

# **Present Situation of IP Disputes in Japan**

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# 1 Jurisdiction over IP Cases (1)

- **TYPE A**
- Cases **containing technological elements**  
(patent rights etc.)

## **1st Instance**

**East Japan --- Tokyo District Court**

**West Japan--- Osaka District Court**

**2nd Instance    IP High Court**

**Final Instance    Supreme Court**

# 1 Jurisdiction over IP Cases (2)

- **TYPE B**
- Cases **not** containing technological elements (regular copyrights, etc.)

## 1st Instance


East Japan - **Tokyo District Court** + other

West Japan - **Osaka District Court** + other

2nd Instance      **IP High Court** + other courts

In real practice, cases are highly  
concentrated onto IP Courts

## 2 Statistics (1)



● District Courts (nationwide)	567 total
Patents	155 (27.3%)
Utility Models	3 (0.5%)
Designs	29 (5.1%)
Trademarks	92 (16.2%)
Copyrights	109 (19.2%)
Program copyright	19 (3.4%)
Unfair Competition Act	136 (24.0%)
Others	24 (4.2%)
Average term is 12 months	

## 2 Statistics (2)

- **Trend**

1. **Grobalization**
2. **IT-related Cases**
3. **FRAND**

# 3 Human Resource of IP High Court

- **IP High Court**
  - 4 Divisions
  - 18 judges
  - 11 research officials
  - Expert adviser system
  - Expert witness system

## 4 Legal Costs

- **Litigation fee in Japan is far less expensive than those in many other countries**
  - **Filing fee paid to the court: low (approximately 0.3% of the amount claiming)**
  - **Attorney's fee: comparatively low since we do not have discovery system**
  - **Investigation fee: depends on the nature of a case**
  - **Expert's fee: depending on the nature of a case**

## 5 Disclosure Order (1)

- Japan has no discovery system like the one in the U.S.



- How and to what extent can plaintiff collect information from defendant?



## 5 Disclosure Order (2)

- In 2005, the Patent Act was revised to enable plaintiff to obtain information and materials of defendant by newly introducing **Disclosure Order** and **Protective Order system**
- When Disclosure Order is to make a defendant disclose their technological secrets that is highly likely to cause irreparable harm to the defendant, a judge can issue **Protective Order** along therewith

## 6 Remedies

- **Injunctions (automatic)**
- **Damages**

## 7 Invalidity defense

- When plaintiff files an infringement suit based on a patent right, etc. against defendant (seeking injunction and/or damages), the defendant is likely to raise invalidity defense

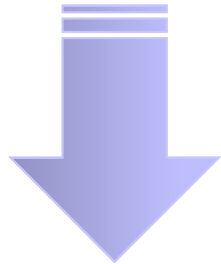


## 8 Settlement in the court

- Outcome of patent infringement cases terminated by
  - Court decision 45%
  - Settlement at the court 48%

## 9 Active involvement of judges in settlement discussions (1)

1. Negotiation b/w corporate IP staffs



this stage takes very long

2. Negotiation b/w outside lawyers

3. Finally, bringing to the court



## **9 Active involvement of judges in settlement discussions (2)**

- **Judge may suggest a settlement like resolution during the course of court proceedings**

# 10 Preliminary Injunctions (1)

- **Advantages:**
  - low cost
  - held by not open court hearings
  - judge is able to hold hearings for parties separately
  - speedy solution is strongly required

## 10 Preliminary Injunctions (2)

- **More advantages:**
  - Plaintiff can withdraw the claim without defendant's consent
  - In other words, plaintiff is able to back off by withdrawing so when he or she is likely to lose



# 11 Conclusion

- **How to avoid an endless litigation**
  - To seek an advice from a professional to investigate any potential risk of a dispute
  - To carefully sign an agreement after a detailed scrutiny
  - To promote an awareness-building of dispute-resolution principles
  - To properly understand the pros and cons of a dispute resolution system, whether court system or ADR



**Thank you for your attention !**

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