

Cite as: 7 TECH. L. REV., Dec. 2010, at 29.

The Research of Japanese Patent Law Article 102(3)

Ming-Yung Wang

Abstract

A patentee or an exclusive licensee may claim against an infringer compensation for damage sustained as a result of the intentional or negligent infringement of the patent right or exclusive license, by regarding the amount the patentee or exclusive licensee would have been entitled to receive for the working of the patented invention as the amount of damage sustained, by applying Japanese Patent Law Article 102(3).

This report is to discuss the problems of Japanese Patent Law Article 102(3). Japanese courts have granted damages in the form of a reasonable royalty in most of all cases. The royalty is defined as the amount that a patentee ordinarily receives as compensation for allowing exploitation of the patented invention. This paper concludes that the amount of money commensurate to the patentee's loyalty is not always awarded equally to the amount of money objectively commensurate to the patentee's loyalty, on the basis of the amount of average loyalty in the same profession, the amount of loyalty intended for national patents, and so on. The amount of money commensurate to the patentee's loyalty may be awarded on the basis of the value of the patented invention and various circumstances surrounding parties con-

cerned. These various circumstances include business relationship between the parties concerned, the amount of profit that the infringer actually gained by infringement, for example.

Keywords: Patentee, Japanese Patent Law, Patent Infringement, Damages, Loyalty