ticipation. If a person skilled in the art can produce the chemical substance *based on the common general knowledge* at the time of application, however, a publication disclosing a chemical formula could be a novelty-destroying prior art reference.

Regarding the assessment of obviousness of selection inventions, the court held that it may be regarded as nonobvious when it provides an advantageous effect which is not disclosed in the prior art, *qualitatively different or qualitatively same but quantitatively prominent* compared to an invention with a generic concept, neither of the effect being foreseeable with the eye of a person skilled in the art.[292]

3. Summary and Conclusion

According to the Korean Supreme Court, a document which discloses clearly all elements of an invention can certainly be an anticipating prior art reference. In addition, in case that expressions regarding the invention are not sufficient or there is a deficiency of disclosure, a document can be an anticipating prior art reference if a person skilled in the art can easily acknowledge the content of the invention based on the common knowledge or rule of thumb.[293] Different from U.S. or European practice, it does not seem that the disclosure and enablement requirements are clearly distinguished in determining anticipation.[294] Although it seems as if insufficiency of disclosure can be augmented by the knowledge of a person skilled in the art under Korean practice, it would be desirable that the Supreme Court would clarify its view on this issue. Further it would also be interesting to see how the Japanese High Court rules on this issue.

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292 Tōkyō Kōtō Saibansho [Tokyo High Ct.] Oct. 31, 1963, Sho 34 (Gyo Na) No. 13 (Japan); Tōkyō Kōtō Saibansho [Tokyo High Ct.] Mar. 30 1978, Sho 51 (Gyo Ke) No. 19 (Japan); Tōkyō Kōtō Saibansho [Tokyo High Ct.] Sho 51 (Gyo Ke) 19 (Japan); Tōkyō Kōtō Saibansho [Tokyo High Ct.] Jul. 30, 1983, Sho 53 (Gyo Ke) No. 20 (Japan); Tōkyō Kōtō Saibansho [Tokyo High Ct.] Sept. 8, 1985, Sho 60 (Gyo Ke) No. 51 (Japan).

293 *In re* University of Florida Research Foundation, Inc., Supreme Court Decision [S. Ct.], 2004Hu2307, Mar. 24, 2006 (S. Kor.).

294 Chaho Chung, et al., *Seontaekbalmyoungin Geoulsang Eesungilchae Balmyoungeui Shingyuseoung Pandan [Novelty Determination of Enantiomer Invention as a Selection Invention],* 49 Seoul National University The Law, 355, 399 (2008)(S. Kor.).