

## **IP High Court Grand Panel Admitted High Compensation for Damages Related to Patents of Massage Chairs**

Japan is often regarded as a country where fewer litigation cases are filed and less amount of compensation for damages are claimed compared with US court cases. Interestingly enough, Japanese courts have recently admitted large amount of compensation for damages in some IP litigations.

The IP High Court (IPHC) Grand Panel handed down a decision on October 20, 2022 that the products of Family Inada (Defendant), infringed upon the patents held by Fuji Medical Instruments MFG (Plaintiff). The IPHC ordered Family Inada an injunction of the production and sales of the accused products, and to pay 390 million JPY (2.9 million USD) to the Plaintiff. Both parties have filed several patent infringement litigations to the courts, transposing as plaintiff and defendant. In some of those litigations, the court sequentially admitted high amount of compensation fees amounting to 2.7 billion JPY (20 million USD). Conventionally, lawsuits seeking high compensation for damages were concluded with settlement agreements between the parties involved. It might be because the Japanese courts should first convince both parties of the legitimacy of court decisions before making a clear about win-loss record on the court cases. However, decisions of recent court cases reflect that the courts are likely to show their active involvements towards judgements, and therefore the number of cases that the courts bind the decision is increasing. The above case is one of such cases settled down with remarkably high amount of compensation fees compared with previous litigation cases. This makes it obvious that judicial procedures are more shifted toward a patentee favorable trend securing a patentee's profit.

This article introduces the IPHC Grand Panel case ordering high compensation for damages to the Defendant amidst of several patent disputes between the two parties.

### Overview of the IPHC case

The present patent infringement litigation in question relates to patents of the structures of massage chairs. The Plaintiff, Fuji Medical Instruments MFG ("Fuji"), is a company which manufactures and sells medical devices, healthcare devices, and home electric appliances. The Defendant, Family Inada, is a company which manufactures and sells electric massage devices, beauty equipment, and home electric appliances. Fuji is recognized as a pioneering company for massage chair devices. Fuji also holds the leading market share and Family Inada ranks third. The details of the case are as follows.

Case number: 2020(Ne)10024

Type: Appeal case seeking injunction and compensation against patent infringement

Judgement date: October 20, 2022

Court: IPHC Grand Panel

Title of invention /Japanese Patent number:

Chair-type medical treatment apparatus / No. 4504690

Chair-type massage machine / No. 4866978

Appellant (Plaintiff): Fuji Medical Instruments MFG. Co., Ltd.

Appellee (Defendant): Family Inada Co., Ltd.

IPHC Grand Panel decision:

- The IPHC ordered the Defendant an injunction of production and sales of the infringing products
- The IPHC ordered the Defendant to pay 390 million JPY to the Plaintiff in compensation for damages

Points at issue:

- Whether the accused products cover the technical scope of the claimed invention
- Whether the defense of invalidation can be admitted

Both parties filed several patent infringement litigations, changing from plaintiff to defendant over three patents (in addition to the above two patents in the IPHC case, the patent number 4504690 was also claimed on the other lower court's ruling). This IPHC Grand Panel Case is an appeal case of 2018(Wa)3226.

[Relevant cases]

Case number	Plaintiff	Defendant	Judgement	Court	Date	Amount of compensation sought
2020(Ne)10024	Fuji	Family Inada	Plaintiff wins	IPHC Grand Panel	October 20, 2022	390 million JPY (2.9 million USD)
2017(Wa)7384	Family Inada	Fuji	Plaintiff wins	Osaka District	September 15, 2022	* A
2018(Wa)1391	Family Inada	Fuji	Plaintiff wins	Osaka District	September 15, 2022	* B

						*A+B=over 2.7 billion JPY (20 million USD)
2018(Wa)3226	Fuji	Family Inada	Plaintiff loses	Osaka District	February 20, 2020	N/A ※The first instance of the IPHC case

At the first instance, the Osaka District Court judged that the accused products of the Defendant had not infringed upon the present patents. At the second instance, the IPHC Grand Panel overturned the lower court’s ruling and judged that the accused products have infringed upon the present patents. Along with the court decisions, IPHC’s calculation method for compensation for damages is worthy of note.

Calculation of compensation for damages against infringing products

The Japanese Patent Law Article 102(2) stipulates the calculation of compensation for damages against acts of infringement, particularly regulating that the calculation should be based on marginal profit of the infringer. That said, as a matter of fact, the aforementioned provision is a presumptive rule and some of the presumed damages may be rejected under certain conditions. This IPHC ruling applies Article 102(3), which sets forth a request of compensation for damages based on equivalent amount of a licensing fee, when calculating the presumed damages. In this case, the IPHC thoroughly considered the reason for the rebuttal and did not admit all the presumed damages but the portion of the profits. That judicial procedure gives an impression that the Grand Panel meticulously discussed the case applying to Article 102(3) to some of the presumed damages. This court ruling ushers a new trend that the court admitted compensation for damages against some of the assumed profits in compliance with Article 102(3).

Our analysis

As mentioned above, Japanese IP lawsuits are likely to be favorable to patentees as the courts tend to admit the patentees’ profits widely. In 2022, the court ordered approximately one billion JPY (7.5 million USD) in a patent infringement case regarding a method patent. LuzCom, a subsidiary company of Nidec which operates semiconductor inspection, filed a lawsuit to the Tokyo District Court, claiming their product patent is infringed. The Tokyo District Court ordered the defendant to pay approximately eleven billion JPY (8.2 million USD) to LuzCom.

This IPHC ruling was handed down at the “Business Court,” a governmental building newly established on October 11, 2022, in a bid to centralize the handling of business-related disputes and legal procedures by the IPHC, Tokyo District Court, and Tokyo High Court. This Court aims to respond to an increasing demand in globalization and expertise, in order to deepen knowledge and experience of the disputes. The Court is also designed to accelerate digitization for expediting trial procedures. The Business Court accommodates the IPHC, IP division, and commercial division of the Tokyo District Court. Its building has 18 court rooms, one of which is used for IP Grand Panel consisting of five judges.

It is assumed that Japanese IP litigations will promote international cooperation, accelerate further efficient and swift procedures. The courts will also be more likely to admit high amount of compensation for damages.

(1USD = 134 JPY)

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