

Views on Possible Improvement on Damage-Related Provisions under the Unfair Competition Prevention Law of Japan

The Second Subcommittee,
Fair Trade Committee

In Japan, Patent Law, Trademark Law, Utility Model Law and Design Law and Copyright Law have been amended one after another during the period from 1998 to 2000 for the purpose of making “establishment of damages” and “establishment of the act of infringement” easier. In line with the above amendments, they are considering necessity of amendment of related provisions of Unfair Competition Prevention Law, which is one of intellectual property laws in Japan.

Based on the survey and analysis which were made by the Fair Trade Committee at JIPA, on the cases in which infringements or damages were disputed in the area of the Unfair Competition Prevention Law, this article discusses concerns about possible introduction of the following infringement or damage-related provisions, which most of other intellectual property laws already experienced as above, for:

- (i) For easier establishment of damages;
 - (1) calculation formula of lost profit;
 - (2) deletion of the term “normally” in the presumption clause under which the amount equivalent to license fees but for infringement be damages;
 - (3) awarding of reasonable amount when the establishment of damages is extremely difficult; and
 - (4) adoption of expert opinions for calculation of damages as necessity.
- (ii) For easier establishment of the act of infringement:
 - (1) requiring a party who alleges the other party’s infringements to stipulate her act in a concrete manner ; and
 - (2) ordering the other party to produce document necessary for the proof of the alleged infringement act as well as assessment of damages.

As opposed to the other intellectual property laws, which gives some legal right to a person, such as the Patent Law, the Unfair Competition Prevention Law regulates some specific acts by a person we have studied and shown in detail the problems we will be facing at the possible amendments, in comparison with the current practice under the Patent Law, and in considering some specific situations under the Unfair Competition Law. The results of our study has also been reported, in a separate form, to the Ministry of Economy, Trade and Industry, as our views on the possible amendments.

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