NEWSLETTER

Overview of the Legal Framework Governing Damages Claims in the Japan's Patent Act

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1. Introduction

Under the Patent Act of Japan (Act No. 121 of 1959) ("**Patent Act**"), when patent rights are infringed, the patentee may seek injunctive relief to halt the infringing acts, claim compensation for damages, and request measures to restore the patentee's reputation. The following is an overview of the damages framework in the Patent Act.

2. Elements of a Damages Claim

A patentee may claim damages against a party who manufactures, sells, imports, or otherwise deals in products that infringe the patentee's patent rights ("**Infringer**"). Japanese law permits only compensation for actual damages; enhanced damages, such as punitive damages, are not available, even in cases involving willful infringement.
To bring a successful claim for damages, the patentee generally must establish:

1. Intent or negligence on the part of the Infringer
2. A causal relationship between the infringement and the damages suffered
3. The amount of damages

However, to lessen the burden of proof on patentees, an Infringer's negligence is presumed once proof of infringement has been provided (Patent Act, Article 103).

The Patent Act also establishes special presumptive rules for calculating damages, as discussed below.

3. Presumption of Damages

The Patent Act establishes three types of presumptions that assist patentees in establishing the amount of damages (Patent Act, Article 102):

- Article 102(1): The amount of damages may be presumed to equal the number of infringing products sold multiplied by the patentee's per-unit profit, assuming no infringement had occurred.
- Article 102(2): The infringer's profits derived from the infringement are presumed to be the amount of damages.
- Article 102(3): Damages may be presumed to be equivalent to the amount of money the patentee would have been entitled to receive for the use of the patented invention.

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Since these provisions operate as rebuttable presumptions, the infringer may reduce the damages by presenting evidence that contradicts the amount reached using these presumptions.

(a) Article 102(1)

Article 102(1) allows the patentee to claim damages based on its own profit margins. Specifically, damages are calculated by multiplying the number of infringing products sold by the Infringer by the patentee's profit margin (i.e., sales revenue minus variable costs such as raw materials, purchase costs, and logistics). Fixed costs such as R&D expenditures and general administrative expenses typically are not deducted. However, if the Infringer sold more infringing products than the patentee could have supplied (i.e., in excess of the patentee's implementation capacity), damages may be limited to a reasonable royalty on the excess portion. It is worth noting that "implementation capacity" includes potential capacity, such as the ability to outsource production to meet demand. However, asserting Article 102(1) may require the patentee to disclose sensitive business information—such as sales figures, costs, and profit margins—which deters some patentees from relying on this provision.

(b) Article 102(2)

Article 102(2) presumes that the Infringer's profit from the infringement reflects the amount of damage suffered by the patentee. For this presumption to apply, it must be shown that the patentee would have gained some profit if not for the infringement. However, courts have ruled that it is not necessary for the patentee to be using or profiting from the patented invention. The Infringer's profit is calculated on a profit margin basis. It is notable that only the portion of the Infringer's profits attributable to the patented invention—i.e., causally linked to the infringement—qualifies as recoverable damages.

(c) Article 102(3)

Whether or not the patentee has implemented the patented invention, the patentee may demand payment of damages equivalent to the amount of money the patentee would have been entitled to receive for the use of the patented invention.

The amount of damages under Article 102(3) is calculated at the discretion of the court. When calculating damages, the court may consider the compensation that the patentee would have received if the patentee and the Infringer reached an agreement, on the assumption that the patent rights were Infringed (Patent Act, Article 102(4)). In addition, if the Infringer did not act with intent or gross negligence, the court may take that fact into consideration when determining the amount of damages (Patent Act, Article 102(5)).

Therefore, the amount of damages under Article 102(3) is determined by taking into consideration various factors, such as the content of the patent rights, the price and sales volume of the infringing products, and the maliciousness of the Infringer, and may be higher than the license fees in a normal license agreement.

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(d) Similar Provisions in Other Intellectual Property Laws

Other Japanese intellectual property laws incorporate similar damages presumptions:

- Trademark Act (Article 38)
- Copyright Act (Article 114)
- Design Act (Article 29)
- Utility Model Act (Article 39)

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