

Study on Revisions Regarding Indirect Infringement*

The Fifth Subcommittee,
The Second Patent Committee

(Abstract)

2002 Amendments to Japan Patent Law requires application of provisions relating to indirect infringement to non-exclusive article under certain conditions. The Fifth Subcommittee of The Second Patent Committee studied how the newly added provision in the law amendment relating to indirect infringement will be implemented and any practical problems arising out of the law amendments. This article reports the study This Subcommittee carried out especially focused on the background of the law amendment, related law provisions of foreign countries and case law.

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1. Introduction

As the IT industry grows and the structure of industries becomes complicated, conventional intellectual property laws were criticized as not providing satisfactory protection. Law amendments were thus made including Patent Law of 2002 which amended provisions relating to indirect infringement (Article 101 of Patent Law) as follows:

(Acts Deemed Infringement)

Article 101. The following acts shall be deemed to be an infringement of a patent right or exclusive license:

- (i) omitted
- (ii) in the case of a patent for an invention of an article, acts of manufacturing, assigning, leasing or importing or offering for assignment, in the course of trade, parts which are used to manufacture the article (except for article widely distributed to the public in Japan) and which are essential for the invention to overcome the problem, knowing that the invention is patented and that the parts are used to the working of the invention;
- (iii) omitted
- (iv) in the case of a patent for an invention of process, acts of manufacturing, assigning, leasing or importing or offering for assignment, in the course of trade, parts which are used to the process (except for article widely distributed to the public in Japan) and which are essential for the invention to overcome the problem, knowing that the invention is patented and that the parts are used to the working of the invention.

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Newly introduced Article 101 (ii) and (iv) make it possible for patents to cover under certain conditions working of parts which can be used for non-exclusive parts or software modules that had not been automatically covered under the old law as not meeting the requirement of “solely.” (parts solely used to manufacture patented invention or to implement patented process).

The new provisions, however, use very vague terms to cover a various types of indirect infringement, which may cause confusion when the provisions are practically implemented. Especially the three phrases in the provisions, i.e., “article widely distributed to the public,” articles “which are essential to overcome problem” and “knowing” will allow a variety of construction though they will be the critical requirements in finding whether or not infringement existed.

Thus we decided to consider the background of Amendments, provisions of foreign states and court decisions relating to indirect infringement after identifying problems possibly arising out of the three requirements.

This Article is based on the considerations by the members of The Fifth Subcommittee, The Second Patent Committee of 2002: Takuto Tanaka (Chairperson, Agilent Technologies Japan, Ltd.); Takaya Kamoshida (Deputy Chairperson, Fuji Photo Film Co., Ltd.); Katsumi Yaguchi (LION CORPORATION); Koji Tomita (TOSHIBA TEC CORPORATION); Kei Nakajima (Hitachi, Ltd.); Etsuko Ono (JSR Corporation); Kazuhiro Oya (Taisho Pharmaceutical Co., Ltd) and Kojiro Nishi (CANON INC.).

2. Background of Law Amendments on Indirect Infringement

Before going into consideration of amended law provisions on indirect infringement, we briefly review the background of introduction of the provisions on indirect infringement and indicate the problems in old provisions on indirect infringement (under Showa 34 (1959) Law).

2.1 Background of Introduction of Provisions on Indirect Infringement

How provisions on indirect infringement

were introduced is explained in detail in “Background of Introduction of Provisions on Indirect Infringement” distributed as materials for the fourth meeting of Legislative Affairs Subcommittee at Intellectual Property Committee of the Industrial Structure Council. We provide brief explanations based on the document, referring to the draft law provisions described in the materials.

Prior to Showa 34 (1959) Amendment, there was no provision relating to indirect infringement under Taisho 10 (1921) Law. Introduction of provisions to deem preparatory acts and indirect acts as infringement started to be considered because it had been difficult to protect patent, an intangible property right, solely based on the principle of Civil Code.

First, the tentative 1 for internal consideration which was nearly the translation of Article 271 of U.S. Patent Law (Law of 1952) was examined.

Tentative 1 For Internal Consideration

Article x. Anyone who is engaged in any of the following acts shall be deemed as supporting infringement of a patent:

1. to induce infringement of a patent;
2. to sell or distribute any component of patented article, any parts necessary to make patented article or any parts necessary to use patented article knowing that such component or parts will be used solely for infringement of the patent.

The tentative was continuously considered, and on December 24, 1956 the secretariat submitted the following draft to the Industrial Property Council:

Draft Submitted by Secretariat to Industrial Property Council

Anyone who makes, sells, distributes or import any component of an article concerned with patented invention, any part, machine or equipment used to make such an article or any part, machine or equipment used to perform process concerned with patented invention for the purpose of infringing the patent or knowing that it will be mainly used for infringement of the patent shall be deemed as infringing the patent.

The draft is similar to the Amended Law in that it adopted the subjective requirement

using the term “knowing.” After further consideration, however, the subjective requirement was deleted and the objective requirement was added with the term “solely.” While the reasons for the deletion and addition are not clear, the subjective requirement is considered to have been deleted taking into account the difficulty of establishment of the requirement and excessive expansion of patent rights.

Also the enacted provisions limited application of indirect infringement to parts used to make patented invention or implement patented process.

2.2 Problems of Old Provision on Indirect Infringement

The legislation history required a very strict construction of the term “solely.” That is to say, indirect infringement was found only with respect to the parts solely used to make an article in the case of invention relating to article, or parts used to implement process in the case of an invention relating to process, while parts having “other purposes of use” would not be covered. Generally speaking, the requirement of “other purposes of use” is construed as not met by abstract or experimental possibility of use but met by such a use that is socially and commonly deemed as economic, commercial or practical.

However, patent protection limited to such exclusive article became insufficient as the industry develops and various manufacturers, such as those for device, parts and assembly, became involved in the production process in a complex way to make a variety of final products, as a result of which many devices and parts now have various purposes of use. Moreover, in the IT industry which has marked a rapid growth in recent years, modules, the components for software products, generally have many purposes and have been difficult to be protected under provisions on indirect infringement. In addition, since the Japanese provisions on indirect infringement were unique compared to those of foreign countries, amendments have been demanded from the viewpoint of international harmonization.

It was based on such background that provisions on indirect infringement were amended.

3. Law Provisions on Indirect Infringement in Foreign Countries

Now we review law provisions of foreign countries that Industrial Structure Council referred to in making Amended Law. As direct comparison on a provision-to-provision basis is not appropriate since the basic concept of indirect infringement is different between the Japanese law and the laws of other countries, we review construction and implementation of similar terms, the material part, i.e., “essential parts to overcome problems,” terms on general products, i.e., “article widely distributed to the public,” and terms on knowledge of possible infringement, i.e., “knowingly.”

3.1 Material Part

In the U.S., provisions relating to contributory infringement (Section 271(c) of US Patent Law) which is equivalent to the Japanese concept of indirect infringement provide as “... constituting material part of the invention.” The phrase “material part” is construed not in terms of patentability but in terms that whether allegedly indirectly infringing part is the essential or material element of the product or process.

In Europe, on the other hand, it is considered as important part of patented invention which is clear from the statutory terms “essential element of the invention” (Article 60 (2) of UK Patents Act) and “means relating to the essential element of (patented) invention” (Article 10 (1) of German Patent Law).

Thus there is a significant difference in construction of material part between U.S. and European countries.

3.2 General Article

In the U.S., provisions relating to contributory infringement (Section 271(c) of US Patent Law) exclude general article by providing that “...knowing ... not a staple article or commodity of commerce suitable for substantial noninfringing use...” “Staple article or commodity of commerce” is usually construed as multi-purpose article though it is considered that even a multi-purpose article may be deemed not a staple article or commodity of commerce if use other than infringing use ① results in a higher

price beyond appropriate ability to compete; ② significantly reduces efficiency; ③ is conceived after a dispute occurs for the purpose of counter-argument; or ④ is limited to conceptual or experimental possibility.

In Europe, whether or not an article is general or not is decided from the commercial point of view as seen from the terms, “the supply or offer of a staple commercial product” (Article 60 (3) of UK Patents Act), “a staple commercial product” (Article 10 (2) of German Patent Law) and “major product in the market.” (Article 29bis of French Patent Law).

In addition, active inducement/ aid will be deemed infringement even in relation to general article. (See Section 271(b) of US Patent Law and Article 10 (2) of German Patent Law)

3.3 Knowledge of Possible Infringement

In the U.S., provision relating to contributory infringement (Section 271(c) of US Patent Law) set forth substantive requirement providing that “knowing .. to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use...” The requirement of “knowing” is generally met by the warning letter provided by the patentee since the term “knowing” is construed as the knowledge of ① existence of the patent and ② assignee’s non-ownership of the right to use the patent, i.e., knowledge of possible infringement, not the result as a matter of law, i.e., “infringement found by declaratory judgment.”

In European laws, it is clearly provided that indirect infringement will be established not only when the alleged infringing party knows the existence of the patent but also when “it is obvious to a reasonable person in the circumstances” (Article 60 (2) of UK Patents Act), “it is clear from the circumstances,” (Article 10 (1) of German Patent Law) or “it is obvious from the circumstances.” (Article 29bis of French Patent Law)

In Germany, the case law has established that substantive requirement does not need to be met with respect to exclusive article if objective requirement is met.

4. Examination

Based on the foregoing studies, we examine the three relevant elements of the law provisions, parts “essential to overcome problems,” “article widely distributed to the public” and “knowing.”

4.1 “Essential to Overcome Problems”

(1) Purposes

It is one of the objective requirements set forth to prevent unnecessary expansion of the coverage of indirect infringement caused by easing the objective requirement (“solely” requirement) under conventional law.

However, the purpose of using the unique terms “problems” and “overcome” compared to the law provisions of other countries, is not clear as Industrial Structure Council which decided the overall direction of Law Amendment had not discussed this requirement very much as well as there are scarce materials to show the legislative history.

(2) Construction

It is difficult, as stated above, to construe the requirement based on the legislative history. Thus we tried to construe the requirement taking into account 1) law provisions of foreign countries; 2) other provision in the Patent Law and 3) relationship of Article 101 (1) to 101 (2) after amendment.

1) Construction Based On Foreign Law Provisions

We examined the requirement based on construction of foreign law provisions. As we discussed above, the construction of main part is different between the U.S. law which regards as the material part of the article, and European laws which regard as essential part of the invention. Given the expression that “for the invention to overcome the problem,” it seems natural to consider that the requirement is literally relating to the essential part of the invention though, in practice, the difference is less likely to cause a problem as the essential part of the invention and that of article are often identical. If, however, they are not identical, opposite decisions may be delivered with respect to whether or not the requirement is met. The following cases may occur for instance:

Assuming that there is a patent for “ballpoint pen having ink A” to overcome a problem “to offer a ballpoint pen of which ink can be erased with a rubber eraser,” and that the patented invention essentially requires an airtight cap for commercialization because ink A is highly evaporative.

When considering the conditions as the essential part of the invention, the cap does not meet the essential requirement because what makes the ink erasable is the property of ink A.

When considering, on the other hand, the conditions as the essential part of the article, a cap which is not directly related to the patented invention, will also be deemed as satisfying the requirement because a ballpoint pen without a cap cannot be a finished commercial product.

In this case, it seems reasonable to consider that the requirement is directed to the essential part of the invention because the patentability of ink A is recognized and because protecting the cap beyond the technical concept of the invention will result in excessive expansion of patent protection.

In this respect, some argued that the requirement is directed to the essential part of the article because production of the cap may be deemed as preparatory act of infringement and because Law Amendment aims to lower the objective requirement.

2) Construction of the Requirement Based on the Relationship to Other Provisions

Here we consider whether the requirement may be construed based on the comparison with Article 37(1)(i) of Patent Law which uses the term “problems.”

Article 37(1)(i) provides with respect to the scope of invention that can be contained in a single application as “such an invention that is identical with the specific invention in the industrially applicable fields and in problem to be overcome.”

“Problem to be overcome” here means the technical problem which has not been solved as of the filing date and which the invention aims to overcome. Article 37(1)(i) may be the grounds for rejection (Article 49(4)) but not for invalidation (Article 123(4)), which means that the provisions merely define inventions that can be contained in a single application and do not affect the substantiality of granted rights.

On the other hand, the terms “problems” and “overcome” used in the provisions relating to indirect infringement should be strictly construed because they will affect the substantiality of granted rights.

Accordingly, we believe that it is not reasonable to construe the requirement in line with the construction of Article 37(1)(i).

3) Construction of the Requirement Based on the Relationship of Article(1) and (2)

Finally, we consider the requirement based on the scope of application of provisions on indirect infringement as provided for in Article 101 (1) and (2) of Amended Patent Law.

First of all, paragraph (1) and paragraph (2) are construed in the subordinate-superior relationship since paragraph (2) is construed from the purpose of Law Amendment to expand paragraph (1) which provided the exclusive article. They, at the same time, may be considered in the parallel relationship as illustrated in figure 2 because paragraph (2) contains objective requirement, “essential to overcome problems,” which lacks in paragraph (1).

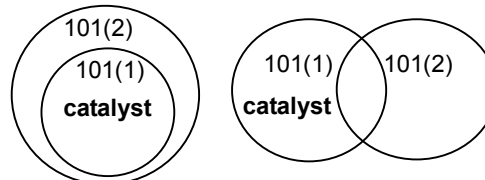


Figure 1

Figure 2

If the paragraphs are construed in the vertical relationship as figure 1, consistency with the conventional indirect infringement provisions is maintained and natural construction will be sustained in practice, especially in the case of a material patent in which specifications problems to be solved are not required to be described, allowing catalyst which was been recognized under paragraph (1) be covered by paragraph (2) Problems remain, however, in covering invention not describing “problems” under paragraph (2) with respect to how to explain the possible difference in claim construction depending on each invention. It is possible, however, with respect to patent for chemical compound in which provision of a compound is a problem to be overcome, to construe that any catalyst required to obtain such a compound will

be deemed as an element “essential to overcome problems.”

If, on the other hand, paragraphs (1) and (2) are in parallel relationship, allegedly infringing product that falls within paragraph (1) will not necessarily meet paragraph (2), eliminating the difference in construction between technical fields. Paragraph (2) will not apply, however, to a material patent which does not anticipate a problem, leaving the problem that scope of protection differs depending on the invention.

The requirement is thus likely to cause difference between the purpose of amendment to expand the scope of application of provisions on indirect infringement to non-exclusive article, and literal construction. There is no reason to change the principle that provisions on indirect infringement should be strictly construed even after Law Amendment. We intend to pay a good attention to the future court decisions to see how this requirement will be treated in actual cases.

4.2 “Article widely distributed to the public”

(1) Purpose

Under the old law, provisions on indirect infringement covered only exclusive article. The Law Amendment allows some non-exclusive article to be subject to allegation of indirect infringement. However, mere expansion of the scope of application of provision relating to indirect infringement may undermine the stability of transactions of articles widely distributed to the public in Japan. This requirement was provided to exclude such articles from application of indirect infringement. The provision actually sets forth as “except for article widely distributed to the public in Japan.”

(2) Construction of Exceptional Clause

Reference material for Law Amendment merely explains the phrase “article widely distributed to the public” to mean “articles widely used in the world such as screw, nail, bulb and transistors,” or “standard goods and common goods generally available in the market and not a custom-made article,” and does not provide further detailed description.

Once “article widely distributed to the public” is expressly provided as excluded from

application of provisions on indirect infringement, the concern of suppliers as well as right holders will be focused on what article will fall within the exceptional clause. Since the requirement sees an article from the viewpoint of its status in the market, its literal construction may result in discussion on availability though it is very difficult to examine this issue when no relevant court decision has yet been delivered. Thus we considered with what facts an article’s status in the market can be defined.

Relationship of an article to the market is by nature grasped from the two aspects: an aspect of being provided to the market as a product and the other aspect of being purchased at the market as a product. The former sees the article from the supply side and the latter from the demand side. And we consider that the phrase an “article widely distributed to the public” may also be grasped from the two sides thereby clarifying the construction. Here we refer to an “article widely distributed to the public” as an “exception.”

1) Consideration from Supply Side

Existence of several suppliers may constitute a good ground for an article to be recognized as “exception.” Especially, “Standardized Goods” which are indicated as an example of “Exception” are the goods “standardized” among several suppliers to be offered to the market.

Not only parts, such as screws and nails but also the collection thereof (including modules for software product) may also be deemed as “exceptions” as long as they are generally widely distributed in the market to the public.

2) Consideration from Demand Side

To be more specific, status in the market from the viewpoint of demand side means “subject matter of application”. “Subject matter of application” of allegedly infringing product, i.e., “purpose of use” has been considered by the court. Since, of course, the issue of the past court decisions was whether or not allegedly infringing product is the exclusive article, the court did not directly consider whether an article was “widely distributed to the public”. However, the decisions and the decisions are worth noting in that it examined an article from the same viewpoint of subject matter of law application.

Now we review each court decisions:

- (I) Case No. Showa 62 (1987) (wa) 3887, Osaka District Court

With respect to the versatility of “car rubber ring,” the court decided whether or not it’s an exclusive article based on applicability to competitors’ products, stating “‘car rubber ring’ is marketed separately from ‘various starters’ and thus recognized as a multi-purpose article that is applicable not only to ‘various starters’ but also to model engine starters made by American manufacturers and other competitors which do not have ‘circular stoppage rim’ or ‘circular shoulder’ on the outer circumferential of the cylinder of the rotor.”

- (II) Case No. Showa 54 (1979) (yo) 2738, Osaka District Court

The court decided whether or not allegedly infringing product is an exclusive article based on applicability to various process in the field identical to that of patented process, stating “it is clear from the purpose of use as stipulated in the separate exhibit that the allegedly infringing product is also applicable to the methods other than the patented method for cleaning bathtub that is carried out ‘with the hose ...with filling equipment at the end of which the filling port is located,’ and ‘with filter cover at the suction end of the hose.’ In addition, it can be applicable to the method for cleaning bathtub not using the second step (the latter part of the patent claim that method of ‘filling the bathtub with purified water by removing the suction end of the hose and locating it in the bathtub after covering the end with the filter’) employed in the claimed invention. Thus the allegedly infringing product is not deemed as used solely for the patented process. It is rather deemed as applicable to various methods for cleaning bathtub and as bathtub cleaning equipment having versatility though there are certain limitations.”

- (III) Case No. Heisei 4 (1992) (wa) 466, Yokohama District Court

The court decided whether or not allegedly infringing product is an exclusive article based on application to various uses, stating “while the court finds that the defendant makes and sells allegedly infringing product, the allegedly infringing product is not deemed as used exclusively to the patented process because allegedly infringing product has been used for a long time as so-called ‘a suspended rafter (toshitsuriko)’ and is used for various purposes as

material that is totally unrelated to the patented process.”

Thus the past court decisions have found an allegedly infringing product as a non-exclusive article on the ground that it can be used to competitors’ products or that it has various purposes. It is generally considered that the more “applicability (purpose)” an article has, the more availability in the market it acquires. Thus the existence of “various applicability” is an important for an article to be deemed as “exception.”

The phrase “various applicability” means both applicability to various models of products of the same type and applicability to a wider range of purposes, i.e., to different models of different types of products (difference in types of articles such as cleaner and television) though the latter will be deemed as more reliable factor as the proof of availability in the market.

As we indicated above, since the requirement sees the article from the viewpoint of its status in the market, the fact that an article is directed to several suppliers and application is not necessarily deemed as satisfying the requirement of “article widely distributed to the public”, be though the assertion based on the fact from the supply side or demand side will actually submitted to the court due to the difficulty of directly establishing the status in the market.

(3) Critical Time for Decision

Whether or not an allegedly infringing product falls within the exclusive article as set forth in Article 101(1) and (3) is decided based on the applicability to other purposes at the time of alleged infringement. The court specifically stated that “it is appropriate to consider that it is required not only that an article for which manufacture, assignment and other acts are carried out is used, according to the mode of placement to the distribution, ‘solely’ to the production of article concerned with the utility model but also that the article in general was not known to be applicable to other purposes at the time when infringement is objectively alleged.” (Case No. Showa 45 (1970) (wa) 1047, Osaka District Court)

Accordingly, it seems reasonable that whether or not an allegedly infringing product is

an exception is decided based on the time of allegation of infringement.

(4) Burden of Proof

It is generally understood that whether the allegedly infringing product falls within the exclusive article as set forth in Article 101 (1) and (3) of Patent Law must be established by the patentee. The court found that "while it goes without saying that the patentee bears the burden of establishing that there is no other use than that for patented invention, the needs for establishment becomes apparent when the other party submits inter alia reasonable allegation on the existence of other purposes." (Case No. Heisei 1 (1989) (wa) 12030, Tokyo District Court) Then which of the plaintiff or defendant bears the burden of proof that the allegedly infringing product falls within an exception?

It seems reasonable to believe that the alleged infringing party bears the burden because such an allegation can be understood as a defense given the provisions of Article 102 (2) and (4) of Patent Law provide to "exclude" the requirement, and because establishing that an article is "widely distributed to the public" is considered easier than establishing that the article is "not widely distributed to the public."

4.3 "Knowing"

(1) Purpose

Mere easing of objective requirements may result in requiring due diligence to the manufacturer/distributor of articles having multiple purposes with respect to even how the parts are used by the buyer. The requirement was thus introduced to exclude such situation because it is sever to require a good-faith user to bear obligations over the act of non-related buyer. The term "knowing" means that the alleged infringing party knows the existence of patented invention and that his/her article (parts, for instance) will be used to the working of the patented invention.

(2) Construction of "Knowing"

One of the provisions in the Patent Law that sets forth subjective requirement is Article 65 in relation to claim for compensation. There the subjective requirement includes knowledge gained by "warning" and "after knowing (for oneself)." In addition, many of foreign law provisions as dis-

cussed above also provide subjective requirement of a person who carried out the action. Thus we examine how to construe the requirement based on the provisions of Article 65 of Japan Patent Law and relevant law provision in foreign countries.

1) "Warning"

First of all, receipt by the alleged infringing party of a warning letter from the patentee satisfies the requirement of "knowing" or triggers the presumption of "knowledge of possible infringement." A warning letter here is reasonably construed as the same type of warning letter provided to claim for compensation under Article 65 of Patent Law, which indicates the patented invention (patent number, date of grant and claims are the minimum requirements) and the fact that the act constitutes indirect infringement and which is provided to the allegedly infringing party via contents-certified mail or certified mail. Attention should be paid, however, in sending a warning letter since improper provision of a warning letter may be subject to claim for damages.

2) "after knowing (for oneself)"

The term "after knowing (for oneself)" is also construed in the same way as "knowing." The requirement, however, will rarely be applied since it is difficult, for the patentee to establish the knowledge of possible infringement on the part of allegedly infringing party. In the case of claim for compensation under Article 65 of Patent Law, knowledge of possible infringement seems to be presumed when gross negligence is found on the part of allegedly infringing party, according to the court decision which ordered that "given the fact that the memorandum providing that the defendant would not infringe plaintiff's patent had been exchanged between the plaintiff and defendant, the defendant should have paid reasonable attention to information relating to plaintiff's patent applications, for which the defendant is presumed to have known that the invention was relating to a published patent application." (Case No. Heisei 8 (1996) (wa) 1579, Kyoto District Court) Knowledge of possible infringement may also be presumed by whistle-blowing and agreement, memorandum or other internal documents including search report on competitors' patent status submitted as a result of the court order.

It will be reasonable to believe that the requirement needs to be satisfied in same manner in European courts where knowledge is presumed as obvious.

In Europe, indirect infringement may be found with respect to general article if the allegation is relating to inducement/ aid of infringement while in Japan, indirect infringement will not be found because the article is deemed as falling within exception though the court may find conspiracy under Article 719 of Civil Code.

(3) Critical Time of Claim for Damages

Since infringement may be found under Article 101(2) and (4) of Amended Law, for the first time when both objective requirements and subjective requirements are met, the patentee may not claim for damages for the period prior to the time when knowledge of possible infringement came into the notice of allegedly infringing party, which is the time the patentee is deemed as acquiring the right to claim damages. Generally speaking, accordingly, no damages will be claimed if the allegedly infringing party stops production or sale of allegedly indirectly infringing product upon receipt of a warning letter.

(4) Possibility to Avoid Liability Based on Express Provision in Distribution Agreement

A supplier of an article which may constitute indirect infringement can insert in the distribution agreement, as take preventive measures, a clause which prohibits use of the article for certain purposes without approval of the patentee.

Then the supplier will be held not liable to indirect infringement since he/she took such good-faith measures to prevent patent infringement by making the buyers recognize the possibility of patent infringement through the distribution agreement. In fact, a German court found

that the supplier would not be held liable to indirect infringement in a similar case.

On the other hand, if the court considers that a distribution agreement is not effective to a third party and that the agreement shows that the supplier anticipated existence of patent and possible patent infringement, the supplier may be held liable to indirect infringement. In this case, however, if indirect infringement is found, the supplier will actually not pay substantial damages due to the existence of the agreement.

5. Conclusion

As described above, we have indicated and examined problems that may occur in construing provisions relating to indirect infringement (Article 101). It will be the accumulation of court decisions that tells us how the provisions are actually implemented though we hope that our considerations will be of any help to the intellectual property-related activities of the readers.

Notes:

- 1) Aro Mfg. Co. v. Convertible Top Replacement Co. , 377U.S.476 , 1964
- 2) (1) (iii) at 3.3.2 Implementation of Regulations of Referred Ministry, Chapter I, Volume I, Patent and Utility Model Examination Manual

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