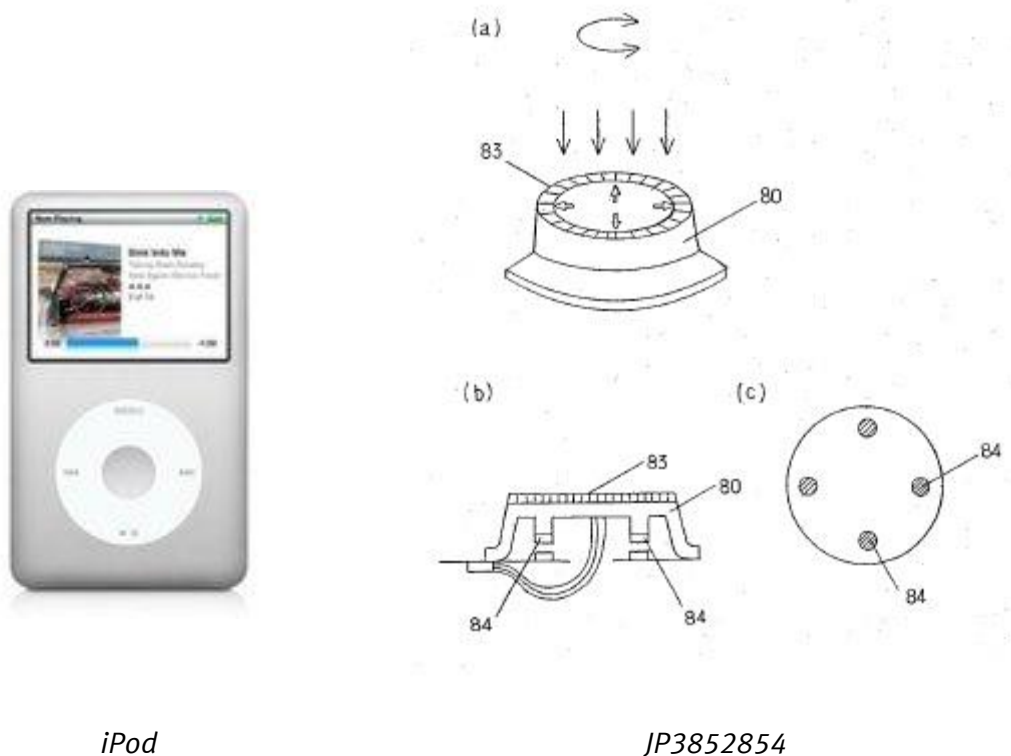


Supreme Court of Japan’s Decision in Apple v. Individual Inventor

On 9 September, 2015, the Supreme Court of Japan affirmed the lower courts’ decisions (decisions by the Tokyo District Court and the IP High Court) that Apple Japan G.K. (“Apple”) pay an individual inventor (“Inventor”) approximately JPY330 million (ca. EUR 2.4 million based on current exchange rate) for infringement of the Inventor’s patent (JP3852854) regarding a click-wheel which was mounted on Apple’s “iPod” product.



Apple has been selling several series of the iPod, and its older models used a click-wheel as a navigation component which allowed a user to find music or a video and control the volume on the device by detecting the user’s input through its touch sensitive ring.

The Inventor argued that Apple’s click-wheel infringed his patent registered in Japan and claimed damages of JPY62.7 billion (ca. EUR 464 million), which was 10% of Apple’s sales volume (JPY627 billion) and a portion of such damages of JPY10 billion (ca. EUR 74 million) as compensatory damages. On the other hand, Apple argued that the Inventor’s patent was invalid due to a lack of inventive step and a lack of support. On 26 September, 2013, the Tokyo District Court found that the Inventor’s patent was valid and Apple infringed his patent. However, although the Inventor argued that his damages were JPY10 billion (as a part of the total damages of JPY62.7 billion), the Tokyo District Court held that the Inventor’s damages

were only approximately JPY330 million (ca. EUR 2.4 million) since acquiring market share in the digital music player product area by Apple was considerably attributed to Apple's marketing efforts. Both parties appealed to the Intellectual Property High Court, but the High Court also agreed with the Tokyo District Court's decision on 24 April, 2014. Here, the Supreme Court agreed with these lower courts' decisions.

The above decisions suggest that, in a Japanese infringement lawsuit, where a patent is enforced and damages are granted, the damages amount may be considerably reduced if the infringer's sales of the product were mainly due to the infringer's marketing efforts. The Court appears to be making an effort to find a fair balance - even "small" individual inventors can be protected and able to enforce their patent rights, but at the same time, unlicensed use of such patents will not be severely punished. Indeed, both now and in the future, applying for a patent of a "small" invention would continue to make legal and commercial sense.

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Sonderhoff & Einsel Law and Patent Office

Shin-Marunouchi Center Bldg. 18/19F
1-6-2 Marunouchi, Chiyoda-ku
Tokyo 100-0005, Japan

tel +81-3-5220-6500
fax +81-3-5220-6556
email info@se1910.com