INTRODUCTION OF ARTICLES

A Study of the Amount of Damages in Patent Infringement Litigation

The First Subcommittee,
The Second Patent Committee

It has been pointed out that the amount of damages determined in patent infringement litigation in Japan is smaller than that in the United States and Europe. The Intellectual Property Policy Outline adopted on July 3, 2002, recommended discussion on a desirable system for determining the amount of damages with the objective of strengthening protection of intellectual property rights and enabling Japan to break away from being a society where infringers can "easily benefit from infringement." Following such recommendation, this issue has been discussed from various aspects. The Subcommittee overviewed the legal grounds for calculating the amount of damages in Japan and those in the United States and Europe, and analyzed the legal provisions and calculation methods applied in recent cases where the courts determined the amount of damages. This work has revealed that the revision of Section 102 of the Japanese Patent Law in 1998 has made it easier for the patentee to prove the amount of lost profits, and the frequency of applying the theory of marginal profits to the calculation of profits has increased the amount of damages determined. The Subcommittee further considered the possibility of introducing punitive damages as a means to increase the amount of damages, thereby deterring patent infringement. However, we have come to a conclusion that the introduction of punitive damages, such as treble damages applied in the United States, would be completely against the Japanese legal framework and therefore cannot be deemed as reasonable. In order to strengthen protection of intellectual property rights, we should take measures to improve such methods of proving the amount of damages that are available to patentees and require litigation costs including legal fees from infringers, rather than introducing punitive damages.

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The Smooth Utilization of Non-substitutable Upstream Technology Patents in Research

The First Subcommittee,
Biotechnology Committee

The smooth utilization of non-substitutable upstream technology patents, such as gene patents, in research activities conduced at companies and universities, is discussed in the Strategic Program for the Creation, Protection and Exploitation of Intellectual Property. This report studies problems arising

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