

Patent Right	Date	August 27, 2025	Court	Intellectual Property High Court, First Division
	Case number	2024 (Ne) 10034		
- A case in which the court made an interlocutory judgment in a patent infringement lawsuit concerning the patent right for an invention titled "Elasto-Plastic Hysteretic Damper," finding that the alleged infringing products literally fulfill the constituent features of the patented inventions and that therefore, the cause for the claim for compensation for damage based on the tortious act of patent infringement is well grounded.				

Case type: Claim for compensation for damage

Result: Well-grounded cause for the claim for compensation for damage

References: Article 70, paragraphs (1) and (2) of the Patent Act

Related rights, etc.: Patent No. 5667716

Judgment of prior instance: Tokyo District Court, 2021 (Wa) 15964

Summary of the Judgment

1. Outline of the case, etc.

In the present case, the Appellant (first-instance Plaintiff), the holder of the patent right (the Patent Right) related to Patent No. 5667716 for an invention titled "Elasto-Plastic Hysteretic Damper" (the Patent), filed a lawsuit against the Appellee (first-instance Defendant) to seek compensation for damage under Article 709 of the Civil Code, claiming that the dampers (Defendant's Σ -shaped Dampers 1 to 6), which are part of the certain kinds of housing (the Defendant's Products) manufactured, transferred, imported, exported, and offered to transfer by the Appellee, fall within the technical scope for the inventions (the Inventions) stated in Claims 1, 3, 6, 7, 8, and 10 of the scope of claims for the Patent, based on the right to claim compensation for damage due to the patent right infringement.

The court of prior instance dismissed the Appellant's claim, holding that none of the Defendant's Products falls within the technical scope of the Inventions. Dissatisfied with this, the Appellant filed an appeal.

The Appellee filed a request for a trial for invalidation of the Patent. In this invalidation trial, the Appellant filed a request for correction to correct the scope of claims and the description for the Patent (the Correction). In response, the Japan Patent Office (JPO) granted this request for correction and made a decision to the effect that the request for a trial for invalidation is groundless. Against this, the Appellee filed a lawsuit to seek

the rescission of the decision of the JPO with this court, but this court rendered a judgment of dismissal, which became final and binding, and as a result, the decision of the JPO became final and binding.

Upon the finalization of the decision, the Appellant, in the present case, amended the cause for the claim for compensation for damage, arguing that the Defendant's Products fall within the technical scope of the inventions related to Claims 1, 7, 8, and 10 of the scope of claims after the correction through the Correction (the Corrected Inventions).

2. Summary of this judgment

In this judgment, the court found that out of the Defendant's Products, those in which Defendant's Σ -shaped Dampers 5 and 6 are incorporated fall within the technical scope of the Corrected Inventions and the rest of the Defendant's Products do not fall within the technical scope of the Corrected Inventions, and that therefore, there is a ground for the cause for the claim for compensation for damage based on the tortious act of the infringement of the Patent Right by the Defendant's Products in which Defendant's Σ -shaped Dampers 5 and 6 are incorporated (excluding the issue of the amount of damages), while there is no such ground for the rest of the cause for the claim. The summary of this judgment is as follows.

(1) The term, "a plate," refers to "a metal board," the term, "a board," refers to "a thin, flat material, such as metal or stone," and the term, "a pair," refers to "two pieces that together constitute one unit." Based on this, it is found that the expression, "a pair of plates," refers to "two thin, flat pieces of metal that together constitute one unit."

(2) Regarding Defendant's Σ -shaped Dampers 1 to 4, ends on one side of the parallel-board parts and the web parts are welded to a vertical-board part, and the vertical-board part is fixed by bolts to a pillar that comprises a load-bearing panel. Meanwhile, it is found that ends on the other side of the parallel-board parts and the web parts are directly welded to the steel pipes (Defendant's Σ -shaped Dampers 1 to 3) or the channel steel (Defendant's Σ -shaped Damper 4), which comprise the load-bearing panel. It cannot be said that the vertical-board part and the steel pipes or the channel steel are "two thin, flat pieces of metal that together constitute one unit," and therefore, it is not found that Defendant's Σ -shaped Dampers 1 to 4 comprise "a pair of plates."

The web parts and the parallel-board parts, which comprise Defendant's Σ -shaped Damper 5, are arranged in a manner that they are sandwiched by two connection plates and ends on both sides of the web parts and the parallel-board parts are directly welded to the connection plates, respectively. In light of this, these two connection plates are rectangular metal boards of identical shape and are arranged on both of the left and right sides of the web parts and the parallel-board parts in a manner that the plates sandwich

these parts. Accordingly, it is found that the connection plates fall under "a pair of plates."

Regarding the load-bearing panel in which Defendant's Σ -shaped Damper 6 is used, it is found that the web parts and the parallel-board parts, which comprise Defendant's Σ -shaped Damper 6, are arranged in a manner that they are sandwiched by two reinforcement members, and ends on both sides of the web parts and the parallel-board parts are directly welded to the reinforcement members, respectively. These two reinforcement members above are rectangular metal boards of identical shape and are arranged on both of the left and right sides of the web parts and the parallel-board parts in a manner that the members sandwich these parts. Accordingly, the reinforcement members fall under "a pair of plates."

(3) In the Corrected Description, there are statements that the constitution that comprises a pair of plates can be replaced with a configuration that does not comprise at least one of the pair of plates. It can be said that this indicated to the effect that the Appellant, while recognizing that a configuration that does not comprise at least one of the pair of plates, as viewed objectively and externally, can substitute for a configuration that comprises a pair of plates, deliberately does not state this fact in the scope of claims, and it is found that there are particular circumstances as seen that Defendant's Σ -shaped Dampers 1 to 4, which have a configuration that does not comprise a pair of plates, fall under those intentionally excluded from the scope of claims in the prosecution of the application for the Patent. Accordingly, it cannot be said that Defendant's Σ -shaped Dampers 1 to 4 fall within the technical scope of Corrected Invention 1 as those equivalent to the configuration stated in the scope of claims.