Japanese Unexamined Patent Application Publication No. 2000-26218

Evidence A No. 4: Fixing of boric acid to wood materials by high boiling point acrylic-based resin raw material (I), Rinsan shiken johou, Vol. 12, No. 6, pages 16 to 18, 1998

Evidence A No. 5: Japanese Unexamined Patent Application Publication No. 11-29742

Evidence A No. 6: Japanese Unexamined Patent Application Publication No. 2001-294506

Evidence A No. 7: Japanese Unexamined Patent Application Publication No. 6-107510
Evidence A No. 8: Japanese Unexamined Patent Application Publication No. 2003-267802
Evidence A No. 9: Japanese Unexamined Patent Application Publication No. 2003-137711
Evidence A No. 10: Japanese Unexamined Patent Application Publication No. 5-339114
Evidence A No. 11: Japanese Unexamined Patent Application Publication No. 2005-336271
Evidence A No. 12: Report of experimental results, President of Forest Research and Management Organization, April 16, 2002
Evidence A No. 13: Basic dealership agreement, manufacturer: Ahtech Kohboh Co., Ltd., Dealer: Kabushikigaisha Nichiei Jutaku Kensetsu, July 15, 1999
Evidence A No. 14: Appendix of basic dealership agreement, manufacturer: Ahtech Kohboh Co., Ltd., Dealer: ECOPOWDER Corp., Kabushikigaisha Nichiei Jutaku Kensetsu, June 14, 2000
Evidence A No. 15: Healthco Cure dealership agreement, Sales (manufacturer): Ahtech Kohboh Co., Ltd., Buyer (Dealer): ECOPOWDER Corp., July 15, 2001
Evidence A No. 16: Japanese Unexamined Patent Application Publication No. 10-67965
Evidence A No. 17: Japanese Unexamined Patent Application Publication No. 10-110136
Evidence A No. 18: Report of experimental results, Chief of Forest Research and Management Laboratory, May 26, 1998
Evidence A No. 19: Outdoor ant-proof test results for up to 6 years in Kumamoto, written by Kentaro Suzuki, Abstracts of the 51st Annual Meeting of Japan Wood Research Society, Japan Wood Research Society, page 407, April 2nd to 4th, 2001
Evidence A No. 20: Outdoor ant-proof test results of various wood preservatives for up to 7 years, written by Kentaro Suzuki, Abstracts of the 52nd Annual Meeting of Japan Wood Research Society, Japan Wood Research Society, page 399, April 2nd to 4th, 2002
Evidence A No. 21: Surface flammability and fire resistance of wood materials treated with boric acid, Technical report of Forest Products Research Institute, Vol. 13, No. 2, pages 8 to 14, 1999
Evidence A No. 22: Research issue Development of manufacturing system of high-resistant wooden material by adhesive mixing method, Web page of scientific research fund-subsidized projects database, December 14, 2015 (Printed date) (https://kaken.nii.ac.jp/d/p/08556028.ja.html)

Evidence A No. 23: Special topic "Q&A relating to wood materials (Part 1)" -wood materials preservation-, Forest Products Research Institute letter, October issue of 2001, pages 2 to 16, 2001
Evidence A No. 24: Bibliography and Claims 1 to 81 of Republication of International publication No. 01-097965, from webpage of J-platpat, August 19, 2015 (Printed date) (https://www7.j-platpat.inpit.go.jp/tkk/tokujitsu/tkkt/TKKT_GM301_Detailed.action)
Evidence A No. 25: Bibliography, abstract, Claim 1 of Japanese Unexamined Patent Application Publication No. 2000-189031, from webpage of J-GLOBAL, August 19, 2015 (Printed date)
(http://jglobal.jst.go.jp/detail.php?JGLOBAL_ID=200903062406357237)
Evidence A No. 26: Writing entitled "Notice of new product release", Ahtech Kohboh Co., Ltd., July 9, 2001, writing entitled "Notice of new product release", Ahtech Kohboh Co., Ltd., July 15, 2001
Evidence A No. 27: Writing entitled "Regarding the results of dealer sales", Ahtech Kohboh Co., Ltd., December 13, 2001
Evidence A No. 28: Order from ECOPOWDER Corp. to Ahtech Kohboh Co., Ltd. on September 3, 2001, invoice from Ahtech Kohboh Co., Ltd. to ECOPOWDER Corp. on September 22, 2001
Evidence A No. 29: Notice of notifying a product release of Demandant's product, Ahtech Kohboh Co., Ltd., August, 2001
Evidence A No. 30: Certificate of contract performance test, Japan Wood Protection Association, August 9, 2001
Evidence A No. 31: Ant-proof efficacy test results of Healthco Cure, Tokyo University of Agriculture, Laboratory of Forest Products Chemistry, September 21, 2001
Evidence A No. 32-1: International Publication No. WO03/005826
Evidence A No. 32-2: U.S. Patent No. 6995199 (a family member of Evidence A No. 32-1)
Evidence A No. 32-3: Chinese Patent No. 1233242, page 1, Abstract (a family member of Evidence A No. 32-1)
Evidence A No. 33: Email from Kentaro Suzuki to Suetake Yuzuru of Ahtech Kohboh Co., Ltd., dated February 6, 2002
Evidence A No. 34: Catalog of Healthco Cure, Ahtech Kohboh Co., Ltd., May 2002
Evidence A No. 35: Writing entitled "Send sample of Healthco Cure 'Catalog four-folded'", Ahtech Kohboh Co., Ltd., June 5, 2002
Evidence A No. 36-1: Receipt of boric acid purchased by Ahtech Kohboh Co., Ltd. from BE International Corporation, Ahtech Kohboh Co., Ltd., May 16, 2002

Evidence A No. 36-2: Delivery slip and Invoice of boric acid purchased by Ahtech Kohboh Co., Ltd. from Yamasan Shoji Co. Ltd., Yamasan Shoji Co., Ltd., June 20, 2002
Evidence A No. 37: Invoice of tar purchased by Ahtech Kohboh Co., Ltd. from limited private company Sanpoh Nenryou, limited private company Sanpoh Nenryou, May 13, 2002
Evidence A No. 38: Invoice of Ultrasol H-40 purchased by Ahtech Kohboh Co., Ltd. from SHOEI YAKUHIN CO., LTD., SHOEI YAKUHIN CO., LTD., June 30, 2002
Evidence A No. 39: Invoice of Apizas AP-DS purchased by Ahtech Kohboh Co., Ltd. from Enseki Tsusho Co., Ltd., Enseki Tsusho Co., Ltd., April 30, 2002
Evidence A No. 40: Invoice of Binchotan powder purchased by Ahtech Kohboh Co., Ltd. from Sankyo Co. Ltd., Sankyo Co., Ltd., April 24, 2002
Evidence A No. 41: Record note (Evidence A No. 41 is not entitled, and thus is referred to as "record note"), Suetake Yuzuru, June 4, 2002 to November 2, 2002
Evidence A No. 42: Note entitled "Test", Suetake Yuzuru, October 23, 2001 to April 5, 2003
Evidence A No. 43: Note entitled "Experiment", Suetake Yuzuru, January 17, 2003 to August 15, 2003
Evidence A No. 44: Register of Patent No. 4177719
Evidence A No. 45: Publication of Patent No. 4177719

(2) Means of Proof submitted together with written refutation
Evidence A No. 46: Japanese Unexamined Patent Application Publication No. 3-200701
Evidence A No. 47: Japanese Unexamined Patent Application Publication No. 7-279271
Evidence A No. 48: Japanese Unexamined Patent Application Publication No. 2002-121497
Evidence A No. 49: Japanese Unexamined Patent Application Publication No. 1-318071
Evidence A No. 50: Japanese Unexamined Patent Application Publication No. 10-265508
Evidence A No. 51: Liquid catalytic activated carbon for ant-proof and preservation, Product manual of Healthco Cure, pages 31, 36, and 37, Ahtech Kohboh Co., Ltd., February, 2003
Evidence A No. 52: Notice sent from Saito Nobuo to Ahtech Kohboh Co., Ltd., August 21, 2009

(3) Means of proof submitted with written statement dated November 2, 2016

Evidence A No. 53: A webpage of KURARAY CO., LTD. describing "a raw material of activated carbon", October 24, 2016 (Printed date) (http://www.kurarayc.co.jp/activecarbon/about/03.html)
Evidence A No. 54: A webpage of Man-ei Kogyo Co. Ltd. describing "kind and use of activated carbon", October 24, 2016 (Printed date) (http://www.man-ei.co.jp/about/02.html)
Evidence A No. 55: A webpage of FUTAMURA CHEMICAL CO., LTD. describing "What is activated carbon?", October 24, 2016 (Printed date) (http://www.futamura.co.jp/activated_carbon/carbon01.html)
Evidence A No. 56: Japanese Unexamined Patent Application Publication No. 50-99870
Evidence A No. 57: Pages of Evidence A No. 41 that attach sticky note describing name as Suetake Yuzuru; Evidence A No. 41, pages 9, 12, 16, 17, 23, 26, 30, and 34; Evidence A No. 42, pages 8 and 11 (Every page number is represented by page number excluding cover page.)
Evidence A No. 58-1: Ahtech Kohboh Co., Ltd., a business card of Suetake Yuzuru
Evidence A No. 58-2: Ahtech Kohboh Co., Ltd., a business card of Suetake Yuzuru
Evidence A No. 59: Sales marketing daily report (July 1st to 5th, 26th, and 27th, August 8th to 11th, September 2nd, 6th to 10th, 24th, and 25th, October 25th and 26th, 2002, November 24, 2001, May 23, 2002, October 16, 2002), Ahtech Kohboh Co., Ltd.
Evidence A No. 60: Diary (July 1st to 7th, and 22nd to 28th, August 5th to 11th, September 2nd to 8th, and 23rd to 29th, October 21st to 27th), Suetake Yuzuru
Evidence A No. 61: Documents showing handwriting of Suetake Yuzuru, Suetake Yuzuru, October 29, 2016
Evidence A No. 62: An email from Morishita Nobuaki of Yamasan Shoji Co., Ltd. to Mr. Suetake on December 6, 2001; a facsimile from Hamasaka Mitsuo of TOYO INK CO., LTD. to Mr. Suetake on December 17, 2002; a technical report sent from Mr. Hamasaka to Mr. Suetake on December 13, 2002; a document sent from Mr. Ishizaki of Mino Ganryo Chemical Co. Ltd. to Mr. Suetake on December 16, 2002; and an email sent from Suzuki Kentaro of Forest Research and Management Laboratory to Suetake Yuzuru on February 6, 2002
Evidence A No. 63-1: Diary (December 9th to 15th), Suetake Yuzuru
Evidence A No. 63-2: Sales marketing daily report (December 12th to 14th, 2002), Ahtech Kohboh Co., Ltd.

(4) Means of Proof submitted together with Oral proceedings statement brief
Evidence A No. 64: Report of Ant-proof efficacy test relating to Demandant's product

submitted to client, Suetake Yuzuru

(5) Means of proof submitted with written statement dated December 14, 2016
Evidence A No. 64 (resubmission): A cover page of pamphlet "SEKISUI HOUSE, LTD., ant-proof efficacy test" collecting Evidence A No. 64-1 to 64-9 together, Ahtech Kohboh Co., Ltd.
Evidence A No. 64-1: Report of outdoor ant-proof efficacy test on ant-proof agent for soil treatment, Suetake Yuzuru
Evidence A No. 64-2: Repellent performance test, Suetake Yuzuru, April 8, 2002
Evidence A No. 64-3: Report of white ant gap penetration test, Suetake Yuzuru, August 1, 2002
Evidence A No. 64-4: Report of white ant gap penetration test, Suetake Yuzuru
Evidence A No. 64-5: Report of white ant moving up and down test, Suetake Yuzuru
Evidence A No. 64-6: Penetration repellent performance test (1), Suetake Yuzuru, October 21, 2001
Evidence A No. 64-7: Penetration repellent performance test (2), Suetake Yuzuru, October 16, 2001
Evidence A No. 64-8: Test report, Nihon Ohyou kagaku kogyo Co. Ltd., October 4, 2000
Evidence A No. 64-9: Preservation efficacy test, Kobayashi Tomonori, October 1, 2002
Evidence A No. 65: Statement, Suetake Yuzuru, December 9, 2016

3 Regarding acceptance or non-acceptance of evidence

Demandee argues that since Evidence A Nos. 41 to 43 have no sign or seal of authors, and thus the authors are not defined and they cannot be authentic, they should be denied to be evidences. (Oral proceedings statement brief, page 21, line 22 to page 23, line 4 from the bottom, the first trial record "Demandee 5")

On the other hand, Demandant argued in the written statement on November 2, 2016, page 29, lines 12 to 25 and page 30, lines 7 to 15 that Evidence A No. 41 attached on page 2 (Evidence A No. 57, page 1) a sticky note described as "Suetake Yuzuru," which was written by Suetake Yuzuru (hereinafter referred to as "Mr. Suetake") and Evidence A No. 61 describe his own name and number written by Mr. Suetake, and the handwriting of Evidence A No. 61 is the same as the handwriting of Evidence A Nos. 41 to 43. Further, Demandant argued in the written statement, page 2, lines 7 to 15 dated December 14, 2016 that the writer of Evidence A Nos. 41 to 43 was Mr. Suetake

by submitting a statement (Evidence A No. 65) that Mr. Suetake described by himself.

In this regard, the body will examine hereinafter whether Evidence A Nos. 41 to 43 were truly authenticated documents.

Referring to Evidence A Nos. 41 to 43, there is no sign or seal of the alleged writer, Mr. Suetake, or his representative. Indeed, Evidence A No. 41 attaches a sticky note describing "Suetake Yuzuru" on page 2; however, such sticky notes could be attached later. Therefore, it cannot be seen from the sticky note attached to page 2 of Evidence A No. 41 that Evidence A No. 41 is signed by Mr. Suetake.

Mr. Suetake stated, however, in Evidence A No. 65 that Evidence A Nos. 41 to 43 were described by Mr. Suetake himself. Further, comparing the numerals or raw materials of Mr. Suetake's handwriting described in Evidence A No. 61 with those of Evidence A No. 41, pages 6 to 8 (every page number of Evidence A Nos. 41 to 43 is represented by page number excluding cover page; the same shall apply hereinafter.), Evidence A No. 42, pages 4 to 6 and Evidence A No. 43, page 10, the writing is very similar. Further, there is no evidence to reasonably doubt that the writer of Evidence A Nos. 41 to 43 might not be Mr. Suetake. In light of these, it is natural to think that the writer of Evidence A Nos. 41 to 43 is Mr. Suetake. Therefore, Evidence A Nos. 41 to 43 are seen as tentatively truly authenticated, and their contents are considered hereinafter.

No. 5 Object of the demand and summary of the argument and means of Proof submitted by Demandee

1 Object of the reply and its argument

The object of the reply as Demandee argues is "the Correction is affirmed. The demand for trial of the case was groundless. The costs in connection with the trial shall be borne by Demandant. " (See the written reply for the trial case, page 2 "6 Object of the reply," the 1st oral proceeding record "Demandee 1.")

Further, Demandee argued in the written reply for the trial case, the written reply for the trial case (2), the written statement dated November 1, 2016, Oral proceedings statement brief, the written statement (2) dated December 14, 2016, and the written statement (3) dated December 28, 2016 that the above reasons 4 and 5 for invalidation as Demandant argued were groundless.

2 The Evidences Submitted by the Demandee
(1) Means of Proof submitted together with the written reply for the trial case
Evidence B No. 1: Webpage of IG Consulting Co., ltd. describing "treatment against white ant", April 1, 2016 (Printed date)
(http://www.e-igc.jp/lasting/termite.php)
Evidence B No. 2: Written argument against reason for refusal of Japanese Patent Application No. 2003-179339, Saito Nobuo, June 16, 2008
Evidence B No. 3: Facsimile from Ahtech Kohboh Co., Ltd. to Tokyo-arpa IP&Co., October 8, 2009
Evidence B No. 4: Report, Sumika Chemical Analysis Service, Ltd., November 30, 2009
Evidence B No. 5: Reply from Tokyo-arpa IP&Co., Ahtech Kohboh Co., Ltd., Carbomax Japan to Saito Nobuo, December 4, 2009
Evidence B No. 6: Liquid catalytic activated carbon for ant-proofing and preservation, pamphlet of Healthco Cure, Ahtech Kohboh Co., Ltd., February, 2003
Evidence B No. 7-1: Delivery slip of boric acid purchased by ECOPOWDER Corp. from HAYAKAWA&CO., LTD., December 8, 2005
Evidence B No. 7-2: Delivery slip of boric acid purchased by ECOPOWDER Corp. from HAYAKAWA&CO., LTD., June 8, 2006
Evidence B No. 8: Catalog of Healthco Cure, Ahtech Kohboh Co., Ltd., May 2002
Evidence B No. 9: Webpage of ALC PRESS INC. describing an English translation of "kouseki" as mineral, February 15, 2016 (Printed date)
Evidence B No. 10: Webpage of Ahtech Kohboh Co., Ltd. regarding Healthcoat series, August 31, 2015 (Printed date), (http://www.healthcoat.com/healthcoat_index.html)
Evidence B No. 11-1: Webpage of ECOPOWDER Corp. describing product introduction of ECOPOWDER Corp., June 9, 2015 (Printed date)
(http://ecopowder.com/products/)
Evidence B No. 11-2: Webpage of ECOPOWDER Corp. introducing a product of ECOPOWDER Corp., "ECOPOWDER BX", June 9, 2015 (Printed date)
(http://ecopowder.com/products/shiroari/ecopowderbx/ecopowderbx1.html)
Evidence B No. 12: Webpage describing boron-based ant-proof agent in lower price than ECOBORON, August 31, 2015 (Printed date) (http://エコボロン.seesaa.net/article/415301741.html)
Evidence B No. 13: Product safety data sheet of Product Healthco Cure, Ahtech Kohboh Co., Ltd., May 1, 2008
Evidence B No. 14: Webpage of Kouken home Co. Ltd. describing measures against

white ant, February 4, 2016 (Printed date) (http://www.koukenhome.jp/termite/page/2)
Evidence B No. 15: Email from Arakawa Tamio to Saito Nobuo relating to the fact that boric acid disrupts white ant biology, January 18, 2016
Evidence B No. 16-1: Japanese Unexamined Patent Application Publication No. 2001-79981
Evidence B No. 16-2: Japanese Unexamined Patent Application Publication No. 10-252146
Evidence B No. 16-3: Japanese Unexamined Patent Application Publication No. 2003-119428
Evidence B No. 16-4: Japanese Unexamined Patent Application Publication No. 2003-268290
Evidence B No. 17: Let's build long life house with boric acid, written by Iwatsuki Atushi, KOKORO Ltd., August 1, 2013, First printing, pages 90 to 103 and colophon
Evidence B No. 18: Notice sent from ECOPOWDER Corp. to Ahtech Kohboh Co., Ltd., April 15, 2002
Evidence B No. 19: Notice sent from ECOPOWDER Corp. to Ahtech Kohboh Co., Ltd., April 22, 2002
Evidence B No. 20: Reply from Ahtech Kohboh Co., Ltd. to ECOPOWDER Corp., February 22, 2002
Evidence B No. 21: Picture, ECOPOWDER Corp., January 15, 1998
Evidence B No. 22: Notice sent from ECOPOWDER Corp. to Ahtech Kohboh Co., Ltd., April 11, 2002
Evidence B No. 23: Facsimile sent from ECOPOWDER Corp. to Ahtech Kohboh Co., Ltd., February 16, 2002
Evidence B No. 24: Notice to terminate sent from ECOPOWDER Corp. to Ahtech Kohboh Co., Ltd., May 1, 2002
Evidence B No. 25: Picture of experiment of the Invention against white ant, ECOPOWDER Corp., May 17, 2002 and June 3, 2002
Evidence B No. 26-1: Property of electronic file of Evidence B No. 26-2, ECOPOWDER Corp., April 12, 2002
Evidence B No. 26-2: Writing entitled "History of development of carbon power (dedicated for ant-proofing), ECOPOWDER Corp.
Evidence B No. 27: Healthcoat, webpage of summary, BUILD EAST Co. Ltd., February 15, 2016 (Printed date) (http://build-east.com/health.html)
Evidence B No. 28: Publication of Patent No. 3133962
Evidence B No. 29: Catalog of Healthco Cure, Ahtech Kohboh Co., Ltd., May 2002

Evidence B No. 30: Item of "boiling stone", Koujien 5th Edition, Edited by Niimura Izuru, Iwanami Shoten, Publishers, November 11, 1998
Evidence B No. 31: Webpage showing the published month of Technical report of Forest Products Research Institute Volume 12 (1998), February 15, 2016 (Printed date) (http://www.fpri.hro.or.jp/gijutsujoho/kanko/joho1998.htm)

(2) Means of proof submitted together with the written reply for the trial case (2) dated August 23, 2016
Evidence B No. 32: Japanese Unexamined Patent Application Publication No. 2000-228574
Evidence B No. 33: Encyclopedia Dictionary of Chemistry, First edition, 5th printing, the item of "Acrylic resin", Edited by Ohgi Michinori and 3 others, Tokyo kagau dojin Co. Ltd., June 1, 1998
Evidence B No. 34: Japanese Unexamined Patent Application Publication No. 63-196503
Evidence B No. 35: Regarding the revision of JIS A 9302 and JIS A 9112, written by Matsuoka Shoshirou, Wood materials preservation, Vol. 15-6 1989
Evidence B No. 36: A webpage of NRI Cyber Patent Desk showing patent family information of International Publication No. 03/005826, June 1, 2016 (Printed date) (https://www.nri-cyberpatent.co.jp/nri/familylist)

(3) Means of proof submitted together with the written statement dated November 1, 2016
Evidence B No. 37: Statement, Saito Nobuo, October 3, 2016
Evidence B No. 38: Picture, ECOPOWDER Corp., April 19, 2002
Evidence B No. 39: Picture, ECOPOWDER Corp., April 28, 2002
Evidence B No. 40: Statement, Imamura Yuji, October 6, 2016
Evidence B No. 41: Memo showing the meeting date and time with Mr. Imamura, Asaba Kensuke, April 16, 2002
Evidence B No. 42: Behavior of underground-living white ant against borate treating agent, White Ant, The Japan Termite Control Association, January 2016, No. 165, pages 11 to 15
Evidence B No. 43: Imamura Yuji's profile, October 21, 2016
Evidence B No. 44: JIS K 1571:2010, Japanese Standards Association, published on September 21, 2010
Evidence B No. 45: Memo showing prototype and prescription of Sumi-no-chikara,

ECOPOWDER Corp., April 23, 2002
Evidence B No. 46: Picture, ECOPOWDER Corp.
Evidence B No. 47: Name card of Wood Research Institute, Kyoto University, Professor Imamura Yuji

(4) Means of Proof submitted together with Oral proceedings statement brief
Evidence B No. 48: Newspaper article of ECOPOWDER-natural paint for white ant-proofing, NIKKAN KOGYO SHIMBUN,LTD., March 27, 2003
Evidence B No. 49: Regarding SDS system based on Law concerning Pollutant Release and Transfer Register, Ministry of Health, Labour and Welfare, November 12, 2016
Evidence B No. 50: Chemical substances Safety Data Sheet of ECOPOWDER BX, ECOPOWDER Corp., April 1, 2004
Evidence B No. 51: Webpage of Kotobank showing the illustration of Encyclopedia Brittanica, sub-entry dictionary describing activated carbon, November 14, 2016 (Printed date) (https://kotobank.jp/word/%E6%B4%BB%E6%80%A7%E7%82%AD-45263)
Evidence B No. 52: A webpage of KURARAY CO., LTD. describing "kind of activated carbon", November 14, 2016 (Printed date) (http://www.kuraray-c.co.jp/activecarbon/about/04.html)
Evidence B No. 53: Item of "Kuzu", Koujien 4th Edition, Edited by Niimura Izuru, Iwanami Shoten, Publishers, published on November 15, 1991

(5) Means of proof submitted together with the written statement (2) dated December 14, 2016
Evidence B No. 54: Comparative experiment record, Saito Nobuo, May 18, 2008, May 20, 2008
Evidence B No. 55: Statement, Saito Nobuo, May 20, 2008
Evidence B No. 56: Property of electronic file of Evidence B No. 55, ECOPOWDER Corp., May 20, 2008
Evidence B No. 57: Cover page of Tree's REPORT PAD
Evidence B No. 58-1: Amazon webpage showing that Tree's REPORT PAD is not available now, December 8, 2016 (Printed date) (https://www.amazon.co.jp/プラス-レポートパッド６号-A罫 50 枚-RE-005A-76-512-/dp/B001P0716A)
Evidence B No. 58-2: Webpage showing that the sales of Tree's REPORT PAD has been terminated, December 8, 2016 (Printed date) (http://murauchi.com/MCJ-front-web/CoD/0000002520886)

Evidence B No. 59: Demand for extension of period of Japanese Patent Application No. 2003-179339, ECOPOWDER Corp., May 12, 2008
Evidence B No. 60: Statement, Saito Nobuo, December 13, 2016
Evidence B No. 61: Resume, Saito Nobuo, December 12, 2016
Evidence B No. 17 (Resubmitted): Let's build long life house with boric acid, written by Iwatsuki Atushi, KOKORO Ltd., August 1, 2013, First printing, pages 90 to 103, pages 262 to 263 and colophon

(6) Means of proof submitted together with the written statement (3) dated December 28, 2016
Evidence B No. 62: Pages 1 and 9 of Demandee's Brief (3) of 2015 (Wa) 16829, Ahtech Kohboh Co., Ltd., April 8, 2016

No. 6 Judgment by the Body on the Reasons for Invalidation

The body determines that the above reason 4 for invalidation is groundless. Further, regarding reason 5 for invalidation, it is an illegal demand for the invalidation trial. Even if not, it is groundless. The reason is set forth as below:

1 Reasons for invalidation 4
(1) Described Matters in the Evidence A
A Evidence A No. 46

Evidence A No. 46, the publication distributed before the priority date of the application of the Patent, has the following descriptions:
(46a) "2. The scope of claims
1. An ant-proof/insect-repellent/preservative composition comprising a mixture of an aqueous emulsion of acrylate-based polymer and liquid A in which an inorganic boron-based ant-proof/insect-repellent/preservative is dissolved into water.
...
4. The ant-proof/insect-repellent/preservative composition of any of Claims 1, 2, and 3, wherein said inorganic boron-based ant-proof/insect-repellent/preservative is a mixture of boric acid and borax." (Claim 1 and Claim 4 of the scope of claims)

(46b) "3. Detailed description of the invention
[Field of industrial application]

The invention relates to an ant-proof, insect repellent, and preservative composition.

Further, it particularly relates to an easy-to-use emulsion-type ant-proof/insect-repellent/preservative composition that provides sustainable ant-proof/insect-repellent/antiseptic effects for a long period, and has less risk to livestock, less uncomfortable odor, and less contamination of groundwater for the use in treating wood materials or soils for the extermination and/or prevention of white ant in a building." (page 1, right bottom column, lines 6 to 14)

(46c) "[Working Effect]

In the ant-proof/insect-repellent/preservative composition of the invention of Claim 1, the inorganic boron-based ant-proof/insect-repellent/preservative may be dissolved or dispersed into an aqueous emulsion of acrylate-based polymer while maintaining a high level of concentration when heated in preparation. Therefore, it brings about large ant-proof/insect-repellent/antiseptic effects with almost no risk to livestock or odor. It becomes hard to dissolve into water by being included with a continuous membrane of acrylate-based polymer, while maintaining long-term efficacy without the contamination of groundwater." (page 3, left bottom column, line 15 to right bottom column, line 4)

(46d) "[Example]

In the present invention, the aqueous emulsion of acrylate-based copolymer may dissolve or disperse inorganic boron-based ant-proof/insect-repellent/preservative at a high level of concentration, while preventing precipitation at a low temperature, and form a continuous membrane in a state where water is evaporated after the application to cause the ant-proof/insect-repellent/preservative to be adhered to wood part or soil surface and prevent leaching with water.

...

The inorganic boron-based ant-proof/insect-repellent/preservative is resistive and slow-acting. Thus, a higher level of concentration is necessary as compared to organic compound-based ant-proof/insect-repellent/preservative. Furthermore, it takes a long time to exterminate white ant. But it is less decomposable, and thus it is extremely effective for long-term sustained ant-proof/insect-repellent effects. Further, it is endowed with antiseptic effects, in which an organic compound-based ant-proof/insect-repellent is poor." (page 4, left upper column, line 3 to right upper column, line 5)

(46e) "Example 1

To 10 kg of Movinyl DM765
(Product name, manufactured by Hoechst synthesis, acrylate-styrene copolymer, concentration of about 50%) there was added
8 kg of water while stirring,
and followed by properly adjusting viscosity, there were added
1 kg of NEOGEN and
1 kg of Noigen EA 80
(both product names, manufactured by DKS Co. Ltd., sodium alkylbenzensulfonic acid and polyoxyethylene nonylphenyl ether) while continuing stirring to obtain a uniform diluted liquid.
Heating 50 kg of water
at 65°C while stirring,
15 kg of boric acid and
15 kg of borax
were added and completely dissolved to obtain liquid A.

Subsequently, to said diluted liquid, liquid A was gradually added while stirring and then mixed and dispersed uniformly to obtain an ant-proof/insect-repellent/preservative composition.

While adding liquid A to said diluted liquid, the liquid temperature of the mixture was adjusted to 40 to 50°C.

The composition thus obtained was diluted with water 3 times at a building site and applied for the use in wood parts, soil use, white ant extermination, and white ant prevention. Alternatively, it may also be mixed with an emulsifying agent of other organic non-chlorine-based ant-proof/insect-repellent.

Incidentally, this composition was extremely stable without degradation even when stored for 12 months or more after the preparation.

In the case of winter where an air temperature becomes 0°C or less, boric acid and borax might be partially precipitated, which would not raise any practical problem, however, because it would be restored to an original stable state if stirred with heat."
(page 6, right upper column, line 4 to left bottom column, line 16)

(46f) "Antiseptic effect:

In accordance with JIS A 9302, the compositions of Examples 1 to 5 were diluted with water in a prescribed time, and coated on a sapwood of Japanese cedar in a prescribed coating amount, and then the antiseptic efficacy value was calculated. The numerical values are shown in Table 3. The numerical values show that the ant-

proof/insect-repellent/preservative composition has excellent antiseptic effects.

第 3 表

実施例	1	2	3	4	5	対照
稀釈倍率	3	3	4	3	3	
防腐効力値						
オオウズラタケ	98	93	95	100	97	76
カワラタケ	95	90	92	98	96	60
ナミダタケ	93	85	88	90	92	55

第３表　　Table 3
実施例　　Example
対照　　Control
稀釈倍率　　Dilution ratio
防腐効力値　　Antiseptic efficacy value
オオウズラタケ　　Fomitopsis palustris
カワラタケ　　Trametes versicolor
ナミダタケ　　Serpula lacrymans

Note: Control was treated under the same conditions expect that it was not subjected to antiseptic treatment" (page 8, left bottom column, lines 9 to right bottom column)

B Evidence A No. 47

Evidence A No. 47, a publication distributed before the priority date of the application of the Patent, contains the following descriptions:

(47a) "[Claim 1] An ant-proof device for a building comprising: a device main body (1) containing ant-proof material (P); and a support means (2) for holding said device main body (1) on a ground surface surrounding a foundation of a building or at a height in the middle of the flank of the foundation of the building, further at least a surface of said device main body (1) opposed to the ground surface being made of a meshed body (11) with a mesh roughness that allows white ant to pass through.

[Claim 2] The ant-proof device for building of Claim 1, wherein said ant-proof material (P) is obtained by immersing, attaching, or mixing an active ingredient for white ant prevention into a carrier (P1) made of one or two or more of raw materials selected from fibrous materials, glass fibers, glass particles, stones, sand, plastic particles, aluminum granules, ceramic particles, brans, activated carbon, and charcoal chips."

(47b) "[0001]
[Industrial Application Field] The present invention relates to an ant-proof device for a building disposed around a foundation of a building to prevent white ant from invading the building while preventing the inflow of moisture and the invasion of decay fungus from under the floor."

(47c) "[0012]
[Operation] According to the above configuration, white ants climbing a side face of an underground part of a foundation in an attempt to bite a building necessarily contact with ant-proof material P through a mesh of a meshed body 11 of a device main body 1, disposed on a ground surface or at a prescribed height in the middle from the ground surface."

(47d) "[0014] Among others, when the carrier P1 is made of fibrous material or glass fiber, a part of the carrier P1 is hung down or projected through a mesh of the above meshed body 11 to enlarge a contact area with white ant. Further, when the carrier P1 is made of activated carbon or charcoal chip, the carrier P1 absorbs moisture coming upward from the ground under the floor along a side surface of the foundation to prevent the corrosion of the building.
[0015] Further, active ingredient for the above white ant prevention is not limited to those with contact toxicity, but may also include, e.g. boric acid, etc. with eating toxicity, or water-absorbing polymer materials that absorb moisture inside white ant."

(47e) "[0024] Further, the above ant-proof material P includes fibrous material (so-called "boric acid-containing fiber") as a carrier P1, in which boric acid is immersed. The ant-proof material P itself with such a configuration is not particularly new. It has been conventionally used as a heat insulator under the floor that exerts ant-proof effects; however, the use in this Example may cause particularly significant effects as mentioned below."

(47f) "[0025] The above configuration may cause white ant climbing a side face of foundation F to bite a building to contact with ant-proof material P through the mesh of the meshed body 11 at the bottom surface of the device main body 1 disposed in the path, which prevents the invasion of white ant."

(47g) "[0027] Further, the above ant-proof material P1 is supported at a prescribed

height position from the land surface. Therefore, active ingredient is hard to dissipate by moisture from land surface. Further, grit and dust falling from the underfloor is hard to deposit on the bottom surface of the device main body 1, which surface is effective for the prevention of white ant. Therefore, the white ant preventing function may be maintained for an extended period of time."

(47h) "[0035] Further, the mixture of activated carbon in the above carrier P1 may cause effects of suppressing water ingress into the underfloor of the building (e.g. sleepers or joist) and diffusing a flavor of α-pinene peculiar to acicular trees into the above living space, thereby inhabitants a feeling of peace, and causing bactericidal action on decay fungus in soil, providing an additional value to ensure the antiseptic function."

(47i) "[0036]
[Advantage of the Invention] As aforementioned, according to the invention, the ant-proof material exposed from a surface of the device main body opposed to the ground surface; i.e., meshed body, may prevent white ants climbing a side face of foundation without compromising its prevention function due to grit and dust falling from underfloor, to thereby maintain its efficacy for an extended period of time.
[0037] Further, the carrier of the above ant-proof material made of fibrous material may hang down from mesh of the meshed body and enlarge an area effective for ant-proofing to ensure the secure ant-proof function, whereas the carrier made of activated carbon or charcoal chip may absorb moisture from the ground surface to suppress the corrosion of the bottom part of a building such as sleepers or joists."

C Evidence A No. 48

Evidence A No. 48, a publication distributed before the priority date of the application of the Patent, contains the following descriptions:
(48a) "[Scope of Claims]
[Claim 1] A paint material comprising a binder of an emulsion-based resin mixed with a graphite silica and a charcoal powder to cause respective physical and physiochemical properties.
[Claim 2] The paint material of Claim 1, wherein graphite silica is black quartzite.
[Claim 3] A method of producing a paint material of Claim 1 or 2, comprising mixing 100 parts of an emulsion polyester with about 40 to 60 parts of black quartzite powder and about 80 to 100 parts of charcoal powder."

(48b) "[0002]
[Conventional Art] Focusing on the moisture absorbing property, odor absorbing property, insect repellent property, and negative ion effects of charcoal powders, what has ever been proposed is a paint composition in which an organic solvent-based resin is mixed with the charcoal powder (Japanese Patent Application No. 11-29742).
[0003]
[Problem to be solved by the invention] The present invention focuses on graphite silica that irradiates far-infrared ray in a room temperature region in addition to the properties of charcoal powder. Further, the present invention focuses on light catalytic titanium oxide with the effects of decomposing and removing air pollutants. That graphite silica or titanium oxide is mixed with a binder of an emulsion-based resin to provide safe and environment-friendly paint material with excellent dispersibility, storage stability, and film-forming ability."

(48c) "[0009] As is well-known, charcoal such as Bincho-tan has significant moisture absorbing property, odor absorbing property, insect repellent property, and negative ion effects."

(48d) "[0011] Black quartzite is a popular name of black material mainly composed of silicon dioxide with a carbon content of several percent, which is produced from a grinded part of fault in pre-tertiary black hard mudstone. Its unique physical characteristic is to irradiate high-intensity, middle-range infrared rays (a growing light with a wavelength of 4 μm to 14 μm) at room temperature, and its electromagnetic wave in the wavelength region of growing light causes a variety of good effects on a living body. Recent studies have clarified that it destroys water cluster (aggregation), and cuts bonding of low molecular weight substances in plants and seeds, and cleaves a double bond of unsaturated fatty acids. Further, it has also been found that it captures and decomposes bacterial pathogens such as salmonella, *Bacillus dysenteria*, and *Bacillus typhosus*, or gases such as ammonia, formaldehyde, and hydrogen sulfide."

D Evidence A No. 49

Evidence A No. 49, a publication distributed before the priority date of the application of the Patent, contains the following descriptions:
(49a) "2. Scope of claims
1. An insecticidal/antimicrobial paint comprising a synthetic resin, a boron compound, and a glycol ether-based organic solvent.

2. The insecticidal/antimicrobial paint of Claim 1, wherein said synthetic resin is one selected from ethylcellulose, vinyl acetate resin, acrylic-based resin, and urethane resin.
3. The insecticidal/antimicrobial paint of Claim 1, wherein said boron compound is o-boric acid."

(49b) "The present invention relates to a synthetic resin paint with an efficacy such as insecticidal property against mites and white ants and antimicrobial property against fungus and Trichophyton, and to a method for producing the same, and to an application product thereof." (page 2, left upper column, lines 9 to 12)

(49c) "On the other hand, the insecticidal/antimicrobial paint of the present invention consisting of synthetic resin emulsion and boron compound may be produced by mixing the synthetic resin emulsion with boron compound, in particular o-boric acid, and uniformly dispersing to make a paint. The solid content of the synthetic resin emulsion used is preferably 30 to 60 weight% in terms of usability as a paint and sustained efficacy by fixing o-boric acid. Further, the paint may include a small amount of thickeners, e.g. polyester-based thickener for the purpose of adjusting viscosity as a paint. The amount of o-boric acid contained in the paint is 5 to 20 weight% to cause sufficient effects. Consequently, a smaller amount of o-boric acid is sufficient to exert effects for the use in antimicrobial paint compared to the use as an insecticidal paint, as in the case of the aforesaid synthetic resin." (page 5, left upper column, line 17 to right upper column, line 12)

E Evidence A No. 50

Evidence A No. 50, a publication distributed before the priority date of the application of the Patent, contains the following descriptions:
(50a) "[Scope of Claims]
[Claim 1] A method for the treatment of a porous article, comprising the steps of: simultaneously or sequentially immersing into and/or coating on a porous article an organic compound having CH_2=CH-, -CH=CH-, CH_2=C(CH_3)-, -CH_2=N-, -CH=N-, NH=CH-, NH=N-, and/or -N=N- as a structure moiety, a boron-containing compound, and a polymerization catalyst; and polymerizing said organic compound in the presence of the boron-containing compound by polymerization catalyst in a porous article and/or on a surface of a porous article.
...

[Claim 24] The method for the treatment of porous article of any one of Claims 1 to 23, wherein said porous article is a metal sintered body, foundry product, alloy, die-cast product, ceramic, brick, concrete, wood material, wood piece, wood powder, wooden processed material, bran, rush, straw, bamboo, leather, fabric, non-woven fabric, fiber, activated carbon, or synthetic resin foam."

(50b) "[0003] [Conventional Art] Conventionally, for the purpose of imparting antimicrobial property and insect repellent property to a porous article such as a wood material, copper, zinc, nickel, arsenic or fluorine salt is added. The use of these substances in a large amount, however, may cause effects on the environment and toxicity to the human body. On the other hand, a boron-containing compound such as boric acid or borax has a higher level of safety compared to the aforesaid compound, and further any resistant bacterium might be hard to emerge. The compound has no color or odor with an advantage of insecticidal property against white ant, mite, and cockroach. Thus it has long been used in a variety of fields.
[0004] However, due to low reactivity of boron-containing compound with porous articles such as wood materials and fibers, the boron-containing compound may elute with rain water from a processed material obtained by causing the compound to be immersed into or coated on a porous article. As a result, it has a disadvantage of decreasing its antiseptic and insecticidal effects."

(50c) "[0066] In the present invention, the concentration of boron-containing compound in a treatment liquid including boron-containing compounds such as boric acid (o-boric acid), methaboric acid, tetraboric acid, or octaboric acid to be used by coating on or immersing into a porous article, or alkali metal salts thereof, or any other metal salts and complexes, is 0.01 to 50%, preferably 0.1 to 20%."

F Evidence A No. 1

Evidence A No. 1, a publication distributed before the priority date of the application of the Patent, contains the following descriptions:
(1a) "2. The scope of claims
1. A method for subjecting housing to dampproof, antiseptic, insect-repellent, and ant-proof treatments, comprising the step of spraying on a soil surface under the floor of the housing an antiseptic, insect-repellent, and ant-proof composition in which an antiseptic, insect-repellent, and ant-proof agent has been absorbed into an activated carbon.
2. A method for subjecting housing to dampproof, antiseptic, insect-repellent, and ant-

proof treatments, comprising the step of spraying on a soil surface under the floor of the housing an antiseptic, insect-repellent, and ant-proof composition in which an encapsulated product encapsulating an antiseptic, insect-repellent, and ant-proof agent has been absorbed into activated carbon." (Claims 1 and 2 of the scope of claims)

(1b) "Activated carbon used herein may be made of a variety of materials such as wood materials and date shells. It may be either a powder activated carbon or a pelletized activated carbon. The inside of activated carbon is significantly porous so that it has a strong absorbing ability to antiseptic, insect-repellent, and ant-proof agents.

Various antiseptic, insect-repellent, and ant-proof agents (hereinafter sometimes referred to as agents) may be used.

The agents may include, for example, insect-repellents such as organic phosphorous-based compounds, drin agents, pyrethroid compounds, organic chloride compounds, boron compounds, and fluorine compounds, Type 1, Type 2, and Type 3 phenols prescribed in JIS K 1550, inorganic fluoride-based antiseptics for wood materials, No. 1, No. 2, chrome, copper, and arsenic compound-based antiseptics for wood materials prescribed in JIS K 1554, creosote oil prescribed in JIS K 2439, etc. These agents may be dissolved into water etc., or used as is in the form of liquid agents." (page 2, left bottom column, line 19 to right bottom column, line 15)

(1c) "The present invention may have dampproof, antiseptic, insect-repellent, and ant-proof effects by causing activated carbon to absorb the above agents. The agents are rarely eluted, since the agents are adhered to activated carbon with strong absorbing ability to maintain environmental health. Further, workers are kept safe, since the agents are adhered to activated carbon. Furthermore, the material easy to handle since it is not necessary to cut or connect sheets, but it is sufficient to just spray the absorbed material." (page 3, right upper column, lines 10 to 18)

(1d) "In the case where an alkali-labile agent such as organic phosphorus agent is used, such agent tends to be decomposed, because activated carbon is generally alkaline.

Accordingly, the Invention encapsulates agents as a countermeasure when using the activated carbon. The capsule is then adhered to the activated carbon.

This allows us to not only take measures for the above alkaline decomposition, but also to suppress the decomposition of alkali-labile agents. Further, the capsule diffuses agents little by little for a sustained period. Thus, the sustainability of efficacy is improved.

The capsule may include, for example, gelatin, polyurethane, sodium alginate, polyvinyl alcohol, egg albumin, epoxy resin, polystyrene, polycarbonate, ethylcellulose, styrene-butadiene copolymer, vinyl acetate-ethylene copolymer, vinyl chloride, vinylidene chloride, acrylic acid ester, vinyl ester, methacrylic acid ester, polyester, polycarbonate, polyamide, chlorinated natural rubber, cellulose derivatives, etc." (page 3, right upper column, line 19 to left bottom column, line 20)

G Evidence A No. 2

Evidence A No. 2, a publication distributed before the priority date of the application of the Patent, contains the following descriptions:

(2a) "[Scope of Claims]

[Claim 1] A coating agent for white ant prevention obtained by dispersing into an emulsion one or two or more absorbing agents selected from the group consisting of activated carbon, zeolite, silica gel, and activated alumina into which a white ant-proof agent is absorbed."

(2b) "[0007]

[Means for solving the problem] The present inventors have focused on the fact that a period for sustaining the prevention effects of commonly-used wood immersing agent or coating agent for the prevention of white ants in housing is significantly shorter than the lifetime of the housing and the fact that the treatment work for immersing a white ant-repellent again into wood materials of the existing housing etc. is not easy, and studied methods for improvement. The present inventors have focused on the fact that the greatest cause of disappearance of the repellent effects is evaporation due to the volatility of repellent having a vapor pressure while it is small, and have found that the vapor pressure may be suppressed by absorbing the repellent into a specific absorbing agent to extend a sustained period of effects. Further, the present inventors have also studied an easy-to-apply method for wood materials, etc. of existing housing by further dispersing an absorbing agent into an emulsion and then coating, and finally achieved the present invention."

(2c) "[0021] Further, silica gel used herein is an absorbent manufactured by coagulating a colloidal silicate solution. Its main component is silicon dioxide having a microporous structure and a specific surface area of 90 to 500 m^2/g, and showing high absorbing ability by van der Waals force. Its microporous volume is preferable 0.3 ml/g

or more. Particle size and shape are preferably small and in powder form."

H Evidence A No. 5

Evidence A No. 5, a publication distributed before the priority date of the application of the Patent, contains the following descriptions:

(5a) "[Claim 1] A paint composition comprising a polyamide resin paint and a charcoal powder.

[Claim 2] The paint composition of Claim 1, wherein said polyamide resin is a copolymerized nylon obtained from raw materials of ε-caprolactam, hexamethylenediamine, adipic acid, and sebacic acid, or a copolymerized nylon obtained from raw materials of ε-caprolactam, hexamethylenediamine, adipic acid, sebacic acid, ω-laurolactam, and ω-aminododecanoic acid.

...

[Claim 4] The paint composition of Claim 1, wherein a solvent is selected from at least one of ethanol, propanol, butanol, benzyl alcohol, lauryl alcohol, diacetone, cyclohexanol, and triethanolamine."

(5b) "[0003]

[Problem to be solved by the invention and the purpose of the invention]

...

[0004] Incidentally, it is known that charcoal absorbs moisture when the ambient humidity is increased, whereas it discharges moisture when it is decreased to basically keep humidity at an average level of about 55%, which are called humidity conditioning effects.

[0005] Further, it is conventionally known that charcoal has an antifungal/insect-repellent effect for preventing the generation of fungus, mites, and white ants and a deodorizing effect of absorbing uncomfortable odors such as ammonia and formaldehyde, as well as the use for a solid fuel. ...

[0008] Charcoal originally has a microporous form. Thus it is relatively easy to pulverize to obtain a fine powder of 10 to 30 μm. To prepare a paint containing this charcoal powder, a variety of resins, solvents, vehicles, etc. were mixed with charcoal to perform a test for practical utility as a paint. Charcoal originally has no solubility to solvents, etc., and thus no good result was achieved. Specifically, charcoal powder was tried to be mixed with various solvent-based paints and water-based paints, but it caused a problem such as nonuniform diffusion in the stirring process or uneven color in the actual coating process, so that a paint suitable for practical use could not be prepared.

[0009] Accordingly, the objective of the present invention is to provide a paint composition for a building, comprising a charcoal powder capable of exerting its properties."

(5c) "[0010]

[Means for solving the problem] The present inventors have intensively studied to provide a paint composition for building that utilizes the aforesaid advantageous properties of charcoal, and as a result solved the problem to complete the present invention.

[0011] Specifically, the present inventors have found that a charcoal may be uniformly mixed with a paint, and the paint thus obtained may not exhibit color unevenness even after coating by mixing a charcoal powder with a nylon resin paint. Further, a nylon resin paint composition in which a charcoal powder is mixed at a proper ratio has been found to have both the properties of nylon resin and the properties of charcoal powder."

(5d) "[0013] In the paint composition of the present invention, nylon resin is a copolymerized nylon obtained from polymerizable raw materials of ε-caprolactam, hexamethylenediamine, adipic acid, and sebacic acid, or a copolymerized nylon obtained from raw materials of ε-caprolactam, hexamethylenediamine, adipic acid, sebacic acid, ω-laurolactam, and ω-aminododecanoic acid."

(5e) "[0014] In the paint composition of the present invention, the content of charcoal may be 1% to 50% on a weight basis. In the charcoal to be mixed with the above nylon resin paint, the mixing ratio of white charcoal and black charcoal may be optionally set. Specifically, white charcoal is particularly superior in cleaning effect of air and removal effect of electromagnetic waves, whereas black charcoal is particularly superior in humidity controlling effect, antimicrobial effect, and insect repellent effect. In view of this, the mixing ratio of white charcoal and black charcoal is set."

(5f) "[0015] The solvent is ethanol, n-propanol, i-propanol, n-butanol, i-butanol, benzyl alcohol, lauryl alcohol, diacetone, cyclohexanol, triethanolamine, or a mixture thereof.

[0016] In the paint composition of the present invention, the above copolymerized-type nylon resin was selected as a nylon resin, because nylon resins with low crystallinity generally have water solubility or alcohol solubility as common property, and these properties may improve affinity, compatibility, and adhesiveness with charcoal."

(5g) "[0019]

[Example, etc.] Subsequently, the present invention is further elaborated hereinafter with test examples and specific examples.

Test Example 1 (Consideration of paint)

To a paint having a nylon resin as a major component (low-melting point type and high-melting point type, including nylon 6, 66, 12) or various general paints, there was mixed 20% of charcoal powder on paint basis (white charcoal: black charcoal=5:5), which was pulverized into 30 μm, to obtain a sample paint. After examining the dispersion of charcoal or color unevenness in the paint, the paint was coated twice with a brush on a corrugated wall and a wooden board with an area of 80 mm × 100 mm and the finished state was observed. The results are as shown in the following Table 1. The mixture of charcoal with a paint comprising a nylon resin as a major component did not result in the problem of color unevenness, but in good finishing, whereas the mixture of charcoal with a paint comprising an acrylic resin as a major component results in poor dispersion and the finished state was not suitable for use as a paint.

[0020]

[Table 1]

供 試 塗 料	混合結果	仕上がり結果
汎用塗料		
アクリル・エマルジョン木部用ニス	△	×
アクリル・エマルジョン塗料（艶有）	×	×
アクリル・エマルジョン塗料（艶無）	×	×
アクリル・エナメル	○	△
ウレタン樹脂塗料	△	△
フッ素樹脂塗料	×（泡有り）	×
シリコーン樹脂塗料	△	×
ナイロン樹脂塗料		
低沸点型	○	○
高沸点型	○	○

供試塗料　　Sample coating

汎用塗料　　General coating

アクリル・エマルジョン木部用ニス　　Acrylic emulsion varnish for wooden parts

アクリル・エマルジョン塗料（艶有）　Acrylic emulsion paint (with gloss)

アクリル・エマルジョン塗料（艶無）　Acrylic emulsion paint (without gloss)

アクリル・エナメル　　Acrylic enamel

ウレタン樹脂塗料　Urethane resin paint
フッ素樹脂塗料　Fluoro resin paint
シリコーン樹脂塗料　Silicone resin paint
ナイロン樹脂塗料　Nylon resin paint
低沸点型　Low-boiling point type
高沸点型　High-boiling point type
混合結果　The result of mixing
×（泡有り）　× (with foam)
仕上がり結果　The results of finishing

For the results of mixing: × for Poor (separated), △ for Somewhat poor, ○ for Good
For the results of finishing: × for Poor (uneven color), △ for Somewhat poor, ○ for Good"

(2) The invention described in Evidence A No. 46

Evidence A No. 46 discloses in Claim 1 of the scope of the claims "an ant-proof/insect-repellent/preservative composition comprising a mixture of an aqueous emulsion of acrylate-based polymer and liquid A in which an inorganic boron-based ant-proof/insect-repellent/preservative is dissolved into water." (point (46a)), and discloses in Example 1 as a specific example the use of acrylate-styrene copolymer as an aqueous emulsion of acrylate-based polymer (point (46e)). Further, the contents of boric acid and borax as components of the inorganic boron-based ant-proof/insect-repellent/preservative are respectively 15 kg on a total weight basis of the composition of 100 kg (point (46e)). Therefore, the contents of boric acid and borax are respectively 15 weight%. Further, it discloses coating the composition of Example 1 on a sapwood of cedar (point (46f)).

For the above reason, Evidence A No. 46 discloses
the invention of "an ant-proof/insect-repellent/preservative composition for coating a sapwood of cedar, the composition comprising a mixture of an emulsion of acrylate-styrene copolymer and liquid A in which 15 weight% of boric acid and 15 weight% of borax are dissolved into water as the inorganic boron-based ant-proof/insect-repellent/preservatives" (hereinafter, referred to as "the A46 invention".).

(3) Comparison / judgment
A Regarding the Invention 1
(A) Comparison

The Invention 1 will be compared with the A46 invention.

It is obvious that "an emulsion of acrylate-styrene copolymer" of the A46 invention is "polymer emulsion" of the Invention 1. Further, Evidence A No. 46 fails to explicitly disclose that this emulsion has film-forming ability; however, it discloses that the aqueous emulsion of acrylate-based copolymer may form a continuous membrane in a state where water is evaporated after the application to cause the ant-proof/insect-repellent/preservative to be adhered to a wood part (point (46d)). In view of this, "an emulsion of acrylate-styrene copolymer" of the A46 invention is definitely a film-forming emulsion. Further, the ant-proof/insect-repellent/preservative composition to be coated on a sapwood of cedar of the A46 invention may obviously form a coating. Thus "the ant-proof/insect-repellent/preservative composition" of the A46 invention is for the use in forming a coating, and corresponds to the "ant-proof composition for the formation of coating" of the Invention 1. Boric acids of the Invention 1 are described in paragraph 0045 of the specification of the Patent as boric acid or borate, preferably sodium borate. On the other hand, the borax of the A46 invention is represented as $Na_2B_4O_7 \bullet 10H_2O$ in its ideal composition, which is a compound corresponding to sodium borate, and further the boric acid of the A46 invention obviously corresponds to boric acids of the Invention 1. Further, the mixing amount of boric acid in the A46 invention is 15 weight%, whereas the mixing amount of borax is also 15 weight%. Supposing that all the borax is derived from borate, it has a content of 30 weight% at the maximum. Therefore, "15 weight% of boric acid and 15 weight% of borax" of the A46 invention corresponds to "the content of said boric acids is 1 to 40 mass%" of the Invention 1.

Consequently, the A46 invention and the Invention 1 have common grounds in "An ant-proof composition for the formation of coating, comprising a charcoal powder derived from plants, a polyamide resin and boric acids, wherein the content of said boric acids is 1 to 40 weight%.", whereas they are different from each other in the following point:

(Different feature 1-46-1) The Invention 1 contains "a charcoal powder derived from plants" in an ant-proof composition, whereas the A46 invention does not contain a charcoal powder derived from plants.

(B) Examination on Different Feature

As for Different feature 1-46-1, the combinations of the A46 invention and Evidence A No. 47, Evidence A No. 1, and Evidence A No. 48 are considered respectively.

a Examination on the combination of the A46 invention and Evidence A No. 47

Regarding the inorganic boron-based ant-proof/insect-repellent/preservative, Evidence A No. 46 discloses that an acrylate-based polymer forms a continuous film on a wood material to adhere an inorganic boron-based ant-proof/insect-repellent/preservative to a wood part and prevent the elution with water and maintain efficacy for a long period by dispersing or dissolving the inorganic boron-based ant-proof/insect-repellent/preservative into an aqueous emulsion of the acrylate-based polymer and coating it on the wood material (See points (46b), (46c), and (46d)). A person skilled in the art could understand that one can prevent the elution of the inorganic boron-based ant-proof/insect-repellent/preservative with water and have sustained efficacy for a long period, since the inorganic boron-based ant-proof/insect-repellent/preservative had already been retained by a continuous film of acrylate-based polymer. Thus it cannot be seen from Evidence A No. 46 that there is a problem that water causes the elution of the inorganic boron-based ant-proof/insect-repellent/preservative.

Subsequently, when it comes to Evidence A No. 47, it discloses in Claim 1 of the scope of the claims "an ant-proof device for a building comprising: a device main body (1) containing ant-proof material (P); and a support means (2) for holding said device main body (1) on a ground surface surrounding a foundation of a building or at a height in the middle of the flank of the foundation of the building, further at least a surface of said device main body (1) opposed to the ground surface being made of a meshed body (11) with a mesh roughness that allows white ant to pass through" (point (47a)). This ant-proof device has a mesh body with a roughness that allows white ants to pass through at a surface opposite to the ground surface, and puts an ant-proof material thereon at a side face of the foundation of a building. Thus it may prevent the invasion of white ants climbing a side face of foundation from a ground surface at the point of passing through the mesh body and contacting an ant-proof material on the mesh body. (See notes (47b), (47c), (47f), and (47i))

Further, Evidence A No. 47 discloses immersing, attaching, or mixing an active ingredient for white ant prevention into a carrier made of specific material including activated carbon and charcoal chip to obtain an ant-proof material (point (47a)) and that the eating toxicity of boric acid etc. may be utilized as an active ingredient for white ant prevention (point (47d)).

Accordingly, the ant-proof device of Evidence A No. 47 holds boric acid as an

active ingredient on a carrier such as activated carbon and charcoal chip; however, it is exposed to a space above the side face of the foundation of building to allow white ant to pass through and maintain the preventing function of white ants for a long period (point (47g)).

Consequently, the ant-proof device of Evidence A No. 47 holds activated carbon or charcoal chip on which boric acid has been supported in a space above the side face of the foundation of building, not on the premise that any components for the formation of coating are to be contained. Therefore, there is no motivation in the A46 invention comprising a component for the formation of coating to mix activated carbon of Evidence A No. 47 or charcoal chips. Further, although Evidence A No. 47 discloses an active ingredient of boric acid supported on an activated carbon or a charcoal chip, a person skilled in the art could not recognize the problem of elution of the inorganic boron-based ant-proof/insect-repellent/preservative with water in the A46 invention, which possibly prevents the elution of boric acid with water.

Further, the A46 invention causes ant-proof effects by dissolving a high concentration level of inorganic boron-based ant-proof into emulsion (point (46c)(46d)), where a high concentration level of boronic acid should be uniformly present in an overall composition. If the activated carbon, etc. on which boronic acid is supported in Evidence A No. 47 is mixed with the emulsion of the A46 invention, boronic acid will be localized in the activated carbon of the composition, which makes it impossible to cause a high concentration level of boronic acid to be present uniformly in the composition as in the A46 invention. Therefore, it cannot be said that the similar ant-proof effects would be caused. From this viewpoint, it cannot be said that there is a motivation to apply the activated carbon, etc. of Evidence A No. 47 supporting boric acid to the A46 invention.

In addition, Evidence A No. 49 discloses a paint comprising 5 to 20 weight% of an ant killer, o-boronic acid. Evidence A No. 50 discloses a method for treating wood materials with a treating agent comprising 0.01 to 50% of boron-containing compound, an ant killer. It cannot be seen that there is a problem in such paint that the inorganic boron-based ant-proof/insect-repellent/preservative might be eluted with water.

As seen above, even if the combination of Evidence A Nos. 46, 47, 49, and 50 is taken into consideration, a person skilled in the art could not recognize that there was a

problem in the A46 invention that the inorganic boron-based ant-proof/insect-repellent/preservative might be eluted with water. Thus, it cannot be said that there is a motivation in the A46 invention to adopt activated carbon or charcoal chip of Evidence A No. 47 on which boric acid is supported to mix charcoal powder from plants in order to solve such problem.

Further, in view of the problem for employing in the A46 invention the different features and the function and effect caused, there is no other motivation to employ the different feature in A46 invention.

Accordingly, it cannot be said that there is any motivation in Evidence A Nos. 47, 49, and 50 to modify the A46 invention with respect to the configuration of Different feature 1-46-1. Thus, a person skilled in the art could not have easily conceived of the Different feature 1-46-1.

b Examination on the combination of the A46 invention and Evidence A No. 1

Evidence A No. 1 discloses a method for subjecting housing to dampproof, antiseptic, insect-repellent, and ant-proof treatments, comprising the step of spraying on a soil surface under the floor of the housing an antiseptic, insect-repellent, and ant-proof composition in which an antiseptic, insect-repellent, and ant-proof agent has been absorbed into activated carbon (point (1a)), and exemplifies the specific compounds including boron compounds as antiseptic, insect-repellent, and ant-proof agents to be absorbed on activated carbon (point (1b)), and discloses effects to preserve environment and health with extremely low elution of agents since the agents are absorbed onto activated carbon (point (1c)).

However, the antiseptic, insect-repellent, and ant-proof composition of Evidence A No. 1 comprises an antiseptic, insect-repellent, and ant-proof agent absorbed into activated carbon, not on the premise that any components for the formation of coating are contained. Therefore, there is no motivation in the A46 invention comprising a component for the formation of coating to mix activated carbon of Evidence A No. 1. Further, the antiseptic, insect-repellent, and ant-proof composition of Evidence A No. 1 does not comprise the components for the formation of coating, but causes effects of extremely lower elution of agents when the antiseptic, insect-repellent, and ant-proof agent absorbed into activated carbon is put in use as is. Therefore, it cannot be said that a person skilled in the art could understand from the A46 invention which disclosed preventing the elution of boric acid with water that there was a problem that the

inorganic boron-based ant-proof/insect-repellent/preservative might be eluted with water as opposed to the disclosure of the A46 invention.

Further, the A46 invention causes ant-proof effects due to the uniform existence of high concentration level of inorganic boron-based ant-proof. If the activated carbon on which an ant-proof agent is supported in Evidence A No. 1 is mixed with the emulsion of the A46 invention, the ant-proof agent is localized in the activated carbon of the composition, which makes it impossible to cause a high concentration level of boronic acid to be present uniformly in the composition. Therefore, it cannot be said that similar ant-proof effects would be caused. From this viewpoint, it cannot be said that there is a motivation to apply the activated carbon of Evidence A No. 1 to the A46 invention.

In addition, a person skilled in the art could not recognize from Evidence A Nos. 49 and 50 the problem in the A46 invention that the inorganic boron-based ant-proof/insect-repellent/preservative might be eluted with water, as is discussed in item a.

As seen above, it cannot be seen from the combination of Evidence A Nos. 1, 46, 49, and 50 that a person skilled in the art could recognize that there was a problem in the A46 invention that the inorganic boron-based ant-proof/insect-repellent/preservative might be eluted with water. Thus, it cannot be said that there is a motivation in the A46 invention to adopt the activated carbon of Evidence A No. 1 on which an ant-proof agent is supported to mix a charcoal powder from plants in order to solve such problem.

Further, in view of the problem to apply different features and the function and effect caused as a result of applying the different feature, there is no other motivation to apply the different feature.

Accordingly, it cannot be said that there is any motivation in Evidence A Nos. 1, 49, and 50 to modify the A46 invention with respect to the configuration of Different feature 1-46-1. Thus, a person skilled in the art could not have easily conceived of Different feature 1-46-1.

c Examination on the combination with Evidence A No. 48

Evidence A No. 48 discloses "a paint material comprising an emulsion-based resin as a binder mixed with a graphite silica and a charcoal powder to cause respective physical and physiochemical properties" (point (48a)), and discloses that the charcoal powder is mixed with paint for moisture absorbing property, odor absorbing property,

insect repellent property, and negative ion effects (see point (48b)).

First of all, however, the paint material described in Evidence A No. 48 does not contain the inorganic boron-based ant-proof/insect-repellent/preservative. Therefore, a person skilled in the art who reads Evidence A No. 48 could not recognize the problem in the A46 invention that the inorganic boron-based ant-proof/insect-repellent/preservative might be eluted with water. Even if Evidence A No. 48 should disclose that a paint material comprising a charcoal powder might have insect-repellent property, it cannot be said that there is a motivation in the A46 invention to mix a charcoal powder derived from plants in order to solve the problem.

Further, the A46 invention causes ant-proof effects due to the uniform existence of high concentration level of inorganic boron-based ant-proof, whereas Evidence A No. 48 causes insect-repellent property due to the action of charcoal powder mixed in an emulsion resin for insect-repellent property. The paints of the A46 invention and Evidence A No. 48 are different from each other in their action mechanism with respect to insect-repellent property. Therefore, from this viewpoint, it cannot be said that there is any motivation to apply carbon powder of Evidence A No. 48 to the A46 invention due to different action mechanisms of insect-repellent property.

Subsequently, the body examines whether or not there is a motivation in the A46 invention to apply a charcoal powder described in Evidence A No. 48 in view of any problem other than the above problem.

As aforementioned, Evidence A No. 48 discloses mixing a carbon powder with paint using the same emulsion-based resin as the A46 invention to cause moisture-absorbing property, odor-absorbing property, and negative ion effects. Accordingly, if the A46 invention should have problems in moisture-absorbing property and odor-absorbing property, there is a prima facie motivation in the A46 invention to mix carbon powder of Evidence A No. 48.

Evidence A Nos. 46 and 48 lack disclosure, however, suggesting that the A46 invention also has such a problem. Further, the Invention 1 allows boric acids to be securely adhered and retained and maintain excellent effects in insecticidal rate of white ant and weight loss rate of wood piece even after weatherproof test by including boric acids and carbon powder from plants in a film-forming polymer emulsion. Evidence A Nos. 46 and 48 fail to disclose the above effect caused by the combination of carbon

powders from plants and boric acids. Therefore, this effect may be unexpected, and thus the Invention 1 may cause significant effects.

Accordingly, considering the motivation from the problem other than the prevention of the elution of boric acid, it cannot be said that a person skilled in the art could have easily conceived of the Invention 1.

Further, a person skilled in the art could not recognize from Evidence A Nos. 49 and 50 the problem in the A46 invention that the inorganic boron-based ant-proof/insect-repellent/preservative might be eluted with water, as is discussed in item a.

Further, in view of the problem to apply different features and the function and effect caused as a result of applying the different features, there is no other motivation to apply the different features.

Accordingly it cannot be said that there is any motivation in Evidence A Nos. 48, 49, and 50 to modify the A46 invention with respect to the configuration of Different feature 1-46-1. Thus, a person skilled in the art could not have easily conceived of Different feature 1-46-1.

(C) As for Effects

As is discussed in the above item (B), it cannot be said that a person skilled in the art could have easily conceived of Different feature 1-46-1 in the A46 invention, but for confirmation, the effects are further considered in details.

The specification of the Patent discloses in paragraph 0015 that the coating of the Patent securely adheres and retains boric acids by carbon powder and film-forming polymer emulsion to sustain ant-proof effects of boric acids for a long period. Further, it discloses in Example after paragraph 0056 that Examples 1 and 2 showed superior effects of insecticidal rate of white ant and weight loss rate of wood piece even when the ant-proof composition of the Invention 1 was coated on the wood piece and subjected to weather proof testing.

Further, although Evidence B No. 2 was submitted by the Demandee in the prosecution process of the application of the Patent to show its advantageous effects, it discloses the comparative experiment B1 where charcoal powder was not mixed. This comparative experiment showed that the weatherproof test resulted in the failure of

maintaining superior effects with respect to insecticidal rate of white ants and weight loss rate of wood pieces. Therefore, Examples 1 and 2 of the Invention 1 where boric acids are incorporated into carbon powder derived from plants and film-forming polymer emulsion were superior in their insecticidal rate of white ants and weight loss rate of wood piece after the weatherproof test as compared to the comparative example where charcoal powder was not mixed.

On the other hand, Evidence A No. 46 only discloses that the composition comprising boric acids and film-forming polymer emulsion has sustained efficacy for a long period (point (46c)), but it fails to disclose the effects of combining with carbon powder derived from plants.

Evidence A No. 47 discloses that the prevention function of white ants may be maintained for a long period by an ant-proof material with an active ingredient of boric acid being supported on a carrier of charcoal chip (point (47g)); however, it does not suggest the effects when the ant-proof material is contained in a coating.

Evidence A No. 1 has an agent absorbed onto an activated carbon, which results in less elution of the agent; however, it does not disclose the effects when combined with a film-forming polymer emulsion.

Evidence A No. 48 only discloses that a paint material comprising carbon powder has excellent dispersibility, storage stability, and film-forming ability, and does not disclose comprising an ant-proof agent. It does not disclose the effects of preventing the elution of boric acids as an ant-proof agent.

As seen above, cited Evidence A Nos. 46, 47, 1, and 48 fail to disclose or suggest that the inclusion of boric acids into carbon powder derived from plants and film-forming polymer emulsion results in the sustained ant-proof effects of boric acids for a long period, and superior insecticidal rate of white ant and weight loss rate of wood piece, after weatherproof test, and thus it can be said that the Invention 1 causes effects beyond the expectation of a person skilled in the art.

(D) The demandant's allegation

a Regarding the combination of the A46 invention and Evidence A No. 47

Demandant argues that Evidence A No. 47 relates to an ant-proof device for a building disposed around a foundation of the building to prevent white ant from invading the building while preventing the inflow of moisture and the invasion of decay fungus from under the floor, and discloses an ant-proof material in which an active ingredient of boric acid for white ant prevention is immersed into and attached to a

carrier of activated carbon or charcoal chip, and Evidence A Nos. 46 and 47 have common ground in their technical field, problem and effect, and thus there is a motivation in the A46 invention to combine the technical matters described in Evidence A No. 47. (written refutation, page 31, line 9 to page 40, line 17, written statement dated November 2, 2016, page 5, line 31 to page 6, line 25)

b Regarding the combination of the A46 invention and Evidence A No. 1

Demandant argues that Evidence A No. 1 discloses the sustained ant-proof/antiseptic effects for a long period by absorbing boric acids on activated carbon in a dampproof, antiseptic, insect-repellent, and ant-proof agent for spraying on a soil surface under the floor of housing, and Evidence A Nos. 46 and 1 have common ground in their technical field, problem, and effect, and thus there is a motivation in the A46 invention to combine the technical matters described in Evidence A No. 1. (written refutation, page 41, line 5 to page 49, line 6, written statement dated November 2, 2016, page 15, line 2 to page 17, line 4)

c Regarding the combination of the A46 invention and Evidence A No. 48

Demandee argues that Evidence A No. 48 relates to a paint material in which a carbon powder is mixed with an emulsion-based resin, and discloses that a charcoal powder has wet-absorbing property, odor-absorbing property, and negative ion effects, and Evidence A Nos. 46 and 48 have common ground in their technical field, problem and effect, and thus there is a motivation in the A46 invention to combine the technical matters described in Evidence A No. 48. (written refutation, page 49, line 19 to page 58, line 12, written statement dated November 2, 2016, page 18, line 29 to page 19, line 29)

d Effect

Demandant argues that the specification of the Patent just discloses that only the specific examples may cause effects, and thus it cannot be said that similar effects may be caused for the whole scope of the Invention 1. (written statement on November 2, 2016, page 12, line 7 to page 14, line 28)

(E) Examination on Demandant's allegation

a Regarding the combination of the A46 invention and Evidence A Nos. 47, 1, and 48

Demandant presents similar argument about the combination of Evidence A Nos. 47, 1, and 48, which are collectively examined.

Demandant argues that there is a motivation to combine Evidence A No. 46 and Evidence A Nos. 47, 1, and 48, by simply showing that they have common ground in the technical field of the invention, the problem to be solved by the invention, and the effects of the invention.

But the commonality of the technical field of the invention, the problem to be solved by the invention, and the effects of the invention may only be a motivation to conceive of the different feature. Their commonality does not lead to the conclusion that there is a motivation to conceive of the different feature.

Further, considering motivation to combine the A46 invention with Evidence A Nos. 47, 1, and 48 respectively, a person skilled in the art could not recognize the problem in the A46 invention that the inorganic boron-based ant-proof/insect-repellent/preservative might be eluted with water, and could not have been motivated to conceive of the different feature 1-46-1, as discussed in the above item (B). Thus, the Demandant's argument is not acceptable in this respect.

b Effect

As is discussed in the above item a regarding effects, the A46 invention may not be combined with Evidence A Nos. 47, 1, and 48 to conceive of the Invention 1. Thus it may be concluded without examining on the effects that a person skilled in the art could not have easily conceived of the Invention 1.

In addition, the specification of the Patent discloses the function and effect in paragraph 0015 that the coating of the Invention may have sustained ant-proof effects of boric acids for a long period by securely absorbing and retaining boric acids on carbon powder and film-forming polymer emulsion. The effects are supported by the Example. Thus it can be understood that the Invention 1 causes desired effects without limitation to the case of the specific Example.

On the other hand, Demandant fails to show any rational reason and supportive evidence thereof for the Invention 1 not causing effects in embodiments other than the specific examples.

Accordingly, the Demandant's argument is not acceptable.

(F) Summary

Accordingly, a person skilled in the art could not have easily conceived of the Invention 1 on the basis of the inventions described in Evidence A Nos. 46, 47, to 50

and 1.

B Regarding the Invention 3

(A) Comparison

The Invention 3 will be compared with the A46 invention.

The Invention 3 has common ground in the Invention 1 in terms of the ant-proof composition for the formation of coating comprising a film-forming polymer emulsion. Therefore, as discussed in the above item A(A), the acrylate-styrene copolymer emulsion of the A46 invention corresponds to the film-forming polymer emulsion of the Invention 3. The ant-proof/insect-repellent/antiseptic composition of the A46 invention corresponds to the ant-proof composition for the formation of coating of the Invention 3. Further, the specification of the Patent discloses in paragraph 0030 an acrylic-based polymer as a film-forming polymer emulsion, and includes styrene as a copolymerizable monomer. The acrylic-based polymer of the Invention 3 includes a copolymer of acrylate and styrene. Therefore, the acrylate-styrene copolymer emulsion of the A46 invention corresponds to acrylic-based polymer or vinyl acetate-based polymer in the polymer emulsion of the Invention 3.

Consequently, the A46 invention and the Invention 1 have common grounds in "an ant-proof composition for the formation of coating, comprising a charcoal powder derived from plants, a polyamide resin, and boric acids, wherein said film-forming polymer is acrylic-based polymer or vinyl acetate-based polymer," whereas they are different from each other in the following point:

(Different feature 3-46-1)

The Invention 3 contains "a charcoal powder derived from plants" in an ant-proof composition, whereas the A46 invention does not contain a charcoal powder derived from plants

(B) Examination on the different features and the effects

Regarding this different features 3-46-1, the combinations of the A46 invention with Evidence A Nos, 47, 1 and 48 are hereinafter considered. This different feature 3-46-1 is the same as the different feature 1-46-1 as discussed in the above A(A). Therefore, for the same reason as that discussed in the above A(B), a person skilled in the art could not have easily conceived of the Invention 3 on the basis of the inventions described in Evidence A Nos. 46, 47, 1, and 48. Further, as for effects, for the same reason as discussed in the above item A(C), the Invention 3 causes unexpected effects.

(C) Summary

Accordingly, a person skilled in the art could not have easily conceived of the Invention 3 on the basis of the inventions described in Evidence A Nos. 46, 47, 1, and 48.

C Regarding the Invention 8

(A) Comparison

The Invention 8 will be compared with the A46 invention .

The ant-proof/insect-repellent/preservative composition to be coated on a sapwood of cedar of the A46 invention may obviously form a coating. Thus, the ant-proof/insect-repellent/preservative composition of the A46 invention is for the use in forming a coating, and corresponds to the ant-proof composition for the formation of coating of the Invention 8.

Consequently, the two are identical to each other in that they are "ant-proof compositions for the formation of coating, comprising boric acids," but are different from each other in the following points:

(Different feature 8-46-1)

The Invention 8 contains "a charcoal powder derived from plants" in an ant-proof composition, whereas the A46 invention does not contain a charcoal powder derived from plants

(Different feature 8-46-2)

The Invention 8 contains "water-soluble polysaccharides," whereas the A46 invention contains "acrylate-styrene copolymer emulsion"

(B) Examination on Different Features

As for Different features 8-46-1 and 8-46-2, the combination of the A46 invention with Evidence A No. 1 is hereinafter considered.

a As for Different feature 8-46-1

This different feature 8-46-1 is the same as the different feature 1-46-1 as discussed in the above A(A). Therefore, for the same reason as that discussed in the above item A(B)b, a person skilled in the art could not have easily conceived of the different feature 8-46-1 on the basis of the inventions described in Evidence A Nos. 46 and 1.

b As for Different feature 8-46-2

Evidence A No. 1 discloses a method for subjecting housing to dampproof, antiseptic, insect-repellent, and ant-proof treatments, comprising the step of spraying on

a soil surface under the floor of housing an antiseptic, insect-repellent, and ant-proof composition in which an encapsulated product encapsulating an antiseptic, insect-repellent, and ant-proof agent has been absorbed into an activated carbon (point (1a)), and an agent is encapsulated and then absorbed onto an activated carbon when the agent such as organic phosphorus-based agent is used, since the activated carbon is generally alkaline, and a specific example of cellulose derivatives is described as this capsule material (point (1d)).

Here, the cellulose derivatives of Evidence A No. 1 are materials of a capsule to encompass an agent for the protection of agent from alkaline, and thus the cellulose derivatives are not described as a film-forming material. Consequently, a person skilled in the art would not have replaced a cellulose derivative for an encapsulated agent that encapsulates an antiseptic, insect-repellent, and ant-proof agent of Evidence A No. 1 with an acrylate-styrene copolymer emulsion for the formation of coating of the A46 invention. There is no motivation to conceive of different feature 8-46-2.

For the above reasons, it cannot be said that there is any motivation in Evidence A No. 1 to conceive of Different feature 8-46-2 in the A46 invention. Thus, a person skilled in the art could not have easily conceived of the Different feature 8-46-2.

(C) As for Effects

Regarding the effects of the Invention 8, the matter described in paragraph 0015 of the specification of the Patent is as discussed in the above item A(C). The Invention 8 relates to an ant-proof composition comprising water-soluble polysaccharides. Therefore, the example of the specification of the Patent is Examples 3 and 4, whereas the comparative experiment of Evidence B No. 2 is the comparative experiment B3.

Further, referring to Example after paragraph 0056, Examples 3 and 4 showed the superior effects of insecticidal rate of white ant and weight loss rate of wood piece even when the ant-proof composition of the Invention 8 was coated on the wood piece and subjected to weatherproof test.

Evidence B No. 2 describes the comparative experiment B3 without charcoal powder. This comparative experiment showed that the weatherproof test resulted in the failure of maintaining superior effects with respect to insecticidal rate of white ants and weight loss rate of wood pieces. Therefore, Examples 3 and 4 of the Invention 8 where boric acids are incorporated into carbon powder derived from plants and water-soluble polysaccharides were superior in their insecticidal rate of white ants and weight loss rate

of wood piece after the weatherproof test as compared to the comparative experiment B3 where charcoal powder was not mixed.

Accordingly, the Invention 8 causes effects beyond expectation.

(D) Demandant's allegation

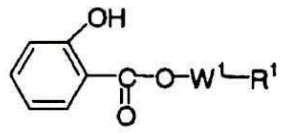
Demandant argues that Evidence A Nos. 6 to 9 disclose coating a paint and spraying an encapsulated agent as the application forms of an ant-proof composition, both of which are commonly known, and that the A46 invention and Evidence A No. 1 have common ground in technical field, problem, and function and effects, and it is just in the ordinary course of things to replace an acrylate-styrene copolymer emulsion of the A46 invention with cellulose derivatives used as a capsule to encompass an agent of Evidence A No. 1. Therefore, it is easily conceivable to modify the A46 invention with cellulose derivatives described in Evidence A No. 1. (written refutation, page 74, line 2 to page 76, line 13, written statement dated November 2, 2016, page 22, line 15 to page 23, line 17)

(E) Examination on Demandant's allegation

Evidence A No. 6 discloses in Claim 1:

"An insect pest control agent for wood materials comprising at least one salicylic ester compound represented by Formula I:

[Chemical Formula 1]

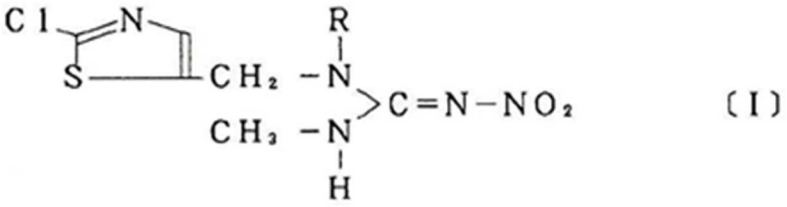


[I]

(where R^1 represents a halogen atom, phenyl having one or two same or different substituents independently selected from the group consisting of C1-6 alkyl, C2-6 alkenyl and C2-6 alkynyl, non-substituted phenyl, C2-12 alkyl, C2-12 alkenyl, C2-12 alkynyl, C2-12 hydroxyalkyl, C2-12 hydroxyalkenyl or C2-12 hydroxyalkynyl. W^1 represents a single bond, C1-6 alkylene, C2-6 alkenylene or C2-6 alkynylene).", and in Claim 18: "the insect pest control agent for wood materials of any one of Claims 1 to 17 for white ants."; and in paragraph 0064 that "the insect pest control agent for wood materials of the present invention has different application forms depending on the intended use. The compound [I] may be directly used as is, or dispersed or dissolved into a proper liquid carrier, or if desired, to which further added commonly-used

additives such as emulsifier, dispersant, suspension, spreading agent, penetrant, wetting agent, thickner, antisettling agent, stabilizer, fixing agent, and resin to be used for a formulation such as oil solution, emulsion, wettable powder, dispersant, suspension, paste, various granular formulations, microcapsules, air sprays, aerosols, foaming agent, and paints. The compounding of them may be implemented by commonly-used compounding means.", and in paragraph 0073 that "Regarding a pest controlling method for wood materials using a pest control agent for wood materials of the present invention, it is possible to use various methods for conventional pest control agent as is that have been applied to a generation source or an invasion port of a pest of wood materials or a product to be protected intended for eliminating a pest of wood materials. The method of using a pest controlling agent of wood materials of the present invention for wood treatment may include, for example, coating, spraying, injection, immersion, etc. Further, a method of using a pest controlling agent of wood materials of the present invention for soil treatment may include spraying on a soil, pressurized injection, mixing, etc."

Evidence A No. 7 discloses in Claim 1:
"a white ant-proof comprising a compound represented by Formula [I]:
[Chemical Formula 1]



(where R is hydrogen, a C1-6 alkyl carbonyl group or a C1-6 alkoxy carbonyl group.) or a salt thereof." and in paragraph 0013: "... The compound of the present invention may be used in a variety of forms for common white ant-repellents. Specifically, the form may include wettable powder, emulsion, oil solution, paste, paint, suspension, dust formulation, granular formulations, high foaming agent, non-aqueous solution, microcapsules, microspheres, etc. These formulations may be manufactured by publicly-known methods in accordance with their intended use. Accordingly, formulating method may be selected as necessary depending on whether the treatment target is wood material or soil, or whether the treatment method is coating, spraying, immersion, injection, distribution, or mixing. The current white ant-repellent may generally be categorized into soil treatment, wood part treatment, and coating treatment,

respectively. The soil treatment use may preferably be emulsion, dust formulation, granular formulation, suspension, microcapsules, or microspheres. The wood part treatment use may preferably be non-aqueous solution. The coating use treatment may preferably be an active ingredient-containing polymer compound."

However, the white ant-proof of Evidence A Nos. 6 and 7 comprises a salicylic ester compound or a specific organic compound represented by the above Formula [1] as an active ingredient, which is different from the inorganic boron-based ant-proof/insect-repellent/preservative of the A46 invention. Further, it is obvious that the solubility to water differs depending on the kind of white ant-proof as an active ingredient. The degree of elution with water differs depending on whether the white ant-proof is coated or sprayed. Therefore, even if Evidence A Nos. 6 or 7 discloses spaying on soil as well as coating for the application method of white ant-proof, it cannot be said that a person skilled in the art would recognize the problem that the inorganic boron-based ant-proof/insect-repellent/preservative is eluted with water in the A46 invention relating to the composition for coating the inorganic boron-based ant-proof/insect-repellent/preservative. Therefore, it cannot be said that there is a motivation in the A46 invention to mix a charcoal powder derived from plants.

Accordingly, the entirety of the Demandant's argument is not acceptable.

Additionally, Evidence A Nos. 8 and 9 are publications published after the priority date of the application of the Patent, and not publications suggesting the problem that the inorganic boron-based ant-proof/insect-repellent/preservative is eluted with water. Therefore, it cannot be seen from these documents that a person skilled in the art could recognize the problem in the A46 invention that the inorganic boron-based ant-proof/insect-repellent/preservative is eluted with water, nor is there a motivation to mix the charcoal powder derived from plants.

(F) Summary

Accordingly, a person skilled in the art could not have easily conceived of the Invention 8 on the basis of the inventions described in Evidence A Nos. 46 and 1.

D Regarding the Inventions 9, 10

The Inventions 9 and 10 are inventions further limiting the Invention 8 by depending from the Invention 8.

Further, as discussed in the above item C, a person skilled in the art could not have easily conceived of the Invention 8 on the basis of the inventions described in Evidence A Nos. 46 and 1. Therefore, for the same reason, a person skilled in the art could not have easily conceived of the Inventions 9 and 10 on the basis of the inventions described in Evidence A Nos. 46 and 1.

E Regarding the Invention 11

(A) Comparison

The Invention 11 will be compared with the A46 invention.

The Invention 11 is different from the Invention 8 only in that the former comprises a polyamide resin, whereas the latter comprises water-soluble polysaccharides. Therefore, as discussed in the above item C(A), the Invention 11 and the A46 invention are identical to each other in that both are "ant-proof compositions for the formation of coating, comprising boric acids," but differ from each other in the following points:

(Different feature 11-46-1)

The Invention 11 contains "a charcoal powder derived from plants" in an ant-proof composition, whereas the A46 invention does not contain a charcoal powder derived from plants

(Different feature 11-46-2)

The Invention 11 contains "a polyamide resin," whereas the A46 invention contains acrylate-styrene copolymer emulsion

(B) Examination on Different Features

As for Different features 11-46-1 and 11-46-2, the combination of the A46 invention with Evidence A No. 1 or Evidence A No. 5 is hereinafter considered.

a Regarding the combination with Evidence A No. 1

(a) As for Different feature 11-46-1

This different feature 11-46-1 is the same as the different feature 1-46-1 as discussed in the above A(A). Therefore, for the same reason as that discussed in the above item A(B)b, a person skilled in the art could not have easily conceived of the different feature 11-46-1 on the basis of the inventions described in Evidence A Nos. 46 and 1.

(b) As for Different feature 11-46-2

As discussed in the above item C(B)b, Evidence A No. 1 discloses a specific example including polyamide as an example of a capsule (point (1d)), but it is just intended for an encapsulated agent. Therefore, a polyamide may not be used in place of the acrylate-styrene copolymer emulsion for the formation of coating of the A46 invention. Thus, it cannot be said that there is a motivation to conceive of the different feature 11-46-2.

For the above reasons, it cannot be said that there is any motivation in Evidence A No. 1 to conceive of Different feature 11-46-2 in the A46 invention. Thus, a person skilled in the art could not have easily conceived of the Different feature 11-46-2.

b Regarding the combination with Evidence A No. 5

(a) As for Different feature 11-46-1

Evidence A No. 5 discloses a paint composition in which a polyamide resin paint is mixed with a charcoal powder (point (5a)), and that charcoal has an insect-repellent effect to prevent the generation of white ants (see point (5b)), and that the mixture of charcoal powder with a nylon resin paint results in the uniform mixture of charcoal with the paint to obtain a paint that does not exhibit color unevenness after coating (point (5c)).

First of all, however, the paint composition described in Evidence A No. 5 does not contain the inorganic boron-based ant-proof/insect-repellent/preservative. Therefore, a person skilled in the art who has read Evidence A No. 5 could not recognize the problem in the A46 invention that the inorganic boron-based ant-proof/insect-repellent/preservative might be eluted with water. Even if Evidence A No. 5 should disclose that a paint composition comprising a charcoal powder might have insect-repellent property, it cannot be said that there is a motivation in the A46 invention to mix a charcoal powder derived from plants in order to solve the problem.

Further, Evidence A No. 5 discloses that a charcoal powder was mixed in various solvent-based paints and water-based paints, but it was not uniformly diffused in the stirring process and color unevenness was caused in the coating process (point (5b)), and Test example 1 discloses that the mixture of charcoal in an acrylic resin paint may result in poor dispersion and the color unevenness in the finished state (point (5g)). A person skilled in the art who has read this description would not mix charcoal powder with acrylic resin. From this viewpoint, it cannot be said that there is a motivation in

the A46 invention comprising an acrylate-styrene copolymer emulsion falling within acrylic resins to mix a charcoal powder of Evidence A No. 5.

Subsequently, the body examines whether or not there is a motivation in the A46 invention to apply a charcoal powder described in Evidence A No. 5 in view of any problem other than the above problem.

As aforementioned, Evidence A No. 5 discloses mixing a carbon powder with a paint using the same emulsion-based resin as the A46 invention to cause moisture-absorbing property, odor-absorbing property, insect-repellent property, and negative ion effects. Therefore, if the A46 invention should have problems in moisture-absorbing property, odor-absorbing property, insect-repellent property, etc., there is a motivation in the A46 invention to mix carbon powder of Evidence A No. 5.

Regarding the insect-repellent property, however, the problem has been already solved by comprising boric acid. The paint composition of Evidence A No. 5 does not have limited intended use only for insect-repellent. Therefore, it cannot be said that there are other problems such as moisture absorbing property in the A46 invention. Even if there is such a problem, the Invention 11 allows boric acids to be securely adhered and retained and maintain excellent effects in insecticidal rate of white ant and weight loss rate of wood piece even after weatherproof test by including boric acids and carbon powder from plants in a film-forming polymer emulsion. Evidence A Nos. 46 and 5 fail to disclose the above effect caused by the combination of carbon powders from plants and boric acids. Therefore, this effect may be unexpected, and thus the Invention 11 may cause significant effects.

Accordingly, considering the motivation from a problem other than the prevention of the elution of boric acid, it cannot be said that a person skilled in the art could have easily conceived of the Invention 11.

Accordingly it cannot be said that there is any motivation in Evidence A No. 5 to modify the A46 invention with respect to the configuration of Different feature 11-46-1. Thus, a person skilled in the art could not have easily conceived of Different feature 11-46-1.

(b) As for Different feature 11-46-2

Evidence A No. 5 discloses a paint composition in which a polyamide resin paint is mixed with a charcoal powder (point (5a)), and discloses that a charcoal powder

has effects of preventing the generation of white ant (point (5b)).

Evidence A No. 46 discloses, however, that "the aqueous emulsion of acrylate-based copolymer may dissolve or disperse inorganic boron-based ant-proof/insect-repellent/preservative at a high level of concentration, while preventing precipitation at a low temperature, and form a continuous membrane in a state where water is evaporated after the application to cause the ant-proof/insect-repellent/preservative to be adhered to wood part or soil surface and prevent the leaching with water." (point (46d)). Therefore, it is essential to use an aqueous acrylate-styrene copolymer emulsion in order to mix an inorganic boron-based ant-proof/insect-repellent/preservative at a high level of concentration. But if the aqueous emulsion is replaced with a polyamide resin of Evidence A No. 5 which is not an aqueous emulsion, it becomes impossible to mix the inorganic boron-based ant-proof/insect-repellent/preservative at a high level of concentration. Therefore, it cannot be said that there is a motivation to replace the acrylate-styrene copolymer emulsion of the A46 invention with a polyamide resin of Evidence A No. 5.

(C) As for Effects

Regarding the effects of the Invention 11, the matter described in paragraph 0015 of the specification of the Patent is as discussed in the above A(C). The Invention 11 relates to an ant-proof composition comprising a polyamide resin. Therefore, the example of the specification of the Patent is Example 5, whereas the comparative experiment of Evidence B No. 2 is the comparative experiment B5.

Further, referring to Example after paragraph 0056, Example 5 showed the superior effects of insecticidal rate of white ant and weight loss rate of wood piece even when the ant-proof composition of the Invention 11 was coated on the wood piece and subjected to weatherproof test.

Evidence B No. 2 describes the comparative experiment B5 without charcoal powder. This comparative experiment showed that the weatherproof test resulted in the failure of maintaining superior effects with respect to insecticidal rate of white ants and weight loss rate of wood pieces. Therefore, Example 5 of the Invention 11 where boric acids are incorporated into carbon powder derived from plants and a polyamide resin was superior in the insecticidal rate of white ants and weight loss rate of wood piece after the weatherproof test as compared to the comparative experiment B5 where charcoal powder was not mixed.

Accordingly, the Invention 11 causes effects beyond expectation.

(D) Summary

Accordingly, a person skilled in the art could not have easily conceived of the Invention 11 on the basis of the inventions described in Evidence A Nos. 46 and 1 or 5.

F Regarding the Invention 12

The Invention 12 is an invention further limiting the by depending from the Invention 11.

Regarding the matters specifying the invention in the Invention 12, Evidence A No. 5 discloses the use of a copolymer polyamide resin with less crystallinity, which has a property of solubility to alcohol such as ethanol (See the points (5a)(5d)(5f)).

However, as discussed in the above item E, a person skilled in the art could not have easily conceived of the Invention 11 on the basis of the inventions described in Evidence A Nos. 46 and 1 or 5. Therefore, even if Evidence A No. 5 should disclose the above matters, for the same reason, a person skilled in the art could not have easily conceived of the Invention 12 on the basis of the inventions described in Evidence A Nos. 46 and 1 or 5.

G Regarding the Invention 13

The Invention 13 is an invention further limiting the Inventions 1, 3, and 8 to 12 by depending from the Inventions 1, 3, and 8 to 12.

Regarding the matters specifying the invention of the Invention 13, Evidence A No. 5 discloses that a charcoal includes a white charcoal and a black charcoal, and their mixing ratio may be selected in view of their respective properties (point (5e)).

However, as discussed in the above items A to F, a person skilled in the art could not have easily conceived of the Inventions 1, 3, and 8 to 12 on the basis of the inventions described in Evidence A Nos. 46 and 47 to 50, 1 and 5. Therefore, even if Evidence A No. 5 should disclose the above matters, for the same reason, a person skilled in the art could not have easily conceived of the Invention 13 on the basis of the inventions described in Evidence A Nos. 46 and 47 to 50, 1 and 5.

H Regarding the Invention 14

The Invention 14 is an invention further limiting the Inventions 1, 3, and 8 to 13 by depending from the Inventions 1, 3, and 8 to 13.

Regarding the matters specifying the invention of the Invention 14, Evidence A No. 2 discloses silica gel as the absorbing agent (point (5e)).

However, as discussed in the above items A to G, a person skilled in the art could not have easily conceived of the Inventions 1, 3, and 8 to 13 on the basis of the inventions described in Evidence A Nos. 46 and 47 to 50, 1 and 5. Therefore, even if Evidence A No. 2 should disclose the above matters, for the same reason, a person skilled in the art could not have easily conceived of the Invention 14 on the basis of the inventions described in Evidence A Nos. 46 and 47 to 50, 1, 2, and 5.

(4) Summary

A person skilled in the art could not have easily conceived of the Inventions 1, 3, and 8 to 14 on the basis of the inventions described in Evidence A Nos. 46, 47 to 50, 1, 2, and 5. It cannot be said that the patents for the Inventions 1, 3, and 8 to 14 were granted in violation of the provision specified in Article 29(2) of the Patent Act.

2 Reasons for invalidation 5

The body determines that Demandant is not a person who has a right to obtain a patent and is qualified to be a Demandant. Examining on the reason of usurped application as Demandant argues, the body determines that the Patent does not correspond to the provision of Article 123(1)(vi) of the Patent Act before the revision.

(1) Regarding the applicable provisions

According to revision supplement Article 2(9) of Heisei 23-nen Law No. 63: "The provision of ... Article 123(1)(vi) ... of the revised Patent Act shall apply to a patent application filed on or after the implementation date of this Act, whereas the provisions then in force remain applicable to a patent application before the implementation date of this Act," to the Patent according to the patent application filed on June 24, 2003, a date before the implementation date of the Act, shall apply the provision of Article 123(1)(vi) ("The case where the Invention was granted a patent for the application by a person who was not the inventor and did not succeed a right to obtain a patent") of the Patent Act before revision (hereinafter simply referred to as "Patent Act before revision").

According to revision supplement Article 2(17) of Heisei 26 Law No. 36: "to an Invalidation Trial demanded before the implementation of this Act remain applicable the provisions then in force regardless of the provision of Article 123(2) of the revised Patent Act," for the Invalidation Trial of the Patent demanded after the implementation date of the Act shall apply the revised Patent Act (i.e., Current Patent Act, hereinafter simply referred to as "Patent Act".), the provision of Article 123(2) ("Invalidation Trial

may be demanded only by an interested party (a person who has a right to obtain a patent in the case where the Invalidation Trial is demanded for reasons corresponding to Article 123(1)(ii) ... or Article 123(1)(vi))."). Therefore, the Invalidation Trial of this case may be demanded only by "a person who has a right to obtain a patent" for a reason corresponding to Article 123(1)(vi).

(2) Regarding Demandant's qualification and way of determining usurped application

Regarding Demandant's qualification, as discussed in the above item (1), "Invalidation Trial may be demanded only by a person who has a right to obtain a patent."

On the other hand, regarding the usurped application, as discussed in item (1), it is specified that "The case when the Invention was granted a patent for the application by a person who was not the inventor and did not succeed a right to obtain a patent." In this regard, in the Invalidation Trial demanded on the ground of usurped application, the Patentee should bear the burden of establishing the fact that "The patent application was filed by the inventor itself of the Invention according to the Patent or a person who had succeeded a right to obtain a patent." The content and the degree of Patentee's argument or establishment may vary depending on the content of specific circumstances suggestive of usurped application or the content and the degree of the argument and establishment activity of Demandant of the trial for invalidation. It should be first examined to what extent Demandant specifically argues the circumstances suggestive of the usurped application and submits the supportive evidences, and then examined whether or not Patentee's argument and establishment surpass the Demandant's argument and establishment, and whether or not the Patentee's representative might present an argument and establishment sufficient to believe that he is an inventor (See: IP High Court Ruling on June 29, 2009 (2008 (Gyo-Ke) 10427); and IP High Court Ruling on January 25, 2017 (2015 (Gyo-Ke) 10230)).

The above ruling is applied to Reasons for invalidation 5 of this case, and it is examined as to whether the Demandant specifically argues the following circumstances suggestive of usurped application and submitted the supportive evidence thereof:
A Demandant's former representative, Mr. Yoshimatsu, has completed the Invention before the priority date of the Patent; and
B Demandant's former representative, Mr. Yoshimatsu, had conveyed to Mr. Saito, the Demandee's representative, the content of the Invention before the priority date of the

Patent, or at least Mr. Saito had been in a condition of the Invention being able to be informed,
and then it is examined as to whether the Demandee's argument and establishment might surpass the Demandant's ones, and
C the Demandee might present an argument and establishment sufficient to believe that the inventor of the application of the Patent was the true inventor of the Invention.

As seen above, it is necessary to examine the above items A to C with respect to the usurped application. The qualification for Demandant is based on the premise that one of the requirements that "Demandant's former representative, Mr. Yoshimatsu, has completed the Invention before the priority date of the Patent" be satisfied. Therefore, it is simultaneously examined in this case as to whether Demandant might have a qualification for Demandant by examining the requirements of the above items A to C with respect to the usurped application.

(3) Regarding the Invention

The Inventions 1, 3, and 8 to 14 are as shown in the above "No. 3."

(4) Regarding the fact that Demandant (the former representative, Mr. Yoshimatsu) has completed the Invention before the priority date of the Patent

A Finding

Regarding the fact that Demandant (the former representative, Mr. Yoshimatsu) has completed the Invention before the priority date of the Patent, the following facts may be recognized from Demandant's and Demandee's arguments and the evidences both submitted:

(1A) According to Evidence A No. 12, at the latest by September 1998, Mr. Yoshimatsu had asked Suzuki Kentaro (hereinafter referred to as "Mr. Suzuki") of Forest Research and Management Organization to implement the outdoor ant-proof tests for liquid catalytic activated carbon product, and Mr. Suzuki started the test from September 10, 1998. Further, on April 16, 2002, Mr. Yoshimatsu had received a report from Mr. Suzuki that an air permeation type charcoal paint containing a specially-processed charcoal and minerals with a product name of Healthco Cure had an ant-proof property without feeding damage of white ants even after 3 years 5 months.

(1B) According to Evidence A No. 32-1, on July 8, 2002, Mr. Yoshimatsu filed an

international application (International Application No.PCT/JP02/06897, priority date: July 10, 2001) with the applicant name and the inventor name of Mr. Yoshimatsu. The invention relates to a water-soluble paint comprising acrylic resin, charcoal powder, tar, and boiling stone, which showed repellent effect to white ants and ant killing effects.

(1C) According to Evidence A No. 15, on July 15, 2001, Demandant had made a dealership sales agreement with Demandee for "liquid catalytic activated carbon for ant-proof and preservation, named Healthco Cure" manufactured and sold by Demandant.

(1D) According to Evidence A No. 29, on August 2001, Demandant started the sales of "liquid catalytic activated carbon, named Healthco Cure," an ant-proof paint.

(1E) According to Evidence A No. 34 and Evidence B No. 8, the catalogs of Healthco Cure, Healthco Cure are an ant-proof preservative in which a woody-based natural material, a fine powder woody carbon, and a natural mineral are mixed together. As a result of quantitative analysis of metal components, only metals of mineral content in natural materials were detected. According to Evidence A No. 35, Healthco Cure's pamphlet (Evidence A No. 34) was sent to customers on June 5, 2002.

(1F) Evidence B No. 6 showed that Healthco Cure comprises 20% natural minerals, and a result of quantification of metal components shows that a metal component contained was 0.02 weight% boron as a semiquantitative value.

(1G) Evidence A No. 41 discloses the following matters:
a "Date 02.6.4
..." (page 3, right column)

b "Date 02.6.17
Measure

...

H-40	227.5
Dora S	97.5
NaOH 2%	12.76 + 10 H_2O
Water	628 + 72.2

NTA	78
Charcoal	150
Zeo	320
B	80
Api	4.8

...

NaOH 2%	77.4 g
NaOH	1.6 + 1.6
NTA	7.8
B	4.8 (3%)
H-40	33
Charcoal	15
Zeo	32

...

H-40	325 kg
NaOH solution	12.76 (NaOH) + 10 kg (water)
Water	700 kg
NTA	78 kg
Charcoal	150 kg
Zeo	320 kg
Api	4.8 kg
Boric acid (ho-san)	80 kg

...

H-40	3.09 kg
NaOH	0.1215 + 0.0952
Water	6.666
NTA	0.7428
Charcoal	1.4285
Zeo	3.0476
Api	0.0457
Boric acid (ho-san) (5%)	0.7619

H-40	139.5
NaOH	6.12 + 4.5 ○water (the character of "water" in ○)
Water	301.5
NTA	33.75
Charcoal	64.35
Zeo	137.25
Api	2.16
Boric acid (ho-san)	34.2

H-40	3.1 kg
NaOH	0.136 + 0.1 ○water (the character of "water" in ○)
Water	6.7
NTA	0.75
Charcoal	1.5
Zeo	3.26
Api	0.048
Boric acid (ho-san) (3%)	0.48
H-40	3.1 kg
NaOH	0.136 + 0.1
Water	6.7
NTA	0.75
Charcoal	1.3
Zeo	3.9
Api	0.048" (page 6, right column to page 8, right column, middle).

c "02.7.1

- business conference

...

- Application Demo Video

Cure to Inspection

- Revise Can Sticker, coloring, Healthco Cure, Nerutan Mat, Zanko (stock quantity)

...

Hirano museum

Cure ○+ (the character of + in ○) Health coat

Insect test → Pest test

for museum
Dealership / Person in charge - Determine a person in charge → Instruction
- When the results are OK (as planned) rebate (gift ticket, etc.)" (page 10, left column, line 4 to page 11, right column)

d "Date 02.11.2
..." (page 39, left column)

(1H) Evidence A No. 42 discloses the following matters: (Further, the underlines represent strike-through in Evidence A No. 42.)

a.	"Date	02.8.10			
H-40	3.25	3.25	32.5 g		
NaOH	70.2	7.2	7.2	6.81	64.9 g
Water	6.49				
NTA	0.78	0.78	50%	0.5 ml	7.8 g
Carbon	1.5	1 kg	10 g		
Zeo	3.2	3.2	32 g		
Api	48 g	0.48 g			
Keshi	48 g	0.48 g			
B	0.8	8 g			
NH_3	4.8 g	0.16	0.48 kg		48 kg" (page 15, left column)

(1I) Evidence A No. 43 discloses the following matters:

"Date	03.8.15		
...			
NTA	1.6	1.36	13.6
F	0.16	0.14	1.4
H_2O	7.8	6.6	66
NaOH	0.468	0.4	4
B	0.46	0.4	4
2606	3.6	3	30
Carbon	1.6	1.36	13.6
Ze	3.2	2.7	27

159.6 g
" (page 10, left column)

(1J) In Evidence A No. 38, an invoice to Demandant, a product name of "Ultrasol H-40"

is described.

(1K) In Evidence A No. 40, an invoice to Demandant, a product name of "Binchotan powder" is described.

Hereinafter, the findings shown in the above (1A) to (1K) are referred to as "Finding (1A)" to "Finding (1K)."

B Judgment

(A) Findings (1A) to (1F)

According to Finding (1A), on April 16, 2002, Mr. Yoshimatsu had invented "an air permeation type charcoal paint containing a specially-processed charcoal and minerals (a product name of Healthco Cure)" with ant-proof property; however, there is no evidence showing the minerals were boric acids. Thus it cannot be seen from Finding (1A) that Mr. Yoshimatsu had completed the Invention before the priority date of the Patent.

According to Finding (1B), on a priority date of July 10, 2001, Mr. Yoshimatsu had invented a paint with repellent effect and ant-killing effects to white ants, the paint comprising acrylic resin, charcoal powder, tar, and boiling stone. But the boiling stone was zeolite, which is aluminosilicate, not boric acids. Thus it cannot be seen from Finding (1B) that Mr. Yoshimatsu had completed the Invention before the priority date of the Patent.

According to Findings (1C) to (1F), "liquid catalytic activated carbon for ant-proof and preservation: Healthco Cure" launched at the latest on August 2001 by Demandant comprises 20% natural minerals and 0.02 weight% of boron as a metal element. The amount of 0.02 weight% is an extremely low level in view of the fact that the Invention 1 or 3 relates to an ant-proof composition. Thus it cannot be said that the boron was intentionally added to exert its effects.

Further, a metal element of boron may be a boron derived from a compound other than boric acids. Therefore, even if Healthco Cure should comprise 0.02 weight% boron as a metal element, it would not necessarily comprise boric acids first of all.

Subsequently, when construed according to Demandant's allegation of natural

mineral meaning boric acid, 20 weight% of boric acid (H_3BO_3) in Healthco Cure corresponds to 3.6 weight% of boron as a metal element, which contradicts the analysis result of 0.02 weight% of boron as a metal element. Therefore, it cannot be seen that natural minerals in Healthco Cure mean boric acid.

Accordingly, it cannot be seen from Findings (1C) to (1F) that Healthco Cure comprises boric acids.

Accordingly, it cannot be seen from Findings (1C) to (1F) that Mr. Yoshimatsu had completed the Invention before the priority date of the Patent.

(B) Findings (1G) to (1K)

a Correspondence relationship between the components of the composition of Evidence A Nos. 41 to 43 and the components of the composition of the Invention

It cannot be directly inferred from Finding (1G)b that "Charcoal" is a charcoal powder derived from plants. According to Finding (1K), however, Demandant purchased Binchotan powder, and had no particular reason to use other charcoals. Thus "charcoal" may be construed as Binchotan powder, and thus tentatively recognized as "a charcoal powder derived from plants" of the Invention.

Regarding "B" in Finding (1G)b, "B" is an element symbol representing boron. Further, Evidence A No. 41 sometimes uses "boric acid (ho-san)" without the use of "B" as a notation of composition, thus "B" is tentatively recognized as boric acid.

In contrast, according to Finding (1G)b, "H-40" is used consistently, and thus tentatively recognized as "Ultrasol H-40" of Finding (1J). But there is no evidence showing that Ultrasol H-40 is "film-forming polymer emulsion," "acrylic-based polymer or vinyl acetate-based polymer," "water-soluble polysaccharides," or "polyamide resin." Therefore, it cannot be said that "H-40" of Evidence A No. 41 corresponds to "film-forming polymer emulsion" of the Invention 1, "acrylic-based polymer or vinyl acetate-based polymer" of the Invention 3, "water-soluble polysaccharides" of the Invention 8, or "polyamide resin" of the Invention 11.

For the above reason, it is recognized that Evidence A No. 41 describes a composition comprising "H-40," "charcoal powder from plants," and "boric acids." But Evidence A No. 41 fails to establish the fact that the composition comprises the component corresponding to "film-forming polymer emulsion" of the Invention 1, "acrylic-based polymer or vinyl acetate-based polymer" of the Invention 3, "water-soluble polysaccharides" of the Invention 8, or "polyamide resin" of the Invention 11. Therefore, it cannot be said that Evidence A No. 41 describes the same composition as

those of the Inventions 1, 3, and 8 to 14.

According to Finding (1H), Evidence A No. 42 describes a composition comprising "H-40," "charcoal," and "B," and thus the composition comprising "H-40," "charcoal powder derived from plants," and "boric acids" is described. As is examined above, however, it cannot be said that "H-40" is "film-forming polymer emulsion," "acrylic-based polymer or vinyl acetate-based polymer," "water-soluble polysaccharides," or "polyamide resin." Therefore, it cannot be said that Evidence A No. 42 describes the same composition as those of the Inventions 1, 3, and 8 to 14.

According to Finding (1I), Evidence A No. 43 describes the composition comprising "charcoal" and "B." As is examined above, however, the composition does not comprise "H-40," nor does it comprise "film-forming polymer emulsion," "acrylic-based polymer or vinyl acetate-based polymer," "water-soluble polysaccharides," or "polyamide resin." Therefore, it cannot be said that Evidence A No. 43 describes the same composition as those of the Inventions 1, 3, and 8 to 14.

As seen above, it cannot be seen from Findings (1G) to (1K) that Evidence A Nos. 41 to 43 describe the same composition as those of the Inventions 1, 3 and 8 to 14. Therefore, it cannot be said that Mr. Yoshimatsu had completed the Invention before the priority date of the Patent.

Demandant argues on the basis of the table on page 91 of the written demand summarizing again the terms in the note and the kinds of raw materials that "H-40" is "acrylic-based resin." Just to be safe, given that "H-40" is "acrylic-based resin," the following fact is examined hereinafter.

b Whether Demandant may argue that Mr. Yoshimatsu had completed the Invention 1 or 3 before the priority date of the Patent on the ground that he had manufactured the composition corresponding to the Invention 1 or 3

Demandant argues on the basis of Evidence A Nos. 41 to 43 that Healthco Cure, which was manufactured and sold before the priority date of the Patent, corresponds to the Invention 1 or 3, and thus Mr. Yoshimatsu had completed the Invention before the priority date of the Patent. This argument is examined.

As discussed in the above item a, Evidence A No. 41 describes the composition

comprising "H-40," "charcoal powder derived from plants," and "boric acids." The content of boric acid in the composition of Evidence A No. 41 may be calculated as 2.77 to 4.76 weight%.

Further, Evidence A No. 42 also describes a composition comprising "H-40," "charcoal powder derived from plants," and "boric acids." The content of boric acid in the composition of Evidence A No. 42 may be calculated as 5.0 weight%.

On the other hand, Evidence A No. 43 fails to disclose "H-40," and first of all, fails to describe the composition corresponding to the Invention 1 or 3.

Further, it is obvious that "film-forming polymer emulsion" of the Invention 1 corresponds to acrylic-based resin. Therefore, Evidence A Nos. 41 and 42 describe the compositions corresponding to the Invention 1 or 3.

Accordingly, the examination is made as to whether it can be seen from the description of Evidence A Nos 41 and 42 that Demandant had manufactured the composition in a product name of Healthco Cure corresponding to the Invention 1 or 3.

(a) Evidence A No. 41

Production records of products in manufacturer are usually recorded ones so that a manufacturing history may be known from the manufactured product after sales. They are usual to record and manage a manufactured date, a name of product manufactured and sold, and the manufacturing history in view of the Product Liability Law (See Article 3), which specifies that a manufacturer shall have a responsibility for compensation in the case where a product has a defect.

According to Finding (1D), Demandant is a company (manufacturer) which manufactures and sells an ant-proof paint. It is not in the ordinary course of business for a manufacturer to manufacture a product on a specific date without manufacturing on other days. Rather, it is in the ordinary course of business to prepare and store a document describing only the manufacturing history with respect to the product that have been manufactured for a certain period of time with a title of "Production record." Further, it is in the ordinary course of business to describe in a document "Production record" manufacturing history such as raw materials, their mixing ratios, and production amounts associated with production date, product name and lot number, all of which are the contents relating to only production with consistent expression, and store the production record in a department where the product is manufactured and managed.

Further, the management of product with product name and lot number by manufacturer is actually consistent with Evidence A No. 38, the invoice describing a

product of Healthcoat as "lot number 20621 Healthcoat."

Based on this, the examination is made as to the overall style and the whole description supposing that Evidence A No. 41 is a production record note.

As aforementioned, Evidence A No. 41 is a note recording the production, the cover page normally has a description of "Production record," whereas Evidence A No. 41 lacks description of "Production record" as a title. Further, according to Finding (1G), items a and d, Evidence A No. 41 is a note described for a period from June 4, 2002 to November 2, 2002. For this period, the date when a composition (raw materials, their mixing ratio, and its production amount, etc.) was described is only June 17, 2002, and on the other date a composition was not described. This means that the composition had not been described continuously for a certain period. In contrast, according to Finding (1G)c, on the other date there is a description titled business conference, which has totally nothing to do with production record of product. Thus Evidence A No. 41 was not used solely for allegedly recording at least production record of product.

As seen above, it cannot be seen from the overall style and the whole disclosure of Evidence A No. 41 that Evidence A No. 41 is a production record note.

Subsequently, the specific description of the composition in Evidence A No. 41 is examined.

According to Findings (1C) and (1D), Healthco Cure had launched on August 2001 at the latest. Therefore, it can be said that a product name of Healthco Cure was used on June 17, 2002 when the composition corresponding to the Invention 1 or 3 of Evidence A No. 41 was described. Given that Evidence A No. 41 is a production record, it is natural that a product name of Healthco Cure would be described therein.

Further, according to Finding (1G)b, Evidence A No. 41 describes a plurality of compositions with different mixing ratios of raw materials. Different mixing ratios of raw materials may result in different properties of ant-proof paints. Thus, if Evidence A No. 41 were a production record of Healthco Cure, it is ordinary course of business even in the same product of Healthco Cure to describe a lot number for each composition with different properties for the management of the manufactured product and the sale destination.

Actually, Evidence A No. 41 merely discloses the raw materials, mixing ratio, and production amount of the composition. The composition corresponding to the Invention 1 or 3 was not described in association with the product name of Healthco

Cure and its lot number. Furthermore, when it comes to the description on June 17, 2002, raw materials, mixing ratios, and production amount of the composition were not described in a unified expression.

As seen above, it is unreasonable to find on the basis of the disclosure of the composition of Evidence A No. 41 that Evidence A No. 41 is a production record note.

Further, there is no evidence to associate the composition of Evidence A No. 41 with a product production record of Healthco Cure.

Taking the above into consideration, it cannot be seen from Evidence A No. 41 that Demandant had manufactured the composition corresponding to the Invention 1 or 3 on June 17, 2002. Therefore, it is not reasonable to say that Mr. Yoshimatsu had completed the Invention 1 or 3 before June 17, 2002.

(b) Evidence A No. 42

Evidence A No. 42 describes the composition corresponding to the Invention 1 or 3 only on August 10, 2002 after the priority date. It cannot be directly concluded that the composition corresponding to the Invention 1 or 3 was manufactured before the priority date of the Patent.

In addition, Evidence A No. 42 describes "test" on the cover page, not "the production record." Further, Evidence A No. 42 does not describe the composition continuously for a certain period.

Further, Evidence A No. 42 merely discloses the raw materials, mixing ratio, and production amount of the composition. The composition corresponding to the Invention 1 or 3 was not described in association with the product name of Healthco Cure and its lot number. Furthermore, raw materials, mixing ratios, and production amount of the composition were not described in a unified expression.

Further, there is no evidence to associate the composition of Evidence A No. 42 with a product production record of Healthco Cure.

Taking the above into consideration, it cannot be said that Evidence A No. 42 is a production record note. It cannot be seen from Evidence A No. 42 that Demandant had manufactured the composition corresponding to the Invention 1 or 3 before the priority date. Therefore, it is not reasonable to say that Mr. Yoshimatsu had completed the Invention 1 or 3 before the priority date.

c Whether it can be inferred from the description of Evidence A Nos. 41 and 42 that Mr. Yoshimatsu had completed the Invention 1 or 3

As discussed in the above item b, it cannot be seen from Evidence A Nos. 41 and 42 that Demandant had manufactured the composition corresponding to the Invention 1 or 3. The examination is made hereinafter as to whether the Invention had been completed on the basis of the fact that Evidence A Nos. 41 and 42 describe the compositions corresponding to the Invention 1 or 3.

Supposing that Evidence A Nos. 41 and 42 are any experiment record in which the composition corresponding to the Invention 1 or 3 was described, it contradicts the fact that the writer of Evidence A Nos. 41 and 42 is Mr. Suetake, not Mr. Yoshimatsu, as Demandant allegedly insists on being the inventor. In this regard, even if it might be construed that Mr. Yoshimatsu instructed Mr. Suetake to describe as the experiment record, as mentioned below, it cannot be seen from Evidence A Nos. 41 and 42 that Mr. Yoshimatsu had completed the Invention 1 or 3.

(a) Regarding the completion of the invention

Regarding the completion of the invention, the Supreme Court rules that "Invention is the creation of technical concept utilizing a natural law (Article 2(1) of the Patent Act), and may be completed by a series of steps of: setting a certain technical problem (object); adopting the technical means for solving the problem; and confirming the effects of achieving the desired object by the technical means. It is construed as being necessary and sufficient for the completion of the invention that the technical means is configured specifically and objectively to the extent that a person skilled in the art who has ordinary knowledge in the technical field may repetitively implement and achieve the desired effects" (Second petty bench of Supreme Court ruling, 1986 (O) 454).

When the above ruling is applied to the Invention, it is construed as necessary that Evidence A Nos. 41 and 42 disclose the ant-proof composition for the formation of coating, comprising the components specified in the Invention 1 or 3 specifically and objectively to the extent that a person skilled in the art could achieve the effects of ant-proof property.

(b) Regarding Evidence A No. 41

As discussed in the above item b, given that "H-40" is "acrylic-based resin," the content of boric acid in a composition of Evidence A No. 41 may be calculated as 2.77 to 4.76 weight%. In view of this, Evidence A No. 41 tentatively describes the composition corresponding to the Invention 1 or 3.

These descriptions merely describe, however, the composition where the components are simply mixed together. Evidence A No. 41 is silent about how to use this composition and what kind of use this composition is used for. Further, there is no result of using this composition; i.e., no data of ant-proof effects, nor other evidence describing the effects of this composition.

Accordingly, it cannot be said that Evidence A No. 41 discloses specifically and objectively to the extent that an "ant-proof" composition "for the formation of a coating" may achieve the effects of excellent ant-proof property. Therefore, even if the above description of Evidence A No. 41 were any experiment record, it cannot be said that Mr. Yoshimatsu had completed the Invention 1 or 3 before the priority date of the Patent.

(c) Regarding Evidence A No. 42

As is discussed in the above item b(b), the content of boric acid in the composition of Evidence A No. 42 is calculated as 5.0 weight%. Thus, the composition corresponding to the Invention 1 or 3 is tentatively described. But such description is on August 10, 2002, after the priority date. Therefore, it cannot be said that there is direct evidence showing that the Invention 1 or 3 had been completed before the priority date of the Patent. Further, Evidence A No. 42 fails to disclose data of ant-proof effects.

Accordingly, it cannot be said that Evidence A No. 42 discloses specifically and objectively to the extent that an "ant-proof" composition "for the formation of a coating" may achieve the effects of excellent ant-proof property, before the priority date of the Patent. Therefore, even if the above description of Evidence A No. 42 were any experiment record, it cannot be said that Mr. Yoshimatsu had completed the Invention 1 or 3 before the priority date of the Patent.

(d) Summary

As discussed in the above items (b) and (c), it cannot be seen from Evidence A Nos. 41 and 42 that Mr. Yoshimatsu had completed the Invention 1 or 3 before the

priority date.

d Summary of Findings (1G) to (1K)

For the above reason, it cannot be seen from Findings (1G) to (1K) that Mr. Yoshimatsu had completed the Invention 1 or 3 before the priority date.

(C) Summary

As described above, it cannot be deduced from Findings (1A) to (1K) and their mutual factual relationships that Mr. Yoshimatsu had completed the Invention before the priority date.

C Demandant's allegation

(A) Demandant argues that Mr. Yoshimatsu had known of the ant-proof effects of boric acid on white ants from Mr. Suzuki, and he started mixing boric acid with charcoal paint after September 1998, and 5 months later, on February 1999, he completed the paint composition for ant-proof comprising "charcoal, acrylic-based resin, and boric acid," and argues that he described boric acid as minerals in Evidence A No. 12, since boric acid had an image of being toxic to the human body and he was concerned about anybody's imitation. (Invalidation Demand, page 85, line 16 to page 87, line 10)

(B) Demandant argues that both products of "composition mixed with boric acid" and "composition without boric acid" were manufactured, and argues that analysis test of metal components of Evidence B No. 6 showed a test of product without boric acid. (Written Refutation, page 96, lines 2 to 13)

(C) Demandant argues that the can count (152 cans) of the composition described on June 17, 2002 of Evidence A No. 41 is an appropriate amount as a can count manufactured by a product in view of the total shipment volume of Healthco Cure of 1300 cans in 2002, thus the description of the composition of Evidence A No. 41 was the recording of the production of the product. Demandant further argues that documents showing the production record and performance of the whole products as of 2002 were missing. (written refutation, page 97, line 8 to page 98, line 7, written statement dated December 14, 2016, page 2, line 20 to page 3, line 3)

D Consideration of Demandant's allegation

Regarding (A)

Demandant argues that the paint composition for ant-proof comprising "charcoal, acrylic-based resin, and boric acid" had been completed on February 1999; however, there is a complete lack of evidence to establish the fact. Thus, the Demandant's allegation cannot be accepted.

Further, Evidence A No. 12 discloses that minerals are contained in a paint, but fails to disclose that boric acids are contained therein. Further, it cannot be said that minerals generally mean boric acids, nor that boric acids were commonly called minerals. Given that boric acid is represented as minerals as Demandant argues, as discussed in the above item B(A), there is a contradiction in Finding (1F) between the fact that Healthco Cure comprises 20% of boric acid and the analysis result that it comprises 0.02 weight% of boron as a metal element. Therefore, Demandant's argument is not acceptable.

Regarding (B)

As Demandant argues, even if Demandant produced both "the composition mixed with boric acid" and "the composition without boric acid," and the analysis result of metal components of Evidence B No. 6 was a test result of a product without boric acid, as is examined in the above B(A), Demandant fails to establish the fact that Healthco Cure comprises boric acids. Therefore, it cannot be deduced from this argument that Healthco Cure comprises boric acids. Further, as discussed in the above item B(B)b, it cannot be said that Demandant had produced the composition corresponding to the Invention 1 or 3 where boric acid was mixed. In addition, Demandant argues that the metal analysis test of Evidence B No. 6 is for the one without boric acid. But such argument is inconsistent with the fact that Healthco Cure of Evidence B No. 6 comprises 20% natural minerals, which is allegedly another notation for boric acid according to the consistent argument by Demandant.

Regarding (C)

As discussed in the above item B(B)b, it cannot be seen from Evidence A No. 41 that Demandant had manufactured the composition corresponding to the Invention 1 or 3. Additionally, Demandant further argues that documents showing the production record and performance of the whole products as of 2002 were missing; however, Demandant fails to establish even the fact that the total shipment volume of Healthco Cure was 1300 cans in 2002. Therefore, it cannot be determined as to whether the can count of the composition of Evidence A No. 41 might be an appropriate amount. Further, it cannot be established as to whether the description of the composition of

Evidence A No. 41 might be a production record of the product.

E Summary

Accordingly, it cannot be seen from Demandant's allegation and all the evidences that Mr. Yoshimatsu, the former representative of Demandant, have completed the Invention before the priority date.

Accordingly, Demandant is not qualified for Demandant regardless of whether or not the Demandant have succeeded the right to obtain a patent from Mr. Yoshimatsu.

As seen above, it cannot be said that Demandant is qualified for Demandant, but just to be safe, the examination on the usurped application is further made.

(5) Demandant's former representative, Mr. Yoshimatsu, had conveyed to Mr. Saito, the Demandee's representative, the content of the Invention before the priority date of the Patent, or at least Mr. Saito had been in a condition of being able to be informed of the Invention

A Finding

Regarding the fact that Demandant's former representative, Mr. Yoshimatsu, has conveyed to Mr. Saito, the Demandee's representative, the content of the Invention before the priority date of the Patent, or Mr. Saito has been in a condition being able to be informed of the Invention, the following facts are acknowledged from Demandant's and Demandee's arguments and the evidences both submitted:

(2A) According to Evidence A No. 13, on July 15, 1999, Demandant made a dealership sales agreement with Kabushikigaisha Nichiei Jutaku Kensetsu, where Mr. Saito was appointed as president, for a product such as charcoal paint (Health coat) that Demandant manufactured and sold.

(2B) According to Evidence A No. 15, on July 15, 2001, Demandant had made a dealership sales agreement with Demandee for liquid catalytic activated carbon for ant-proof and preservation, named Healthco Cure" manufactured and sold by Demandant.

(2C) According to Evidence B No. 22, on and after September, 2001, Demandee had demanded for Demandant to submit a safety data sheet of Healthco Cure, but had not been sent one at least through April 11, 2002.

Hereinafter, the findings shown in the above (2A) to (2C) are referred to as "Finding (2A)" to "Finding (2C)."

B Judgment

According to Findings (2A) and (2B), on and after July 15, 1999, Demandant made a dealership sales agreement of Health coat with Demandee, and on July 15, 2001 Demandant made a dealership sales agreement of Healthco Cure with Demandee. Therefore, it is found that Demandee had sold Healthco Cure on and after July 15, 2001. There is no evidence, however, of the fact that Demandee was informed about raw materials and their mixing ratios of Healthco Cure from Demandant before the priority date of the Patent. Rather, it can be deduced from Finding (2C) that Demandee had been requesting for the submission of a safety data sheet of Healthco Cure, but it was not submitted.

Consequently, since there are no other circumstances that they collaborated on Healthco Cure, it cannot be recognized that Demandant (former representative, Mr. Yoshimatsu) had conveyed to Demandee (the representative, Mr. Saito) the content of the Invention before the priority date of the Patent, or at least Demandee (the representative, Mr. Saito) had been in a condition of being able to be informed of the Invention.

C Demandant's allegation

Demandant argues that Demandant made a dealership sales agreement with Mr. Saito on Health coat on July 15, 1999, and thereafter, Mr. Yoshimatsu informed Mr. Saito that boric acid ball effective for cockroach also acts on white ants, and further informed him of a paint composition for ant-proof, comprising charcoal, acrylic-based resin, and boric acid.
(Invalidation Demand, page 81, lines 1 to 9, page 82, lines 2 to 8)

D Examination on Demandant's allegation

Regarding Demandant's allegation, there is no evidence sufficient to find that Mr. Yoshimatsu informed Mr. Saito that boric acid ball was effective on white ants, and informed about a paint composition for ant-proof, comprising charcoal, acrylic-based resin, and boric acid. Therefore, none of Demandant's allegations is acceptable.

E Summary

For the above reasons, it cannot be deduced from Demandant's allegation and all

evidences that Demandant (former representative, Mr. Yoshimatsu) had conveyed to Demandee (the representative, Mr. Saito) the content of the Invention before the priority date of the Patent, or at least Demandee (the representative, Mr. Saito) had been in a condition of being able to be informed of the Invention.

(6) As for the inventor of the application of the Patent being the true inventor of the Invention

A Finding

Regarding the fact that the inventor of the application of the Patent is the true inventor of the Invention, the following facts may be recognized from Demandant's and Demandee's arguments and the evidences both submitted:

(3A) According to Evidence B No. 61, Mr. Saito graduated high school on February 28, 1968 and joined Kabushikigaisha Ahsu Shokai on April 1, 1968 to work on delivery and sales. Thereafter, on August 1, 1973, he joined Token Co., Ltd. to work on design and sales. Further, on September 1, 1978, he joined Kabushikigaisha Nichiei Jutaku having business fields of building operations and real estate to engage in design, planning, and sales. On April 1, 1984, he assumed the post of president of the same company. On January 26, 1990, he founded a non-life insurance agent named H&C Plc. (Current ECOPOWDER Corp. (Demandee)), and assumed the post of president.

(3B) According to Evidence B No. 16-1, on September 20, 1999, a patent application was filed for the invention relating to a healthy straw mat in which a charcoal powder was fixed with adhesives to utilize the absorbing property of charcoal powder with an inventor of Mr. Saito (Japanese Patent Application No. H11-264817).

(3C) According to Evidence B No. 16-3, on August 6, 2002 (priority date: August 7, 2001), a patent application was filed for an aerosol composition with excellent coating performance comprising a charcoal powder derived from plants and a polymer emulsion with an inventor name and an applicant name of Mr. Saito (Japanese Patent Application No. 2002-228172). The specification of the present application discloses in paragraph 0002 that charcoal has an effect of preventing the generation of white ants, and describes in paragraph 0032 the example of white ant-proof as an application example.

(3D) According to Evidence B No. 16-4, on March 18, 2002, a patent application was filed for a charcoal paint comprising a charcoal powder derived from plants and a

polymer emulsion with an inventor name and an applicant name of Mr. Saito (Japanese Patent Application No. 2002-74560). The specification of the present application discloses in paragraph 0002 that charcoal has an effect of preventing the generation of white ants, and describes in paragraph 0036 the example of white ant-proof as an application example.

(3E) On June 24, 2003 (priority date: June 28, 2002), Mr. Saito filed a patent application of the Patent with an inventor and an applicant of Mr. Saito.

(3F) According to Evidence B No. 40, on April 25, 2002, Mr. Saito asked Professor Imamura Yuji of Kyoto University to implement an outdoor ant-proof test for ant-proof paint mixed with boric acid.

(3G) According to Evidence B No. 2, to the application of the Patent was issued a notice of reasons for refusal on March 18, 2008. In response, a written argument was submitted together with a comparative experiment. In a part other than the description of the comparative experiment, it discloses that Demandee asked Professor Imamura Yuji of Kyoto University to evaluate outdoor ant-proof efficacy test on or after April 11, 2003.

(3H) According to Evidence B No. 54, a comparative experiment was conducted in response to the notice of reasons for refusal for a period of March 25, 2008 to May 20, 2008 to obtain a comparative experiment result shown in the written argument (Evidence B No. 2) dated June 26, 2014.

(3I) According to Evidence B No. 60, the comparative experiment of Evidence B No. 2 was conducted by Mr. Saito.

Hereinafter, the findings shown in the above (3A) to (3I) are referred to as "Finding (3A)" to "Finding (3I)."

B Judgment

According to the above Finding (3A), Mr. Saito graduated high school on February, 1968, and followed by job experiences in the other companies, joined Kabushikigaisha Nichiei Jutaku on September 1, 1978.

According to Finding (3B), after the assumption of the post of president of the

same company on 1984, a patent application was filed on 1999 with respect to a straw mat utilizing the absorbing property of charcoal powder, a component of the Invention. According to Finding (3C), on August 6, 2002 (priority date: August 7, 2001), a patent application was filed for an aerosol composition with excellent coating performance comprising a charcoal powder derived from plants and a polymer emulsion, which are components of the Invention (Evidence B No. 16-3). Further, according to Finding (3D), on March 18, 2002, a patent application was filed for a charcoal paint comprising a charcoal powder derived from plants and a polymer emulsion which can be said to be an underlying technique of the Invention (Evidence B No. 16-4). In these two patent applications, white ant-proof is described as an application example.

Thereafter, according to Finding (3E), Mr. Saito filed an application of the Patent according to an ant-proof composition with an inventor name and an applicant name of Mr. Saito. As seen above, a series of patent applications were continuously filed with respect to a paint comprising a charcoal powder derived from plants and a polymer emulsion, starting from Evidence B No. 16-3, followed by Evidence B No. 16-4 to an application of the Patent. In view of this, it is not reasonable to construe that all of these patent applications were made by misappropriation. It can be seen that Mr. Saito had taken an action to make the Invention at least before the priority date of the Patent.

Further, Evidence B No. 16-4 discloses the invention according to a charcoal paint comprising a charcoal powder derived from plants and a polymer emulsion which is the underlying technique of the Invention, and describes white ant-proof as an application example, and discloses that a charcoal prevents the generation of white ants. Therefore, it is reasonable for him to file an application for the Invention with an objective of white ant-proof after filing a patent application for the above underlying technique.

Further, based on the above underlying technique, he even had an idea of mixing boric acids. Only if the white ant-proof effects could be confirmed, the Invention could be completed. Therefore, it is reasonable to find that Mr. Saito had invented the above underlying technique and had been filing applications with an interest in ant-proof conceived of the Invention and completed the Invention after the confirmation of the effects.

Further, regarding the confirmation of the effects of the Invention, according to

Finding (3F), on April 25, 2002, before the priority date of the Patent, Mr. Saito asked a third party, Professor Imamura Yuji of Kyoto University, for an outdoor ant-proof test on ant-proof paint mixed with boric acid. This is consistent with Finding (3G) that Mr. Saito asked Professor Imamura Yuji of Kyoto University to implement an ant-proof test for the comparative experiment described in the written argument against reason for refusal in the examination process of the application of the Patent on or after April 11, 2003. This objectively supports the fact that Mr. Saito asked Professor Imamura Yuji of Kyoto University to implement an outdoor ant-proof test on an ant-proof paint mixed with boric acid before the priority date of the Patent.

Further, according to Findings (3G) to (3I), Mr. Saito himself started a comparative experiment in order to refute the reasons for refusal when notice of reasons for refusal was notified against the application of the Patent and obtained an experimental result without delay. This also supports that the Invention was made by Mr. Saito.

Taking all of these into account, although Demandee fails to submit direct evidence such as an experimental record sufficient to find the fact that Mr. Saito has made the Invention, it can be strongly deduced from the facts of a series of related applications and the correspondence with Professor Imamura that Mr. Saito has made the Invention. There are no other reasonable reasons and supportive evidences to find that Mr. Saito was not the inventor.

C Demandant's allegation

Demandant argues that the argument and establishment of Mr. Saito having made the Invention do not overturn any of the argument and establishment of Mr. Yoshimatsu having made the Invention, supposing that Mr. Yoshimatsu had completed the Invention as of February, 1999, and informed Mr. Saito before the priority date of the Patent that boric acid had an effect on white ants. (Oral proceedings statement brief on November 16, 2016, page 3, line 22 to page 4, line 22, page 8, line 5 to page 10, line 8)

Further, Demandant argues that Evidence B No. 16-1 to Evidence B No. 16-4 fail to describe the mixing of boric acids, and these evidences cannot be evidences to find that Mr. Saito is the inventor of the Invention. (Oral proceedings statement brief on November 16, 2016, page 6, line 17 to page 8, line 4)

D Examination on Demandant's allegation

As discussed in the above items (4) and (5), it cannot be said that Mr. Yoshimatsu has made the Invention, nor that Mr. Yoshimatsu informed Mr. Saito of the content of the Invention before the priority date of the Patent, nor that Mr. Saito was in a condition of being able to be informed of the Invention. Therefore, Demandant's allegation on the basis of these facts is not acceptable.

Further, invention is the creation of a new technical concept. Thus, even if Evidence B No. 16-1 to Evidence B No. 16-4, patent applications irrelevant to the Invention, fail to describe the mixing of boric acids, it is reasonable that the Invention of mixing boric acids is made thereafter. It cannot be seen on the ground that Evidence B No. 16-1 to Evidence B No. 16-4 fail to describe the mixing of boric acids that Mr. Saito is not the inventor of the Invention. Thus Demandant's allegation is not acceptable.

(7) Summary of usurped application

As discussed in the above items (4) and (5), Demandant fails to submit sufficient evidence to support the following facts: Demandant's former representative, Mr. Yoshimatsu, has completed the Invention before the priority date of the Patent; and Mr. Yoshimatsu had conveyed to Mr. Saito, the Demandee's representative, the content of the Invention before the priority date of the Patent, or at least Mr. Saito had been in a condition of being able to be informed of the Invention. On the other hand, as discussed in the above item (6), Demandee presents argument and establishment that can overturn the Demandant's argument and establishment and sufficient to tentatively infer that Mr. Saito is the true inventor. There are no other reasonable reasons and supportive evidences to doubt the fact.

Accordingly, it cannot be said that the Invention was granted a patent for a patent application by a person who was not the inventor and did not succeed a right to obtain a patent (usurped application).

(8) Summary

As aforementioned, the Demandant is not a person who has a right to obtain a patent, and thus is not qualified for Demandant. Therefore, the demand does not comply with Article 123(2) of the Patent Act, and is an illegal demand for invalidation trial on the basis of this reason.

Further, regarding the reason of usurped application as Demandant argues, it cannot be said that the Invention was granted a patent for the application by a person who was not the inventor and did not succeed a right to obtain a patent. Therefore, the Patent does not correspond to the case of Article 123(1)(vi) of the Patent Act before revision.

Accordingly, the Patent shall not be invalidated due to reasons for invalidation 5 as Demandant argues.

No. 7 Summary

As aforementioned, the Patents of the Inventions 1, 3, and 8 to 14 may not be invalidated on the basis of the grounds and evidences shown by Demandant.

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

March 21, 2017

Chief administrative judge: INOUE, Masahiro
Administrative judge: SATO, Takefumi
Administrative judge: SERA, Satoki