

Trial decision

Invalidation No. 2019-800012

Demandant MARUZEN CO., LTD.

Patent Attorney FUKUDA, Nobuo

Attorney MATSUMOTO, Naoki

Demandee JIMWAY Co., Ltd.

Attorney KOBAYASHI, Yukio

Attorney YUGETA, Hiroshi

Attorney KANDA, Hideto

Attorney HIRATA, Shinji

The case of trial regarding the invalidation of Japanese Patent No. 6188984, titled "antiviral sanitary masks" between the parties above has resulted in the following trial decision:

Conclusion

The demand for trial of the case is dismissed.

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

Reason

No. 1 History of the procedures

The major history of the procedures relating to Japanese Patent No. 6188984 (hereinafter, the "Patent") is as follows:

October 27, 2016 Filing of the original application of the Patent (Japanese Patent Application No. 2017-513167) (claim of priority under the Paris Convention, October 30, 2015 (Japanese Patent Application No. 2015-214479), Japan)

March 10, 2017	Filing of the application of the Patent (Japanese Patent Application No. 2017-46177).
August 10, 2017	Registered (Japanese Patent No. 6188984)
February 13, 2019	Written demand for trial (Demandant)
Dated March 25, 2019	Invitation to amend
April 26, 2019	Written amendment (Demandant)
	Description of evidence (1) (Demandant)
	Request for examination of witness, statement of matters for examination (Demandant; the party: Takamitsu Zenbayashi)
	Request for examination of witness, statement of matters for examination (Demandant; witness: Naruki Terauchi)
	Request for examination of witness, statement of matters for examination (Demandant; the party: Ichiro Nagatake)
	Request for examination of witness, statement of matters for examination (Demandant; witness: Hiroo Ninagawa)
July 31, 2019	Written reply in the trial case (Demandee)
	Description of evidence (1) (Demandee)
	Request for examination of the party, statement of matters for examination (Demandee; the party: Ichiro Nagatake)
Dated October 3, 2019	Notice of matters to be examined
October 23, 2019	Oral proceedings statement brief (Demandant)
November 6, 2019	Oral proceedings statement brief (Demandee)
	Description of evidence (2) (Demandee)
	Request for examination of witness, statement of matters for examination (Demandee; witness: Toshio Hirayama)
November 12, 2019	Record of responses (Facsimile transmission of memorandum on progress of the oral proceedings)
November 14, 2019	First oral proceedings and examination of evidence (examination of the party, Examination of witness)
	Written statement (Demandee)
	Description of evidence (3) (Demandee)
Dated January 20, 2020	Notice of matters to be examined
January 29, 2020	Oral proceedings statement brief (2) (Demandee)
February 3, 2020	Second oral proceedings and examination of evidence (Examination of witness)

Hereinafter, "Evidence A No. 1," "Evidence B No. 1," etc. are abbreviated as "A1," "B1," etc.

The written demand for trial amended by the written amendment dated April 26, 2019 is abbreviated as the "written demand," and the written reply in the trial case dated July 31, 2019 is abbreviated as the "written reply."

In addition, the "oral proceedings statement brief" or "the oral proceedings statement brief (2)" submitted by the Demandant or Demandeé is referred to as the "Demandant's statement brief," "Demandee's statement brief" or "Demandee's statement brief (2)."

In any summary abstract, "..." means omission of statements. Encircled numbers are expressed as "((1))," etc.

No. 2 Inventions and matters described in the patent specification

Inventions according to Claims 1 to 5 of the Patent are as stated in Claims 1 to 5 as shown below.

Hereinafter, the Invention according to Claim 1 of the Patent is referred to as "Invention 1," and Inventions according to Claims 1 to 5 of the Patent are collectively referred to as the "Inventions."

"[Claim 1]

An antiviral sanitary mask consisting of two or more layers of fabrics comprising a knitted fabric applied with an antiviral agent and a knitted fabric not applied with any antiviral agent, wherein

a main body of the mask is formed to cover a nose part, a lower jaw part, and right and left auricular regions by laminating the knitted fabric applied with the antiviral agent on the outer side and the knitted fabric not applied with any antiviral agent on the inner side that contacts the nose part and the lower jaw part, and,

a frame that forms a trim with a given thickness with the knitted fabric along the rim connecting the tip of the nose, the outer side of the left auricular region, the lower jaw part, and the outer side of the right auricular region is formed in the main body, and

a non-stretchy joint part that forms a space covering the subnasal area in the nose part and the labial part is formed in the midsection of the mask body.

[Claim 2]

The antiviral sanitary mask of Claim 1, wherein the knitted fabrics are composed of polyester fibers, and an acrylic resin having paste-like properties is adhered as a bond.

[Claim 3]

The antiviral sanitary mask of any one of Claims 1 and 2, wherein the frame forming the trim is formed with a binder-finished knitted fabric band.

[Claim 4]

The antiviral sanitary mask of any one of Claims 1 and 3, wherein the frame is formed inside both of right and left auricular regions in the mask body.

[Claim 5]

The antiviral sanitary mask of any one of Claims 1 and 4, wherein the joint part is sewn by mating two knitted fabrics cut into a outwardly bunched sector form, sewing the mating part with lockstitch, and sewing in a non-stretchy manner the end part opening to right and left with two-stitch double-top seam."

No. 3 Overview of allegations of the parties and evidence

1. Overview of the Demandant's allegation and evidence

(1) Demandant requests a trial decision, "the patent for inventions stated in Claims 1 to 5 of Japanese Patent No. 6188984 are invalidated. The costs in connection with the trial shall be borne by the Demande" (Written demand, "6").

(2) Reasons for invalidation alleged by the Demandant are as shown below (Written demand, "7, (3)").

[Reasons for invalidation]

Since the Demande, who is the patentee for the Patent, has not inherited any right to receive a patent for the Invention from inventors and the Patent was granted to a patent application by a party who has not inherited the right to receive a patent, the Patent falls under the provisions of Article 123(1)(vi) of the Patent Act and should be invalidated.

(3) Demandant has submitted the following evidence.

A1: Japanese Patent No. 6188984

A2: Print-out of web pages (Company brochure: Sawayaka Hoken Plan (K.K.))

A3: Application for approval for management innovation plan, August 31, 2015

A4: e-mail (Title: Re: Masks for overseas sales) print-out

A5: e-mail (Title: Communication) print-out

A6: e-mail (Title: Re: Mask sample) print-out

A7: e-mail (Title: Fw: Draft of final report on patch test) print-out

A8: Draft of final report, skin patch test of K-125-100 post processed socks, prepared on September 2015, Life Science Laboratories, Inc.

A9: e-mail (Title: Fw: Draft of final report on patch test) print-out

A10: FAX print-out

A11: Complaint (case of demand for injunction against patent infringement), dated December 22, 2017

A12: Plaintiff's first brief (Heisei 29 (Wa) No. 43269, case of demand for injunction against patent infringement)

A13: Certificate of attestation (antiviral processing), date of issuance: February 2, 2016, Japan Textile Evaluation Technology Council

A14: The Certification Standards of SEK Mark Textile Products, date of revision: April 1, 2017, Japan Textile Evaluation Technology Council

A15: Print-out of web pages (various test data <facewear>)

A16: Japanese Unexamined Patent Application Publication No. 2017-133137.

A17: Statement of facts, October 21, 2019, Tokuji Terauchi

A18: Court decision (Intellectual Property High Court, Heisei 27 (Gyo-Ke) No. 10230, case of demand for cancellation of the trial decision)

A1 to A16 were submitted attached to the written demand, and A17 and A18 were submitted attached to Demandant statement brief.

There is no dispute between the parties concerning validity of A1 to A18 (Record of the first oral proceedings and examination of evidence, column "Demandee," "2").

2. Overview of the Demandee's allegation and evidence

(1) The Demandee requests the trial decision, "The demand for trial of the case was groundless. The costs in connection with the trial shall be borne by the Demandant" and alleges that there is no ground for invalidation (Written reply, "No. 6").

(2) The Demandee alleges that, since the Demandant does not have any right to receive a patent and cannot be deemed to have standing to be a Demandant, the demand for trial for invalidation of the case should be dismissed by a trial decision (Demandee's statement brief (2), No. 6).

(3) Demandee submitted the following evidence.

B1: Court decision (Tokyo District Court, Heisei 29 (Wa) No. 43269, case of a demand for injunction against patent right infringement)

B2-1: Defendants' Brief (2) (Heisei 29 (Wa) No. 43269, case of a demand for injunction against patent right infringement)

B2-2: Defendants' description of evidence (2) (Heisei 29 (Wa) No. 43269, case of a

demand for injunction against patent right infringement)

B3: Defendants' Brief (1) (Heisei 29 (Wa) No. 43269, case of a demand for injunction against patent right infringement)

B4: Certificate of full registry records (Demandee), November 1, 2017, Utsunomiya District Legal Affairs Bureau, Ashikaga Branch, Registration Officer, Susumu Saotome

B5: Japanese Patent Application No. 2015-214479, specification, the scope of claims, abstract, and drawings

B6: e-mail (Title: Re: Proposed brochures, and packages) print-out

B7: Shimotsuke Shimbun, "Antibacterial masks with knitted cloth," March 25, 2016

B8: Tochigi Nambu Yomiuri Times, "News from Ashikaga, the town of fibers! Birth of antiviral knitted masks "FACEWEAR," 2017

B9: Yomiuri Shimbun, "High performance masks from Ashikaga accepted very well," January 30, 2017

B10: Still image for a program titled "Influenzae became epidemic; how about preventive measures?" by "Tochigi TV," URL:
https://www.youtube.com/watch?v=kXcW_awGrR0&feature=youtu.be

B11: Document titled matters to be made sure, June 28, 2016

B12: Bulletin of Ashikaga Chamber of Commerce and Industry, "Yuai," No. 765, January 1, 2017

B13: Bulletin of Ashikaga Chamber of Commerce and Industry, "Yuai," No. 769, April 20, 2017

B14: Shimotsuke Shimbun, "Commercialization of antiviral fiber products, Maruzen obtained SEK approval," March 23, 2017

B15: e-mail (Title: FW: Royalties for the use) print-out

B16: Certificate of full registry records (Global Research Laboratories Japan Co., Ltd.), October 3, 2014, Utsunomiya District Legal Affairs Bureau, Ashikaga Branch, Registration Officer, Takao Wada

B17-1: Document titled "Rajeunir series focuses attention on proper immunizing power of skins," Global Research Laboratories Japan Co., Ltd.

B17-2: Written demand, August 29, 2005, Crossover project, Kazuyoshi Matsui

B17-3: Written demand, September 5, 2005, Crossover project, Kazuyoshi Matsui

B18: Analytical test report, June 15, 2004, Japan Food Research Laboratories

B19: Test report, June 25, 2004, Japan Food Research Laboratories

B20: Test report, December 20, 2005, Nikoderm Research Inc.

B21: Translation of the report on phototoxicity test, January 31, 2004, Argo, Inc.

B22: Translation of the report on continuous skin irritation study, January 31, 2006, Argo,

Inc.

B23: Translation of the report on primary skin irritation test, January 31, 2006, Argo, Inc.

B24: Translation of the report on dermal sensitization test, January 31, 2006, Argo, Inc.

B25: Translation of the report on rabbit eye irritation test, January 31, 2006, Argo, Inc.

B26: Translation of the report on photosensitivity test, January 31, 2006, Argo, Inc.

B27: Translation of the report on oral toxicity study, January 31, 2006, Argo, Inc.

B28: Material Safety Data Sheet, 2006/02/25, Global Research Laboratories Japan Co., Ltd.

B29: Statement, dated October 29, 2019, by Toshio Hirayama, patent attorney

B30: Japanese Design Registration No. 1558559

B31: Still image for a program titled "Influenzae became epidemic; how about preventive measures?" by "Tochigi TV," URL:

https://www.youtube.com/watch?v=kXcW_awGrR0&feature=youtu.be

B32: e-mail (Title: Unit price of mask) print-out

B33: Court decision (Intellectual Property High Court, Heisei 21 (Gyo-Ke) No. 10379, case of a demand for cancellation of a trial decision)

B34: Receipt, October 13, 2015, Hirayama & Company

B35: Receipt, October 29, 2015, Hirayama & Company

B1 to B28 were submitted attached to written reply, B29 to B33 were submitted attached to the Demandant's statement brief, and B34 and B35 were submitted attached to the written statement dated November 14, 2019.

There is no dispute between the parties concerning validity of B1 to B35 (Record of the first oral proceedings and examination of evidence, column "Demandant," "2").

No. 4 Allegations prior to prosecution on the merits (standing as the Demandant)

Since the Demandeé alleges as an allegation prior to prosecution on the merits that the Demandant lacks standing as the Demandant, first, standing as the Demandant is examined.

1. Allegations by the parties

(1) Demandeé's allegation

With respect to standing as the Demandant, the Demandeé alleges as follows: "Since Demandant's representative, Mr. Zenbayashi, did not create the technologically characteristic portion of the Invention, and is not any inventor of the Invention, it is obvious that the Demandant, Maruzen Co., Ltd. does not have any right to receive a patent

for the Invention.

Then, in the present trial that is demanded based on the reason for invalidation that the Patent falls under the provisions of Article 123(1)(vi) of the Patent Act, the Demandant cannot be deemed to have standing as the Demandant and the demand for the present trial does not comply with the requirement under Article 123(2) of the Patent Act and is not lawful.

Accordingly, since the demand for the present trial is not lawful and cannot be amended, it should be dismissed under the provisions of Article 135 of the Patent Act " (Demandee statement brief (2), "No. 6").

(2) Demandant's allegation

With respect to the fact that the Demandant has the right to receive a patent for the Invention, the Demandant alleges, roughly speaking, as summarized in A to E below.

The body requested the Demandant to further prove that the Demandant has the right to receive a patent for the Invention (memorandum on progress of the oral proceedings attached to the record of responses dated November 12, 2019, "3," and the notice of matters to be examined dated January 20, 2020, "No. 1"), but the Demandant did not submitted any statement brief for the second oral proceedings and stated that the Demandant would not submit any further documents (Record of the second oral proceedings and examination of evidence, column "chief administrative judge," "1").

A. Mr. Zenbayashi, the representative of the Demandant, together with CSL Co., Ltd. (Mr. Hiroo Ninagawa) and Harada Co., Ltd., had carried out as of July 2015 at the latest, research and development of an antiviral agent (drug, K-125) and development of fiber products in which the antiviral agent was used (A3 to A9), and the fiber products included the "antiviral sanitary masks" according to the Invention (A4) (Written demand, "7, (4), ((3)), (a) to (j)").

B. With respect to the invention of the antiviral agent (K-125) and fiber products in which the antiviral agent is used, Demandant has filed a patent application jointly with CSL Co., Ltd. and Harada Co., Ltd. (A16), and the first draft of the application had been completed as of August 31, 2015, and Mr. Zenbayashi, the representative of the Demandant printed the first draft of the application and handed it to Mr. Terauchi, the president of Tokumitsu Co., Ltd. prior to the filing of the application for the Patent, and it is doubted that the Demandee's representative, Mr. Nagatake obtained the content of the first draft of the application and reflected it to the content of the Patent (Written demand, "7, (4), ((4)),

(b)").

C. Mr. Terauchi, who is named as the inventor of the invention of the Patent together with Mr. Nagatake, was the representative of Tokumitsu Co., Ltd. and an officer of the Demandee at the time of establishment of the company, but he retired from the Demandee company. From Mr. Terauchi, testimony that "since I am engaged in manufacture of antiviral sanitary masks by sewing masks, I might be qualified to be named as one of inventors. But, I don't have any memory of assigning the right to receive a patent to the Demandee. In addition, activities of sewing masks were carried out not from the standpoint of the Demandee, but from the standpoint of Tokumitsu Co., Ltd." has been obtained (A17) (Written demand, "7," (4), ((4)), (h),").

D. Mr. Terauchi stated that, among configurations described in Claim 1 of the Patent, configurations other than matters related to antiviral properties; namely, the configuration "... mask consisting of two or more layers of fabrics ... a main body of the mask is formed to cover a nose part, a lower jaw part, and right and left auricular regions by laminating the knitted fabric ...,

a frame that forms a trim with a given thickness with the knitted fabric along the rim connecting the tip of the nose, the outer side of the left auricular region, the lower jaw part, and the outer side of the right auricular region is formed in the main body, and a non-stretchy joint part that forms a space covering the subnasal area in the nose part and the labial part is formed in the midsection of the mask body" is totally a knowhow of Tokumitsu Co., Ltd. obtained through experiences of being engaged in manufacture of a large number of masks in the past, and the above configuration was formulated by the Demandee's representative, Mr. Nagatake as a claim using the structural aspect developed and manufactured by Tokumitsu Co., Ltd. as it is and, such structural aspect cannot be independently conceived by the Demandee's representative, Mr. Nagatake, who has never been involved in manufacture of such masks (Written demand, "7, (4), ((4)), (j)").

2. Matters described in A3 to A9, A16 and A17

Main matters described in A3 to A9, A16, and A17 mentioned in the Demandant's allegation shown in above 1, (2) are as shown below.

(1) Matters described in A3

A. "Applicant: Maruzen Co., Ltd.," "Implementation mechanism: Through joint developmental activities with Maru Home Textile Co., Ltd., Harada Co., Ltd., and CSL Co., Ltd., textiles with antiviral and deodorizing properties will be developed and

development of fiber products using such textile will be carried out, ..., " "Subject of management innovating project: Development of fiber products with antiviral and deodorizing fabrics and fabrics subjected to superhydrophobic and antibacterial processing." "It is management innovation of our company to provide nursing care and health industries with products with high added value through development of fabrics provided with antiviral and deodorizing properties concurrently and development of fiber products with fabrics subjected to superhydrophobic and antibacterial processing " (page 2, (Appendix 1)).

B. "We will manufacture and sell antiviral and deodorizing bedding articles with high added value using fabrics under development at present.

Mr. Ninagawa, who developed a medicinal agent in developing this antiviral and deodorizing ..., made a proposal that three companies jointly apply for a patent for this medicinal agent. It was decided that a patent application should be jointly filed by three companies, Harada Co., Ltd. (Mr. Harada, President), CSL Co., Ltd. (Mr. Ninagawa) and Maruzen Co., Ltd. (Zenbayashi). It was also decided that another patent application for a medicinal agent, "VISTED" made by Mr. Ninagawa should be filed. Accordingly, our company will file applications for utility models for products relevant to this medicinal agent" (page 8, line 5 from the bottom to page 9, line 4).

(2) Matters described in A4

A. "Sender: Maruzen Co., Ltd. Takamitsu Zenbayashi" ...

Subject: Re: Masks for sale in overseas markets

To: Mr. Terauchi, President

With respect to the following matter,

Since we obtained OK for masks with knitted fabric, we have to develop products. We will try to process thin knitted fabrics. ... " (page 1/5)

B. "From: Minoru Yoshii

...

To: Mr. Zenbayashi

Masks with knitted fabric, OK. ... " (page 1/5)

C. "2015/07/13 18:41, Message ... from Maruzen Co., Ltd., Takamitsu Zenbayashi

Mr. Yoshii

...

Sorry for the short notice, but a project to produce masks with knitted fabric processed with this VIRUSDEAD for overseas market (China) came from our business partner.

The masks are made not with unwoven fabric but with knitted fabric.

Since it is knitted fabric, we would like to export such masks if it is possible to cut knitted fabrics adhered by spraying medicinal agent and a binder, and manufacture masks by sewing as post processing

Is it possible to market?" (pages 1/5 to 2/5).

(3) Matters described in A5

"Sender: "Maruzen Co., Ltd. Takamitsu Zenbayashi" ...

To: Mr. Ninagawa

...

ps.

One of our business partners who sells mufflers ... called Tokumitsu Co., Ltd.

...

A Chinese company that Tokumitsu knew has been operating sales over the Internet in China and, since they have been selling masks, if it is possible to produce masks in Japan and export them from Japan, they would like to buy.

...

Products that we would like to handle

Bedding articles such as feather futon, thinner futon, pad, and pillow

Coverings such as quilt covers, sheets and pillowcases

Fabric processor: Planned to use Shikibo

Masks VISDEAD processed knitted fabrics

Processing in Japan" (page 1/2).

(4) Matters described in A6

"From: Maruzen Co., Ltd. Takamitsu Zenbayashi

...

To: Mr. Fujiwara

I hope things are going well.

We sent out mask samples today.

Samples were prepared by sewing fabric with SEK red mark.

The fabric is original for our company that we have on stock, and therefore there is no risk on the fabric.

...

In order to produce masks with the VISDEAD knitted fabric also in our company, we sent out data yesterday " (page 1/2).

(5) Matters described in A7

"Sender: Harada Co., Ltd. Kawaradani ...

To: CSL Co., Ltd., Mr. Ninagawa; Maruzen Co., Ltd. Mr. Zenbayashi, President

I hope things are going well.

Report of patch test of k-125-100 is attached.

Please check on that" (page 1/4)

(6) Matters described in A8

"Title: Patch test of socks postprocessed with k-125-100

Abstract: As a result of 48 hours closed patch test of socks postprocessed with k-125-100, since no cutaneous reaction was observed with all of 20 test subjects, it was classified to "safe product" (page 2).

(7) Matters described in A9

"Sender: Maruzen Co., Ltd. Takamitsu Zenbayashi ...

Patch test passed" (page 1/1).

(8) Matters described in A16

A. "(71) [Applicant]

[Identification No.] 511190018

[Name] CSL Co., Ltd.

[Address] Sun Kisei 401, Akegaoka, Higashiku, Nagoya, Aichi

(71) [Applicant]

[Identification No.] 504446180

[Name] Harada Co., Ltd.

[Address] Daifuku 934-1, Sakurai, Nara

(71) [Applicant]

[Identification No.] 594025069

[Name] Maruzen Co., Ltd.

[Address] Tonyamachi 3413-51, Utsunomiya, Tochigi

(74) ...

(72) [Inventor]

[Name] Hiroo Ninagawa"

B. [Scope of Claims]

[Claim 1]

An antibacterial and antiviral composition for fibers comprising amino acid silver complex, amino acid zinc complex, and copper ions.

[Claim 2]

The antibacterial and antiviral composition for fibers of Claim 1, wherein amino acid of the amino acid silver complex and amino acid zinc complex is L-pyrrolidone carboxylic acid.

[Claim 3]

The antibacterial and antiviral composition for fibers of Claim 1 or Claim 2 wherein copper ions are from copper pyrrolidone carboxylate.

[Claim 4]

The antibacterial and antiviral composition for fibers of any one of Claims 1 to 3, wherein the composition comprises sulfuric acid.

[Claim 5]

The antibacterial and antiviral composition for fibers of any one of Claims 1 to 4, wherein the composition further comprises N-long chain acyl amino acid potassium.

[Claim 6]

The antibacterial and antiviral composition for fibers of any one of Claims 1 to 5, wherein the composition further comprises glutamic acid.

[Claim 7]

The antibacterial and antiviral composition for fibers of any one of Claims 1 to 6, wherein the composition further comprises citric acid.

[Claim 8]

A fiber product wherein the antibacterial and antiviral composition for fibers of any one of Claims 1 to 7 is applied to fibers or the fibers are impregnated with the composition."

C. " [Technical field]

[0001]

The present invention relates to an antibacterial and antiviral composition for fibers and fibrous products.

[Background Art]

[0002]

Heretofore, antibacterial and antiviral compositions comprising fine particulates of a metal such as silver and zinc are known (for example, Patent Documents 1 to 6).

[0003]

In addition, for example, fiber products that have antibacterial and antiviral properties have also been proposed (Patent Documents 7 and 8).

D. [Problem to be solved by the invention]

[0005]

For example, however, if the antibacterial and antiviral composition of Patent Documents 1 to 6 is applied, antibacterial and antiviral component tends to run out of fibers, and it is difficult to maintain the antibacterial and antiviral properties for a long time period. In addition, there is a risk of discoloring if the antibacterial and antiviral composition comprises metals such as silver.

[0006]

In addition, the fiber products of Patent Documents 7 and 8 also have a problem that the antibacterial and antiviral component tends to run out of the fibers and the antibacterial and antiviral effect also gradually decreases. Furthermore, the fiber products of Patent Documents 7 and 8 have a problem that materials that can be used are significantly restricted because of possible inhibition of the antibacterial and antiviral effect by dyeing using colorant or pigment as well as use of fabric softener, or processing solvent.

[0007]

The present invention was made taking the above situations into consideration and the problem to be solved by the present invention is to provide an antibacterial and antiviral composition for fibers in which running out of fibers and discoloring can be suppressed and excellent antibacterial and antiviral effect can be maintained for a long time period, and restriction for materials that can be used is limited, and fiber products impregnated with this antibacterial and antiviral composition or to which this antibacterial and antiviral composition is applied."

E. "[0029]

In the fiber products of the present invention, the antibacterial and antiviral composition is applied to fibers, or the fibers are impregnated with the composition.

[0030]

Any material that comprises at least in some part in its fibers to which the antibacterial and antiviral composition is applied or fibers impregnated with the composition, and formed as yarn, woven or knitted product, web, non-woven fabric, paper, net, etc. may be used for the fiber products. To be concrete, for example, clothing materials (including hats and caps, gloves, and handkerchiefs), beddings (including futons, and pillows), curtains, wall papers, carpets, mats, sheets, filters, masks, wipers, towels, protective clothing materials, and guard nets can be exemplified as the fiber products, and these products can be provided for daily life and inactivate bacteria and viruses scattering or floating in the living environment."

(9) Matters described in A17

"Statement

With respect to the invention of Japanese Patent No. 6188984 'antiviral sanitary masks,' taking advantage of abundant skills and experiences of myself, I produced (sewing) antiviral sanitary masks.

Due to the fact that I have been engaged in manufacture of antiviral sanitary masks by carrying out sewing for the masks, I may be one of the inventors, but I have no memory of having assigned the right to receive a patent to JIMWAY Co., Ltd.

I established JIMWAY Co., Ltd. jointly with Mr. Ichiro Nagatake as a company that sells the masks like a sales representative.

I have been an officer of JIMWAY Co., Ltd. since its establishment. However, I am the representative of Tokumitsu Co., Ltd. whose main line of business is sewing of fabrics, and it is my main job. Accordingly, I believe that sewing for masks was carried out not as an officer of JIMWAY Co., Ltd., but as the representative of Tokumitsu Co., Ltd., taking advantage of my expertise and, as a result, the Invention was completed.

Above is what I believe to be the facts.

October 21, 2019

Address: ...

Name: K.K. Tokumitsu

(Representative) Representative Director, Tokuji Terauchi"

3. Testimonies by the parties and witnesses

Testimonies by the parties and witnesses with respect to the issue whether Demandant owns the right to receive a patent for the Invention are as shown below. All parties and witnesses took an oath and gave testimonies in the trial court of the Japan Patent Office as shown below. Numbers in testimonies are according to transcription.

(1) Party (Demandee's representative): Ichiro Nagatake

A. "Demandee's attorney, lawyer, Shinji Hirata

...

008. Then, I would like to ask about the history of development of the mask of the Invention. First, the mask of the Invention has a structural feature, the form that covers the nose part, lower jaw part, and right and left auricular regions. How was this feature conceived?

We have a registered trademark 'FACEWEAR' that is used also in the product name. When we considered to use masks, we thought that it would be nice if we have a mask that completely covered the whole face.

The name, FACEWEAR is based on an idea of clothing to be worn for a face. Normally, when we hear the word, mask, we bring up the image of masks of non-woven fabric with a form that covers only a small part of the face. But our mask was conceived based on the fact that, while persons normally wear underwear, such as shirts and pants, there is no underwear to wear for our faces. As we believe that the face is a very important area, we arrived at an idea that, if we create underwear for faces, it must be very effective as a mask, and started development for creating such underwear.

With respect to such underwear, when we named it FACEWEAR, we intended to sell it in China at the beginning, but we also wished to sell it worldwide, especially in Europe and America, as our final goal. Right from the beginning, masks were not commonly used in Europe and America, and, therefore, we thought that if we can finally sell our masks in Europe and America, it would be a success from business point of view.

On that occasion, we considered what kind of masks are suitable for sale in Europe and America. We started from the shape and, when we thought about masks in Europe and America, the image that came up first was an iron mask, and we felt that iron masks are not funny for our sanitary masks. You might not know this, but there is an old comic titled "Cobra" in which a lady called Lady appears wearing an iron mask, and the mask

covers the face totally and the shape of the mask looks very comfortable. As we commenced development of our mask taking Lady into consideration, we arrived at a mask whose shape looks like covering the face.

009 Then, why was a feature of the mask of the Invention, the structure of laminated fabrics in which a knitted fabric applied with the antiviral agent is used on the outer side and a knitted fabric not applied with any antiviral agent on the inner side, conceived?

The reason is that, since there is a risk of occurrence of certain trouble including skin troubles if an antiviral mask directly contacts the skin, for the purpose of making the structure so that the surface contacting skin is free of antiviral agent, a fabric processed with the antiviral agent is used on the outer side and a normal fabric is used on the backside based on a sense similar to that for wearing normal pants or shirts. That's the reason.

010 I have another question. Knitted fabric was adopted for the masks of the Invention. Is there any special reason to adopt knitted fabric?

Since we heard that masks are to be first sold in China and masks of knitted fabric is the mainstream in China, we used knitted fabric.

011 Are there any other reasons?

As I already said, since we had an image of clothing to wear for the face, we thought that, since knitted fabrics are stretchy, they fit better by easily stretching and shrinking.

012 Does it mean that stretchy knitted fabric was used to make it fit better?

Yes, that is right.

013 Then, next question. The mask of the Invention is provided with a non-stretchy joint part that forms a space covering the subnasal area in the nose part and the labial part is formed in the midsection of the mask. Would you let us know what was the trigger for developing this?

Not to cause wearers feel suffocating.

014 Then, what was the reason to consider that a suffocating feeling can be avoided?

For example, if a mask made with normal knitted fabric is worn, and if there isn't anything that prevents it, the fabric closely contacts the skin and it causes troubles in speaking or breathing. To prevent such troubles, it is better to have a certain space around the mouth for breathing or speaking easily. Therefore, we examined what structure is preferable to have a space around the mouth and arrived at such shape.

015 Then, let's move to the next question. The mask of the Invention has a structure in which the circle in the outer periphery is formed into a frame. What is the reason for adopting such a frame?

For making the mask to fit precisely, it is necessary to have the frame.

016 When you say to fit precisely, does it mean that the frame prevents formation of any clearance gap?

Yes, that's it exactly. This part of the nose, if you wear a mask, it's the same with normal masks, in that mask also, when we produced prototypes, this part and this part of the nose...

Demandee' attorney, lawyer, Hiroshi Yugeta

017 We cannot understand if you say this part.

You mean the portions for nose and ? Since this space and the spaces in the ear regions open unavoidably, we considered that it is appropriate to use the frame, in order to narrow down, or close them."

B. "Demandee's attorney, lawyer, Shinji Hirata

...

022 Then, I move to the next question.

What is the reason why Mr. Nagatake established JIMWAY, which is demandee's company?

To make masks with knitted fabric a business.

023 The mask with knitted fabric you just mentioned is the product called FACEWEAR you mentioned before. Isn't it?

Yes, that's it exactly.

024 Directors of JIMWAY when it was established were Mr. Nagatake and one more person, Mr. Terauchi. What was the reason for Mr. Terauchi becoming an officer of the company?

Already before the project of this mask with knitted fabric came up, there was an offer from Mr. Zenbayashi that we can get fabrics and we decided to develop masks and commenced the work a little bit, but the company was established on October 1. Mr. Terauchi was the representative of Tokumitsu Co., Ltd. and was engaged in fiber related business at that time.

I said that if Mr. Tokumitsu would carry out the project because he had been engaged in fiber related business, we would back out from the project, since I have another business and do not need to join the fiber related business. However, I also said that, if Mr. Terauchi wants to have my help, I am willing to help him in the project on conditions that a new company should be established, both of us take a stake in the new company to have even share, both of us join the new company as directors, and let the new company obtain rights and carry out the business. That was the trigger for establishment of JIMWAY.

025 In short, does it mean that, in marketing a product FACEWEAR, there was a purpose to centralize the right and let JIMWAY retain it?

Yes, that's it exactly."

C. "026 Then, next question is filing of the patent application of B5. The attorney for this application is a patent attorney named Hirayama. What was the reason to choose the office of this patent attorney Hirayama?

Mr. Zenbayashi of Maruzen Co., Ltd. introduced Mr. Hirayama as the patent

attorney he usually used. Since JIMWAY needed to file various applications for obtaining rights for masks with knitted fabric, we asked Mr. Zenbayashi to introduce the office to us and we visited Mr. Hirayama.

027 When did you visit Mr. Hirayama, patent attorney

It was October 13, 2015.

028 What subjects did you discussed on that occasion?

As it was necessary to file patent and design applications, Mr. Terauchi and I visited Mr. Hirayama and asked to file patent applications for JIMWAY Co., Ltd. as the applicant.

029 Does it mean that Mr. Nagatake and Mr. Terauchi went together?

Yes, we went together.

030 Then, what subjects did Mr. Terauchi talk about?

We requested him to file patent applications for JIMWAY Co., Ltd. as the applicant.

031 Did both of Mr. Terauchi and you explain the details of the masks of the Invention to the patent attorney, Mr. Hirayama?

Yes, that's it exactly.

032 Could you concretely explain how you explained?

Just as I explained here, showing the product, we explained how we made the mask, telling about various steps of the process. After that, Mr. Terauchi explained matters related to fabrics, for example, how to sew and the thread size of the used thread.

I asked Mr. Hirayama to file a patent application in a hurry. However, I have a clear memory that Mr. Terauchi urged Mr. Hirayama to do it more and I wondered why it is necessary to hurry so much. Anyhow, I have a memory that, when we visited there

and talked, there was another gentleman and he brought a piece of wire-like article and a document for patent application was prepared checking point by point fitting the wire like article to the mask.

033 I heard that the art of sewing for the mask was explained by Mr. Terauchi, but who explained the idea?

I explained it.

034 Does it mean that Mr. Nagatake, President explained in such way that the idea of this structure means this and that?

Yes, that's it exactly."

D. Demandee's attorney, lawyer, Hideto Kanda

135 I have two questions.

You said that a staff member in the office of Mr. Hirayama, patent attorney confirmed the configuration of the mask using a piece of wire. May I understand that, on that occasion, as a premise, Mr. Nagatake and Mr. Terauchi explained the structure of the mask to the staff member in the office of Mr. Hirayama?

Yes.

Showing B34,

136 This is addressed to JIMWAY Co., Ltd., isn't it?

Yes.

137 Then, 300 thousand yen as the fee. You brought it in cash.

Yes.

138 May we understand it in this way, that since filing of the application was requested as JIMWAY Co., Ltd., this is addressed to JIMWAY.

Yes.

139 Therefore, it was brought on October 13 as a partial payment for filing the patent application, wasn't it?

Yes.

140 It is written on B34 as "partial payment for filing a patent application."

I believe so."

E. "Chief administrative judge, Yoshiyuki Takayama

141 What do you think the most important point of the Invention is?

There weren't many masks in Japan that precisely fit to the face made with knitted fabric. Needless to mention that they may be sold to China. Anyhow, the masks can be used very comfortably. Therefore, I considered that the most important point is that they are comfortable masks.

142. Who conceived the point?

I conceived it.

143 Judging from the patent specification, the Invention uses knitted fabric as mentioned before.

Yes.

144 This also uses two or more layers of fabrics.

Yes.

145 It is stated that the structure is such that the antiviral agent is applied to the top outer layer and the inner layer does not have any antiviral agent. Who conceived of this idea?

I did."

F. "154 Then, with respect to the patent invention that was invented by Mr. Nagatake, is there any possibility that the right to receive a patent for the invention was assigned to Maruzen Co., Ltd.?

No."

(2) Witness: Tokuji Terauchi

A. Demandant's attorney, lawyer, Naoki Matsumoto

...

010 JIMWAY was established on October 1, 2015, wasn't it?

Yes.

011 Do you know the reason?

In starting the business this time, we agreed to sell jointly and established the company.

012 Around the time of establishment, did you hear from Mr. Nagatake any explanation about rights concerning the patent?

As far as I can remember, there was nothing like that.

013 You have been an officer of JIMWAY.

Yes.

014 Please let us know the reason.

I believe we decided to become the representative and the senior managing director, since the company was established by two persons.

015 What was the reason you joined the company as an officer?

I thought that there could be a department for manufacturing."

B. "023 Who conceived the structure of the mask for which a patent application was filed finally?

For making the form, we made the mask following such basis. In filing the documents, I guess that Mr. Nagatake saw various matters and decided to file this form.

024 According to your written statement, there is a statement 'taking advantage of abundant skills and experiences of myself.' What skills and experiences were utilized concretely?

First, as I have capability to carry out sewing works, planning works, and works for producing patterns within my circle, including relatives and contractors, and I have skills to plan, make forms, and complete products in this company."

C. "025 Next, I would like to ask about the right to receive a patent.

Please allow me to question straight. Have you ever assigned the right to receive a patent to JIMWAY?

I have no idea of assigning, but patents and ... there was no assignment of patents. I have no memory of doing such assignment."

D. "030 On October 13, 2015, you visited the office of Mr. Hirayama, patent attorney, didn't you?

Yes.

031 Can we understand that you visited together with Mr. Nagatake?

Yes.

...

035 Why did you visit Mr. Hirayama's office together?

In manufacturing masks, unless we register our trademarks and designs, we cannot talk to any person. According to my memory, therefore, to obtain necessary registrations at first, through introduction by Maruzen, we two visited Mr. Hirayama to file applications in a hurry.

036 Were requests only for design and trademark registration?

I believe so.

...

039 You gave explanations to Mr. Hirayama, patent attorney, on various topics. Who gave what explanations to Mr. Hirayama?

Mr. Nagatake mainly talked to Mr. Hirayama about matters related to design elements of the products, although I joined the talk here and there.

...

Showing B34,

041 It is dated October 13, 2015, and addressed to JIMWAY Co., Ltd. and the amount is written as 300 thousand yen. May we understand that the payment of 300 thousand yen was made on this October 13?

Yes. I have a memory of making the payment since I knew that I had money for partial payment."

E. "Demandee's attorney, lawyer, Shinji Hirata

...

056 In short, may I understand that Mr. Nagatake devised the idea for the structure of the mask as described in the patent application?

I believe that it is not the idea but he prepared statements, and drawings were prepared, the application was prepared by two from a design point of view.

057 When you prepared the design, where did you do that?

In the company, we did it in my company.

058 When you prepared the design, did you produce any sample?

Yes.

059 Who conceived of the idea when you produce the sample?

As I had types that can be used as a basis, I made the first design by myself using the types."

F. "Showing B30,

063 May I understand that this records the details of application for design registration you requested of Mr. Hirayama, patent attorney?

Yes.

064 Is it certain that creators of this design are Mr. Nagatake and Mr. Terauchi, and the right holder is JIMWAY?

Yes.

065 Namely, it is correct that you assigned the right for this registered design to JIMWAY, isn't it?

That's right.

066 Then, I will read aloud the description of the articles according to the design in B30. 'The present design relates to an antiviral sanitary mask in which an antiviral agent is applied to the outside fabric and no antiviral agent is applied to the inside fabric. A knitted fabric is used for the fabric and a frame is formed with a bridge-sewn band of the knitted fabric on the whole periphery and the inside of the auricular region and three vertical lines are formed in the middle part with a lockstitch and two decorative stitches,

one each on both side of the lockstitch.' May I understand that this structure is the same as the structure of the patent invention in question?

Yes."

G. "Chief administrative judge

121 May I ask you a question for the body?

According to the patent gazette, Mr. Terauchi is listed as an inventor. Therefore, I believe that Mr. Takeuchi somehow contributed to the Invention and is listed as an inventor. Do you have any memory that, after you made the invention, you assigned the right to receive a patent to Maruzen Co., Ltd.?

No, I don't have."

(3) Party (Demandant's representative): Takamitsu Zenbayashi

A. "Demandee's attorney, lawyer, Shinji Hirata

028 With respect to the Invention, you said that you invented to configure the mask with two or more layers including a knitted fabric with an antiviral agent and a knitted fabric without any antiviral agent and to laminate knitted fabric layers to have the knitted fabric with the antiviral agent on the outer side and the knitted fabric without antiviral agent on the inner side that contact the lower jaw.

I have not made the Invention. Those are well-known facts and they can be found on the homepage, the homepage of SEK.

029 You did not make the invention. Just by looking at the homepage ...

Exactly.

030 You mean you just did so.

Yes."

C. "Chief administrative judge

Showing A1,

032 With respect to the patent right in question in the present case shown in A1, some of claims were already referred to in the present case, but what do you think the important point of the Invention is?

I believed it is antiviral property.

033 Do you believe that it is antiviral property?

Yes.

034 Do you mean that Mr. Zenbayashi has been carrying out research of antiviral agents?

Mr. Ninagawa is responsible for the antiviral agent. After we attach the antiviral agent to fabrics, the antiviral agent should not run even when the fabric is subjected to washing ten times. Therefore, it is my job to make it durable to satisfy such requirement.

Showing B5,

035 I see. As already mentioned repeatedly, according to B5 and the specification prepared by Mr. Hirayama, Mr. Nagatake and Mr. Terauchi are listed as the inventors. Do you think that Mr. Zenbayashi also somehow contributed to this patent?

If there is any contribution, I help with supply of antiviral fabric.

036 May I understand that you are not involved in the project as an inventor?

With respect to the shape, we don't do sewing work. Tokumitsu does sewing work for us as a contractor. Therefore, basically, we left sewing work to Tokumitsu.

037 You agree that you are not any inventor for the patent right disclosed in this patent gazette of A1 in the present case, don't you?

I am not any inventor if we look at a whole mask. But, what I wanted to say is

that it is an invention of an antiviral agent.

Trial examiner: Toyohide Watanabe

038 You said that the feature is the antiviral agent. You also said that the relation of outside and inside with the antiviral agent, etc. were already known and you did not invent them. If so, are you the inventor?

I am an inventor for manufacturing antiviral fabric.

039 Then, does it mean you are not the inventor of the Inventions?

I am not the inventor of the Inventions.

(4) Witness: Hiroo Ninagawa

A. Demandant's attorney, lawyer, Naoki Matsumoto

...

Showing A1,

002 Have you ever seen this?

No, I haven't seen it.

003 In the patent in question in the present case, is there any part of claims in which you are involved?

No, there isn't."

B. "Chief administrative judge

019 With respect to A1 that you saw, the patent gazette which you said you saw it for the first time, may we understand that Mr. Ninagawa is not any inventor of the patent invention of the present case?

I am not any inventor for this product, but I invented this liquid. Since we had been selling masks for some time, it was not invented as this mask.

020 You are not the inventor for the Patent, are you?

No."

(5) Witness: Toshio Hirayama

A. Demande's attorney, lawyer, Shinji Hirata

...

Showing B5,

007 Is it certain that these filing documents for the Patent are documents Mr. Hirayama prepared as the attorney of JIMWAY ?

Yes, it is certain.

008 Then, I would like to ask about this application.

When did you receive a request for this patent application?

I cannot tell it definitely for the moment, but I believe it was the beginning of October of the filing date, October 30, 2008.

009 You say the beginning. Then, from whom did you received request for filing?

For requesting, the president of JIMWAY, Mr. Nagatake, and Mr. Terauchi, senior managing director came to us, and we received the request from these two gentlemen.

010 You said that Mr. Nagatake and Mr. Terauchi visited you. From whom did you hear the subject matter of the invention?

We heard the subject matter of the invention from both of them, but I remember that we heard mainly from Mr. Terauchi.

011 Then, what did Mr. Nagatake tell?

I believe that it was Mr. Terauchi who is familiar with masks. We heard that Mr. Nagatake also has another job and newly established the company for starting up this

mask. Mr. Takeuchi knows about detail of masks better. Since there were many new ideas, however, I remember that a part of the ideas came out from Mr. Nagatake.

012 Then, with respect to the timing of filing the patent application, we heard that the request was received in the beginning of October and the application was filed on October 30. What did you hear about this timing?

They said that they wanted to start manufacturing and sale of the mask as early as possible and asked to file the application as soon as possible. Since we received the request for filing at the beginning of October and filed the application at the end of October, I think we did it in a hurry.

013 Then, does it mean that you were appointed as their attorney in the discussion at the beginning of October?

That's right. I was appointed as their attorney when they came to us.

014 On that occasion, who was named as the applicant of the patent application?

According to my memory, I heard from them that, since a new company was established, the application should be filed under the name of JIMWAY Co., Ltd.

015 Then, whose name were you asked to put in the column for the inventor?

I believe that we determined that Mr. Nagatake and Mr. Terauchi should be the inventors, since we heard the subject matter of invention from both of them.

016 With respect to names of the applicant and the inventors, were you instructed by Mr. Nagatake and Mr. Terauchi to do so?

I remember that they agreed on that."

B. "Showing B34:

017 Is it certain that Mr. Hirayama issued this receipt?

It is certain.

018 Please let me know the purport of issuance of the receipt.

When they came to us, they asked me to prepare necessary documents and file an application. Since we have to prepare for the work if we finalize the arrangement, 300 thousand yen as a partial payment, maybe based on a request from our part, anyhow Mr. Nagatake had brought money with him and wished to pay, we received 300 thousand yen as a partial payment based on agreement between the parties.

Showing B35.

019 Is it correct that Mr. Hirayama issued this receipt?

Yes, it is correct.

020 Then, please let me know the purport of issuance of this receipt.

As this is dated October 29 and it is the filing date or a date close to the filing date, the work had been completed and the application for design registration was intended. Since this is not the total amount we received, however, it is mentioned as a partial payment. But, I believe we had received a substantial amount of money.

021 You received the fee for the patent application on October 29, and filed the patent application on October 30. Did you show Mr. Nagatake and Mr. Terauchi the filing documents before filing them?

We don't have the documents that we showed them. But, since we have made it a rule to show applicants and inventors documents without fail and after that file the document, it is certain that we showed them the document. However, if we are asked to prove it, we cannot present the documents at present."

C. "Demandant's attorney, lawyer, Naoki Matsumoto

...

Showing B29,

038 This written statement, No. 1, states that, for naming Mr. Nagatake and Mr. Terauchi as inventors, and JIMWAY as the applicant for the patent, you have no memory of having obtained any special final confirmation from both of them.

Yes.

039 You said that you showed both of them the final documents. How about the relation with that statement?

I believe that the documents were sent by post or faxed to the company.

040 When you say to the company, does it mean to JIMWAY?

That's right.

041 Should it be understood to be the final confirmation?

For me it is the final confirmation, because we must have received an affirmative reply from them. Since we do not file the documents unless we receive an affirmative reply. Therefore, I believe that we made a final confirmation.

042 But, the written statement 1 states that you have no memory of having obtained any special final confirmation.

This means that we have not asked them to come to our office and confirmed whether they agree to name JIMWAY to the applicant. However, I wrote after that I remember that, at the beginning, both of them requested me to file the application in the name of JIMWAY. Therefore, the receipt you showed me was issued addressed to JIMWAY Co., Ltd.

...

046 Please allow me to repeat. Final confirmation as documents is that you sent them by post or fax addressed to JIMWAY.

I believe that we sent them addressed to JIMWAY by fax or by post.

047 Have you received the reply to it by telephone?

I believe that it was by telephone.

048 From whom did you receive it?

I believe that it was from Mr. Nagatake.

049 Didn't you get any confirmation from Mr. Terauchi?

I believe that I have not heard from him."

D. "Chief administrative judge

054 Then, we would like to ask several questions from the body.

As we already heard from you, when you prepared the specification for the patent, you heard from Mr. Nagatake and Mr. Terauchi who are listed as inventors in the specification various information such as ideas and how to actually manufacture masks and prepared the specification.

That's right.

055 This specification states that the applicant is JIMWAY Co., Ltd. Since JIMWAY is a legal person, JIMWAY itself cannot make any invention. I guess that, therefore, Mr. Nagatake and Mr. Terauchi assigned the right to receive a patent to JIMWAY. Can't it be possible that the right to receive a patent was owned not by JIMWAY but by Maruzen?

I cannot understand why such a reason comes up.

As at the time of filing the application, I did not notice such a reason.

056 Therefore, you received business cards for JIMWAY, issued the receipt addressed to JIMWAY, recognized that the applicant should be JIMWAY, and prepared this specification, am I correct?

That's right."

4. Judgment by the body

A trial for invalidation of the patent may be demanded only by "an interested person (where a request for a trial for patent invalidation is filed on the ground that the patent falls under item (ii) of the preceding paragraph (limited to cases where the patent is obtained in violation of Article 38) or item (vi) of the preceding paragraph, a person who has the right to receive a patent)" (Article 123(2) of the Patent Act).

Since the request for the trial for invalidation of the Patent is based on the reason that the Patent falls under Article 123(1)(vi) of the Patent Act, the demandant must be a person who has the right to receive a patent for the Invention.

In addition, while the right to receive a patent is primarily owned by the inventor of the invention that is industrially applicable (hereinafter, the "inventor") (Article 29, main paragraph of the Patent Act), since the demandant of the present case is a legal person, Maruzen Co., Ltd., the Demandant must have been assigned the right to receive a patent from the inventor of the Invention.

However, as shown in (1) and (2) below, although it is acknowledged that the Demandant has been assigned the right to receive a patent for an invention other than the Inventions, and the Demandant alleges that it has been assigned the right to receive a patent for the Inventions based on evidence, it has not been sufficiently proven and it cannot be deemed that the Demandant is a person who has the right to receive a patent for the Inventions.

Accordingly, the demand for a trial for invalidation of the Patent violates the provisions of Article 123(2) of the Patent Act and is not lawful and no amendment is allowed, it should be dismissed under the provisions of Article 135 of the Patent Act.

(1) Subject matter of the Inventions

As explained in above No. 2, the Inventions are inventions of an "antiviral sanitary mask" that have common matters specifying the invention, matters related to the structure of the mask "consisting of two or more layers of fabrics comprising a knitted fabric applied with an antiviral agent and a knitted fabric not applied with any antiviral agent," wherein "a main body of the mask is formed to cover a nose part, a lower jaw part, and right and left auricular regions by laminating the knitted fabric applied with the antiviral agent on the outer side and the knitted fabric not applied with any antiviral agent on the inner side that contacts the nose part and the lower jaw part, and," "a frame that forms a trim with a given thickness with the knitted fabric along the rim connecting the tip of the nose, the outer side of the left auricular region, the lower jaw part, and the outer side of

the right auricular region is formed in the main body," and "a non-stretchy joint part that forms a space covering the subnasal area, and a labial part in the nose part are formed in the midsection of the mask body "(Claim 1).

In addition, based on the background that, notwithstanding that sanitary masks with antiviral activity have been disclosed in the past, no sanitary masks provided with sufficient infection preventing effect had been obtained (paragraphs [0002] and [0003] of the patent specification), the present invention "arrived at a conclusion that, in the above mask, it is observed that comparatively large clearance gaps tend to be formed at the nose part and the auricular regions forming the periphery of the mask, and, if the above mask made of non-woven fabric is subjected to antiviral processing, viruses can invade from the clearance gaps and antiviral effect of the mask might decrease by half" (paragraph [0004] of the patent specification), and the Inventions set the problem to be solved by the invention to "satisfy the infection preventing function of sanitary masks with an antiviral agent and, at the same time, to solve various problems occurring in using as masks caused by the knitted fabric" (paragraph [0007] of the patent specification). If the above problem to be solved by the invention is solved with the above common matter specifying the invention and the body of the mask is fitted to the face, the following working effects can be obtained: the frame is stretched to some extent, and covers the nose part, the lower jaw part, and right and left auricular regions and, as a reactive force of the knitted fabric against the stretch, a force is applied in the shrinking direction (in the direction toward the inside) resulting in an effect to cause the frame to closely contact the face making it possible to prevent invasion of viruses as much as possible (paragraph [0016] of the patent specification), even if there is a risk that a certain clearance gap is formed between the inside of the auricular region forming the edge and the mask body, since a frame with the trimming having a given thickness by the knitted fabric reaches the inside of both auricles, invasion of viruses can be prevented by close contact due to the contracting force of the frame (paragraph [0017] of the patent specification), at the same time, when the action to contact to the face by the above frame prompted, in the cheek and jaw regions, the stretchy knitted fabric itself comes into close contact with the region, and a double preventing effect against invasion is prompted in addition to the effect of preventing virus invasion by the above frame ([0018] of the patent specification), on the other hand, if the mask body is produced with a knitted fabric, there is a risk that because of its stretchy property, excessive contacting property suppresses breathing and movement of the mouth, but since the non-stretchy joint part that forms a space covering the region beneath the nose and lip region is provided in the middle part of the fabric, expansion or shrinkage of the knitted fabric does not occur even when the lips are moved by conversation, etc. or

the wearer breathes and such activities can be carried out stably ([0020] of the patent specification), and, since no antiviral agent is applied to the inner side of the mask body above activities of speaking, breathing etc. can be made further smooth ([0011] of the patent specification).

(2) Invention for which the right to receive a patent is assigned to the Demandant

The Demandant alleges that, as at the time point of July 2015 before the priority date of the Patent (October 30, 2015), the Demandant had been carrying out research and development of the antiviral agent (drug K-125) and developing fiber products including the "antiviral sanitary masks" of the present patent in which the antiviral agent is used, and, subsequently, filed a Japanese Patent Application (A16) for an "invention concerning an antiviral agent (K-125) and fiber products using the same" (above 1, (2), A and B).

Judging from matters described in A16 summarized in above 2, (8), "inventions of an antiviral agent (K-125) and fiber products using the same" for which the above patent application was filed are an invention of an antiviral agent of which common matter specifying the invention is "an antiviral composition for fiber comprising amino acid silver complex, amino acid zinc complex, and copper ions" and an invention of "fiber products in which the above antibacterial and antiviral composition for fibers is applied to the above fibers or the fibers are impregnated with the composition " and that, with respect to the "antiviral sanitary masks," it is merely stated that "Any material that comprises at least in some part in it fibers to which the antibacterial and antiviral composition is applied or fibers impregnated with the composition, and formed as yarn, woven or knitted product, web, non-woven fabric, paper, net, etc. may be used for the fiber products. To be concrete, for example, clothing materials (including hats and caps, gloves, and handkerchiefs), beddings (including futons, and pillows), curtains, wall papers, carpets, mats, sheets, filters, masks, wipers, towels, protective clothing materials, and guard nets can be exemplified as the fiber products, and these products can be provided for daily life and inactivate bacteria and viruses scattering or floating in the living environment" (A16, paragraph [0030]), the above inventions are not inventions whose matters specifying the inventions as a whole or a part thereof are matters related to a structure of a mask.

This is also supported by testimonies by "Hiroo Ninagawa", who is listed as the inventor mentioned in A16 (above 2, (8), A) to the effect that Mr. Ninagawa himself has not been involved in any part of the Inventions (above 3, (4), A), and that Mr. Ninagawa himself is not any inventor of the Inventions (above 3, (4), B).

Judging from disclosure in A16 (above 2, (8), A), it is acknowledged that

Demandant together with CSL Co., Ltd. and Harada Co., Ltd. received from the inventor, "Hiroo Ninagawa" assignment of the right to receive a patent for "an antiviral agent (K-125) and fiber products using the same" that is different from the Inventions.

Meanwhile, A1 to A18 do not directly or indirectly indicate that the right to receive a patent for the Inventions with the subject matter shown in above (1) has been assigned to the Demandant.

On the other hand, the testimonies by "Tokuji Terauchi" who is listed as an inventor in the patent gazette (A1) and was an officer of the Demande, "056 ... I believe that it is not idea, but he (Note by trial decision: "Ichiro Nagatake" who is named as an inventor in the patent gazette (A1) and is the representative of the Demande) prepared statements, and drawings were prepared, the application was prepared by two (note by the trial decision: above "Ichiro Nagatake" and above "Tokuji Terauchi") from a design point of view, " with respect to the structure of the mask of the Invention, "As I had types that can be used as a basis, I made the first design by myself using the types" with respect to preparation of samples of masks in the process of creating the Inventions, and testimony to the question whether the structure of the mask mentioned in B30 "Description of the article to the design" having patent attorney, "Toshio Hirayama" who prepared the basic application for priority for the Patent (B5) as the attorney having above "Ichiro Nagatake" and above "Tokuji Terauchi" as "creators" for which an application of design registration was filed on the same date as the filing date of above B5 may be understood to be the same structure of the Inventions, "066 ... Yes" prove that above "Ichiro Nagatake" and above "Tokuji Terauchi" are the inventors of the Inventions.

In direct examination, above "Ichiro Nagatake" testified that "008 ... We have a registered trademark 'FACEWEAR' that is also used in the product name. When we considered to use masks, we thought that it would be nice if we have a mask that completely covered the whole face. ... we arrived at an idea that, if we create underwear for the face, it must be very effective as a mask and started development for creating such underwear. ... On that occasion, we considered what kind of masks are suitable for sale in Europe and America. We started from the shape and, when we thought about masks in Europe and America, the image came up first was an iron mask, ... a lady called Lady appears wearing an iron mask, and the mask covers the face totally and the shape of the mask looks very comfortable. As we commenced development of our mask taking Lady into consideration, we arrived at a mask of which shape looks like covering then face," "009 ... since there is a risk of occurrence of certain trouble including skin troubles if an antiviral mask directly contact skin, for the purpose of making the structure such that in which the surface contacting skin is free of antiviral agent, a fabric processed with the

antiviral agent is used on the outer side and normal fabric is used on the backside based on a sense similar to that for wearing normal pants or shirts," "011 ... since we had an image of clothing to wear for face, we thought that, since knitted fabrics are stretchy, they better fit by easily stretching and shrinking," "014 ... For example, if a mask made with normal knitted fabric is worn, and if there isn't anything that prevents it, the fabric closely contacts the skin and it causes troubles in speaking or breathing. To prevent such troubles, it is better to have a certain space around the mouth for breathing or speaking easily. Therefore, we examined what structure is preferable to have a space around the mouth, and arrived at such shape," "017 ... You mean the portions for nose and?.. Since this space and the spaces in the ear regions open unavoidably, we considered that it is appropriate to use the frame, in order to narrow down, or close them" and the testimony is specific and coincides with the subject matter of the Invention shown in above (1), the above testimony can be deemed trustworthy.

And, based on testimonies by above "Ichiro Nagatake" that the Demande, JIMWAY, is engaged in the business of masks with knitted fabric, he took a stake together with above Mr. "Tokuji Terauchi" and both of them joined as a director, and the company was established to let its own rights (above 3, (1), B), that he visited together with above "Tokuji Terauchi" above "Toshio Hirayama," patent attorney and requested to file a patent application for the Demande as the applicant, above B5 (basic application for priority for the Patent) was the patent application made by the patent attorney, and above "Tokuji Terauchi" made an explanation of sewing for the masks and Ichiro Nagatake made an explanation of ideas for the masks (above 3, (1), C), and that B34 that carries a statement "partial payment for filing patent application" was issued by Hirayama Patent Office addressed to the Demande for 300 thousand yen in cash brought on October 13, 2015 as partial payment for filing patent application (above 3, (1), D), a testimony by above "Tokuji Terauchi" that, on October 13, 2015, through introduction by the Demandant (Maruzen), understanding that it is for the purpose of applications for registration of a trademark and design, he visited the office of Mr. Hirayama, patent attorney together with the above "Ichiro Nagatake" and the above "Ichiro Nagatake" explained mainly design aspect of the product (above 3, (2), D), and testimonies by the above patent attorney, "Toshio Hirayama" that he remembers that B5 was prepared in response to a request from the above "Ichiro Nagatake," President of the Demande and the above "Tokuji Terauchi," Senior Managing Director of the Demande, after hearing the subject matter of the invention from them and agreeing to name the Demande, JIMWAY, as the applicant, and the above "Ichiro Nagatake" and the above "Tokuji Terauchi" as the inventors (above 3, (5), A), that B34 and B35 are receipts issued by Mr.

Hirayama for moneys received as a partial payment (above 3, (5), B), that the statement in B29 (Mr. Hirayama's written statement) "for naming Mr. Nagatake and Mr. Terauchi as inventors, and JIMWAY as the applicant for the patent, I have no memory of having obtained any special final confirmation from both of them" means that Mr. Hirayama has not confirmed by calling the above "Ichiro Nagatake" and the above "Tokuji Terauchi" to his office that the above two should be named as the inventors and JIMWAY as the applicant and believes that the final documents were send by fax or post to the Demande and an affirmative reply from the above "Ichiro Nagatake" by telephone (above 3, (5), C), and that it may be understood that, in preparing the specification for the Patent Mr. Hirayama heard from the above "Ichiro Nagatake" and the above "Tokuji Terauchi" named as inventors stories concerning ideas and how to actually manufacture masks (above 3, (5), D), it should be understood that B5 was prepared by the above patent attorney "Toshio Hirayama" based on the explanation by the above "Ichiro Nagatake" and the above "Tokuji Terauchi" to name the above "Ichiro Nagatake" and "Tokuji Terauchi" as the inventors of the Inventions, and the Demande as the applicant who owns the right to receive a patent for the Inventions.

Therefore, the above testimonies by "Ichiro Nagatake" and the above "Tokuji Terauchi" to the effect they have never assigned the right to receive a patent for the Invention to the Demandant (above 3, (1), F and 3, (2), H) proves that the Demandant has not been assigned the right to receive a patent for the Invention.

Furthermore, the above testimony of "Takamitsu Zenbayashi" who is the representative of the Demandant (above 3, (3), C) and the above testimony of "Toshio Hirayama," Patent Attorney (above 3, (5), D) do not prove that the Demandant received the assignment of the right to receive a patent for the Invention whose details are shown in the above (1).

Accordingly, we have to say that the invention of which right to receive a patent was assigned to the Demandant is the above invention of "an antiviral agent (K-125) and fiber products using the same" and not the Invention a part of whose matters specifying the invention is matters related to the structure of a mask.

By the way, the representative of the Demandant "Takamitsu Zenbayashi" testified in reply to the question in the supplementary examination what he think the important point of the Invention is, that "032 ... I believed it is antiviral property, with respect to the antiviral agent," that "034 ... Mr. Ninagawa is responsible for the antiviral agent. After we attach the antiviral agent to fabrics, the antiviral agent should not run even when the fabric is subjected to washing ten times. Therefore, it is my job to make it durable to

satisfy such requirement.," and, with respect to the relationship with the Invention, that "035 ... If there is any contribution, I help with supply of antiviral fabric," "036 ... with respect to the shape, we don't do sewing work. Tokumitsu does sewing work for us as a contractor. Therefore, basically, we left sewing work to Tokumitsu" (above 3, (3), C).

As shown in the above Part 2, however, although the Invention has "two or more layers of fabrics comprising a knitted fabric applied with an antiviral agent and a knitted fabric not applied with any antiviral agent" as a part of the matter specifying the invention, but does not have "antiviral agent (K-125)" according to the invention whose right to receive a patent was assigned to the Demandant, namely, "antibacterial and antiviral composition for fibers comprising amino acid silver complex, amino acid zinc complex, and copper ions" as the matter specifying the invention, and, the patent specification merely exemplified in paragraph [0029] that "the antiviral agent is used for the purpose of decreasing viruses adhered to the knitted fabric to be explained below, and for example an amino group added with silver ion, copper ion, zinc ion, etc. can be used. To be specific, CLS Co., Ltd. K125 can be pointed out and, with this product, approval for antiviral test stipulated in 2014 ISO 18184 can be obtained."

Therefore, these testimonies also prove that the right to receive a patent for the Invention whose content is shown in above (1) has not been assigned to the Demandant.

No. 5 Closing

As explained above, since the demand for the trial for invalidation of the Patent violates the provisions of Article 123(2) of the Patent Act and cannot be amended, it should be dismissed under the provisions of Article 135 of the Patent Act.

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

May 19, 2020

Chief administrative judge: TAKAYAMA, Yoshiyuki
Administrative judge: WATANABE, Toyohide
Administrative judge: ISHII, Takaaki