

This article cites major formulas for obtaining the amount of royalties as well as examines and analyzes based on the cases for damages relating to patent and utility model in the past dozen years, the formulas actually employed by the court, resulting amount of royalties as decided by the court, focused especially on the trends in deciding the royalty rates. In addition, we studied how amendments of Patent Law relating to calculation of damages which became effective a few years ago have affected such court decisions.

As to royalty rate, the conventional, major level of three percent has been raised in recent years to five percent.

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Study and Proposals on Introduction of Consent System and Opposition-Based Examination System in Trademark Examination

Trademark Committee

In September 1998, a vast questionnaire survey was conducted to Japanese companies with respect to “Consent System” and “Opposition-based Examination System,” as a result of which little needs were found for either of the two systems at that time. As “Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks” became effective in March 2000, it has become necessary to consider introduction to Japan of “Consent System” and “Opposition-based Examination System” has become necessary in terms of international harmonization of trademark system for many European countries accessing the Protocol originally employ both of the systems. Based on the backgrounds, this article provides proposals and recommendations on introduction to Japan of both systems based on the results of questionnaire survey relating to both systems conducted to forty Japanese companies most of which are members of JIPA Trademark Committee as well as ten trademark agents in overseas countries. We propose that “Consent System” should be “considered toward early introduction” because: (a) there are more than reasonable needs among users; (b) the system should provide more consistency with the presently available transfer of rights after registration; (c) Japanese system should be internationally harmonized; and (d) the gap between examination practice at the Patent Office and corporate needs would be bridged. As to Opposition-based Examination System, it seems that “introduction is too early”, because sufficient discussion has not been made on the issue which has a significant impact on the corporate practice.

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