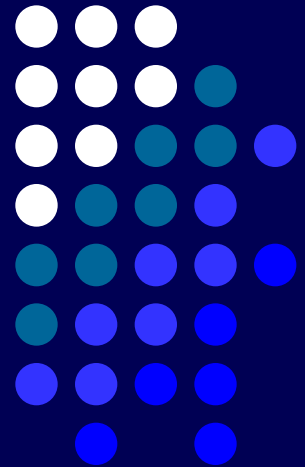
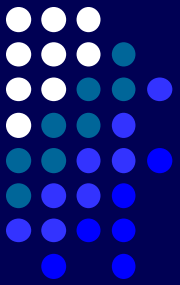


Role of the Intellectual Property High Court and Litigation System for Intellectual Property in Japan

October 18, 2017

Misao Shimizu,
Chief Judge of the Intellectual
Property High Court





Introduction

- 1 the meaning of the IP High Court established in April 2005 in Japan
- 2 the characteristics of intellectual property litigation ("IP litigation") in Japan
- 3 the importance of international cooperation among intellectual property courts in various states

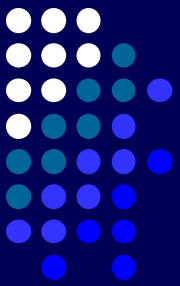
1. Meaning of Establishment of IP High Court in 2005 in Japan

1.1 Background of Establishment

1 While economic stagnation has continued since the 1990s when the bubble economy collapsed in Japan, intellectual property rights have been formally prioritized as a new pillar of economic development.

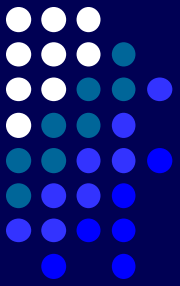
2 Together with the development of technology, disputes related to intellectual property ("IP disputes") have become more complicated and difficult, and as such, the need to establish a specialized court for resolution of IP disputes has increased.

3 while corporate activities have been globalized and IP disputes have become more internationalized, the need to establish a court that can deal with such internationalization has increased.



1. Meaning of Establishment of IP High Court in 2005 in Japan

1.2 Meaning of Establishment



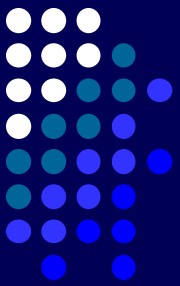
- 1 The mission of the IP High Court is to resolve IP disputes in a proper and prompt manner as the sole special court in Japan.
- 2 The IP High Court is also required to play a part in dealing with internationalization.
- 3 The IP High Court must take a leading role in resolving IP disputes with the intellectual property rights department of the Tokyo District Court and such department of the Osaka District Court.

1. Meaning of Establishment of IP High Court in 2005 in Japan

1.3 Details of IP High Court

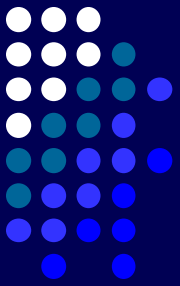
Cases handled by four departments of the IP High Court (usually 17 judges) established in 2005 are almost the same as those having been handled by four intellectual property rights departments of the Tokyo High Court before.

- 1 The IP High Court is the court of second instance for IP-related civil suits handled by district courts under the jurisdiction of the Tokyo High Court, and also for infringement lawsuits handled by the intellectual property rights department of the Tokyo District Court (usually 17 judges) and such departments of the Osaka District Court (usually 5 judges), which relate to intellectual property rights such as patent rights.



1. Meaning of Establishment of IP High Court in 2005 in Japan

1.3 Details of IP High Court



2 The IP High Court handles actions for revocation of trial /appeal decisions made by the Japan Patent Office as administrative dispositions.

3 The IP High Court is entitled to examine legally or socially important cases at the grand panel composed of 5 judges from the perspective of taking a leading role in IP litigation in Japan in a unified manner.

1.3 Details of IP High Court

IP High Court

TOKYO

**4
divisions**



17 judges

**11 Judicial
Research officials**

(Technical researcher)

- 1) Appeals of all types of IP cases from the Tokyo District Court and Technological cases from the Osaka District Court
- 2) Litigations against appeal/trial decisions made by JPO

1.3 Details of IP High Court

OSAKA District Court

TOKYO District Court

2 divisions

21st 26th

5 judges

3 Judicial

Research officials

(Technical advisor)

4 divisions

29th 40th 46th 47th

17 judges

7 Judicial

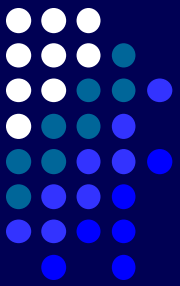
Research officials

(Technical advisor)

All types of IP cases + Publicity Right cases

1. Meaning of Establishment of IP High Court in 2005 in Japan

1.4 Circumstances after Establishment



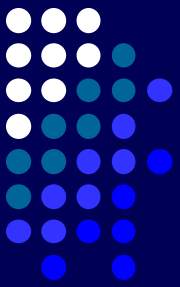
This year is the 13th year since the establishment of the IP High Court. There are two important changes in IP litigation during this period as stated below.

- 1 IP litigation has been expedited further.

For example, a civil case appealed to the IP High Court is settled in 7 months on average. An action for revocation of a trial /appeal decision for which 20 months were required on average in 1998 is currently settled in 8 months on average. In this connection, intellectual property cases in the first instance in district courts in Japan are currently settled in 14 months on average, which is on a very expedited level from a global viewpoint.

1. Meaning of Establishment of IP High Court in 2005 in Japan

1.4 Circumstances after Establishment



2 IP litigation in Japan has been getting more attention on an international basis.

To be more specific, a number of law practitioners such as judges, lawyers and patent attorneys, government officials and researchers have visited the IP High Court from overseas. This number amounts to approximately 2,800 persons to date.

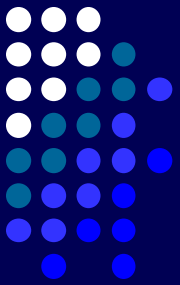
The IP High Court also dispatches judges to IP-related international conferences held around the world for active international exchange, and actively communicates information to overseas locations via the website of the IP High Court.



International Symposium: Toward the Future of the Judicial System for Intellectual Property ~Commemorating the 10th Anniversary of IP High Court ~ (Tokyo, 20 April 2015)

2. Characteristics of IP Litigation in Japan

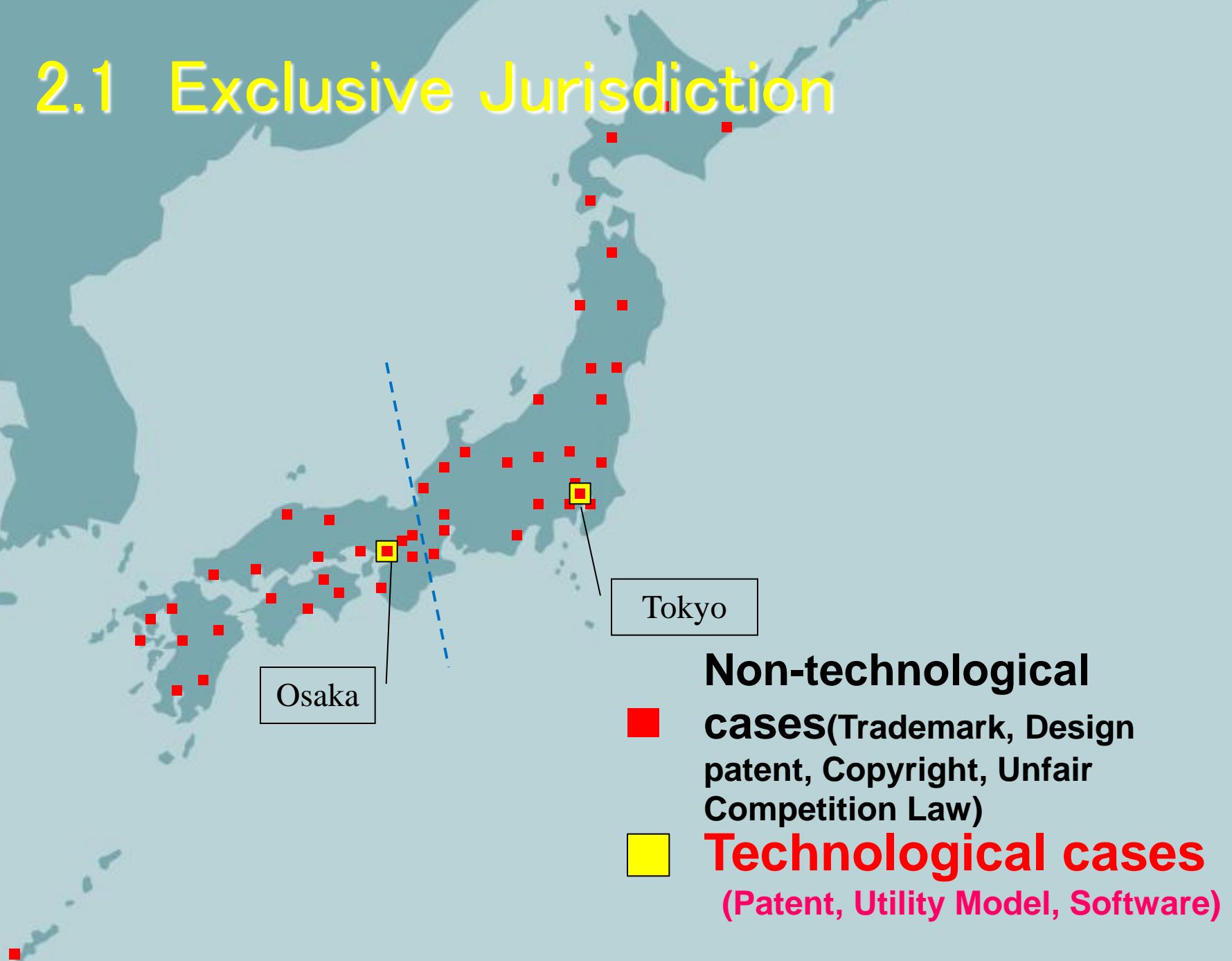
2.1 Exclusive Jurisdiction over Patent Litigation



In Japan, over litigation related to advanced technology such as patent cases among intellectual property cases, the Tokyo District Court, the Osaka District Court and the IP High Court solely have exclusive jurisdiction.

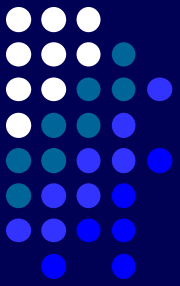
With respect to jurisdiction in the first instance, by dividing Japan into the eastern region and the western region, the Tokyo District Court has jurisdiction over the eastern region and the Osaka District Court has jurisdiction over the western region. The IP High Court only has jurisdiction in the second instance. In this manner, technical cases are settled by means of "selection and concentration," which is the characteristics of IP litigation in Japan. Using this exclusive settlement system realizes dispute resolution that is more expedited.

2.1 Exclusive Jurisdiction



2. Characteristics of IP Litigation in Japan

2.2 Acquisition of Technical Knowledge in Litigation



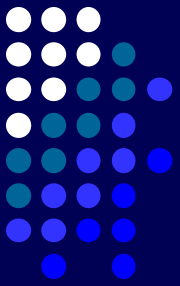
How judges understand the technology ?

Scientific background is not always required. But an ability to understand scientific technology accurately and efficiently is necessary .

Legal mind to decide legal issues with balance is very important .

2. Characteristics of IP Litigation in Japan

2.2 Acquisition of Technical Knowledge in Litigation



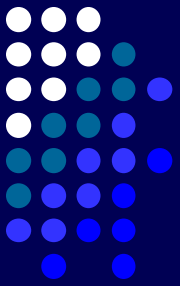
As a characteristic of IP litigation in Japan, in order for judges to acquire technical knowledge about intellectual property rights, the judicial research officials system and the technical advisor system have been adopted as stated below.

This is not the usual process in which expert witnesses specialized in certain fields give technical explanations as in the U.S., or external experts are requested to raise expert opinions as in Europe.

2. Characteristics of IP Litigation in Japan

2.2 Acquisition of Technical Knowledge in Litigation

2.2.1 Judicial Research Officials System

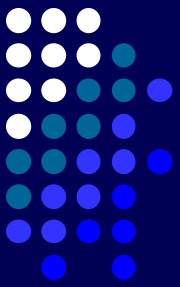


Judicial research officials are full-time court officials who have technical knowledge about technology fields such as mechanics, electricity and chemistry, and assist judges in understanding the technology concerning each case. Judicial research officials are employed from among administrative judges of the Japan Patent Office or patent attorneys, and in principle, after working for any court for three years, are reinstated as administrative judges or patent attorneys. Currently, 11 officials are assigned to the IP High Court, 7 officials are assigned to the Tokyo District Court, and 3 officials are assigned to the Osaka District Court.

2. Characteristics of IP Litigation in Japan

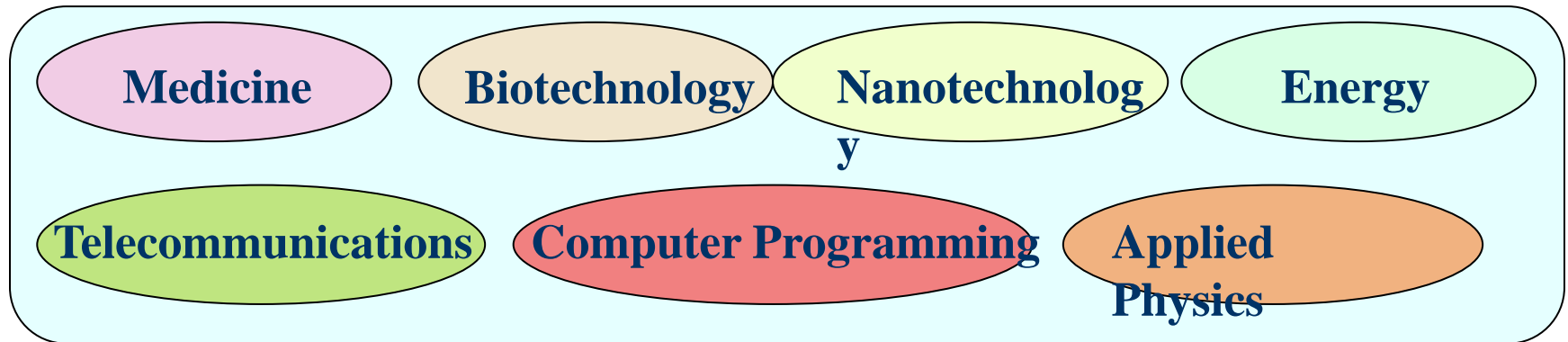
2.2 Acquisition of Technical Knowledge in Litigation

2.2.2 Technical Advisor System



Technical advisors are part-time public officers who have technical knowledge about a wide range of advanced technology fields such as mechanics, electricity, chemistry, information communication and biotechnology. Technical advisors participate in technical meetings held by judges especially in respect of cases involving advanced technology, and give opinions from a technical perspective to assist judges in understanding such technology. Technical advisors are appointed from among persons such as university professors, researchers of companies and patent attorneys, and in principle, their positions are renewed for a two-year term. Currently, approximately 210 advisors are appointed.

2.2.2 Expert Advisers



Part time court members (about 210): university professors etc

*All belonging to 3 courts: IP High Court, Tokyo District Court, Osaka District Court



Designated for a case which contains highly difficult technological issues.

Explanatory sessions

Presentation by both parties (attorneys)

Alleged infringing product

Videogram

Presentation software



Frank discussion



Questions by judge,
Judicial Research Official,
Technical Advisor

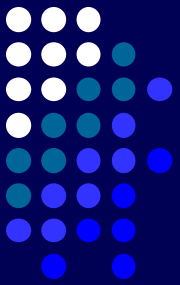
Response by parties
and attorneys



**Deepening the understanding
on technological matters etc**

2. Characteristics of IP Litigation in Japan

2.3 Details of Judgment



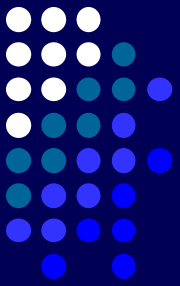
Intellectual property cases in Japan are usually judged by a panel. Especially, cases concerning specialized technology such as patent cases are solely judged by the IP High Court, the intellectual property rights department of the Tokyo District Court and such department of the Osaka District Court.

Therefore, judgments are rendered by a panel of experienced judges only, which allows not only the judgments to be appropriate but also for the reason that such judgments are to be explained in an easy-to-understand manner, as a characteristic of IP litigation in Japan.

Furthermore, these judgments are rendered in a relatively short term from an international perspective as stated above, and are fully published on the website.

2. Characteristics of IP Litigation in Japan

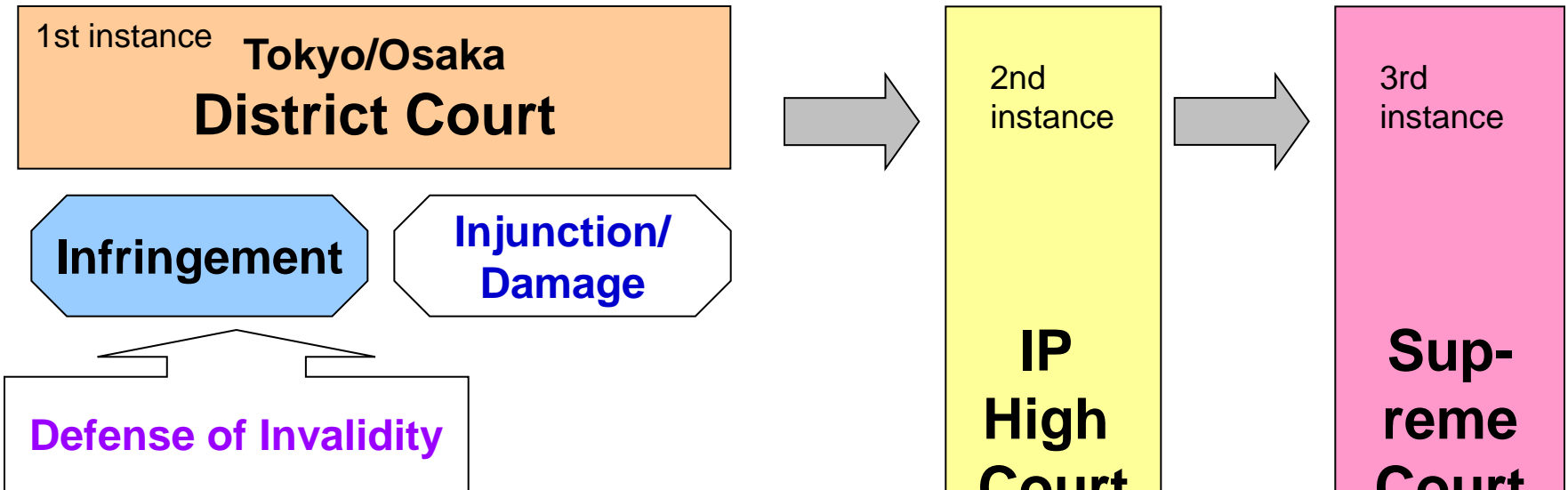
2.3 Details of Judgment



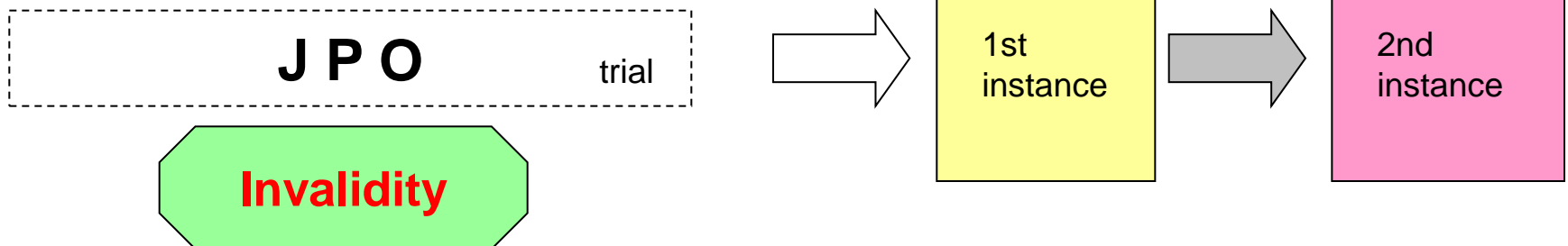
In addition, as another characteristic of IP litigation in Japan, the validity of a patent asserted by the defendant as a defense can be judged in the course of a patent infringement suit. Therefore, with regard to the validity of a patent in patent litigation, there is a dual procedure system.

Dual System in Patent Litigation

Infringement procedure

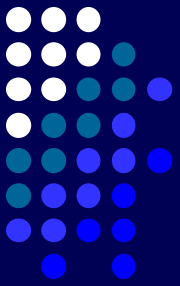


Invalidity procedure



3. International Cooperation among Intellectual Property Courts

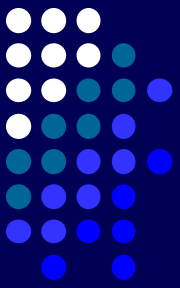
3.1 Internationality of IP Disputes



For major reasons such as global development of trade, globalization of corporate activities and existence of patents common across several states, internationalization of IP disputes is proceeding further.

3. International Cooperation among Intellectual Property Courts

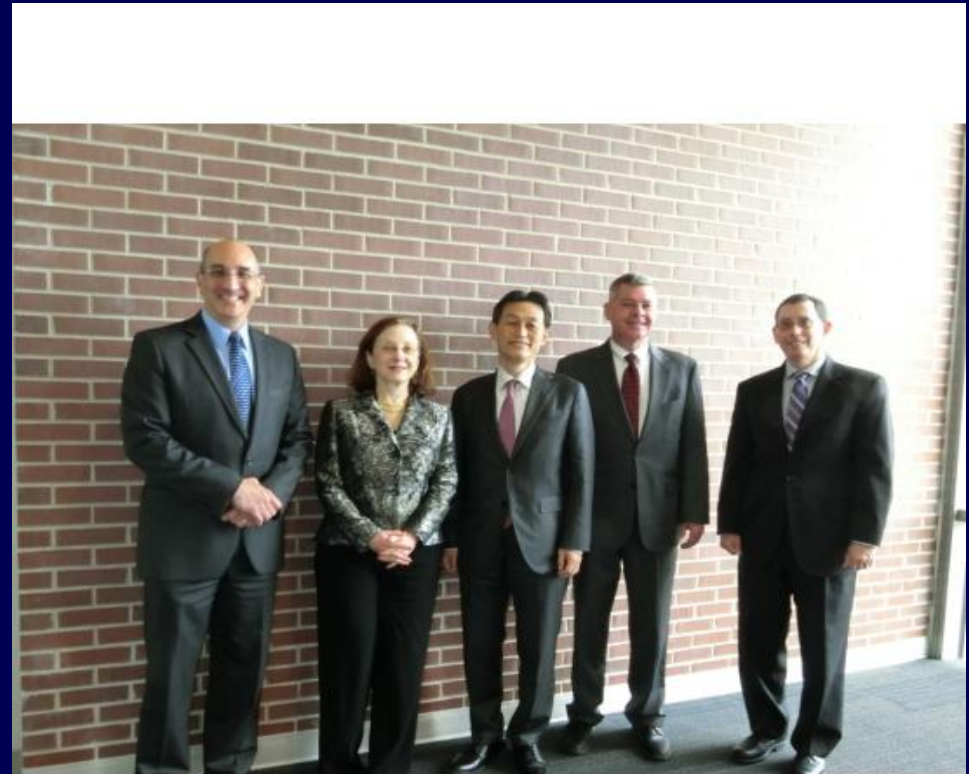
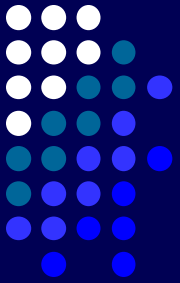
3.2 Efforts by IP High Court to Respond to Internationalization

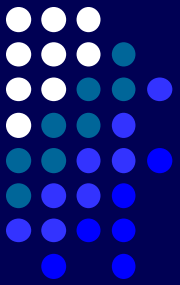


To deal with the aforementioned internationalization of IP disputes, the IP High Court actively exchanges personnel and communicates information as stated above. As personnel exchange, while the IP High Court dispatches judges to international conferences, it also accepts a number of visitors from overseas. As information communication, the IP High Court translates its website into the following five languages: English, German, French, Chinese and Korean. For the English version in particular, important intellectual property judgments are translated, as well as being classified into each category of intellectual property rights such as patent, trademark and copyright, arranged further by issue and then published.

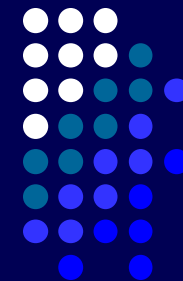
April 2017 U.S. Court of Appeals for Federal Circuit

U. S. Patent and Trademark Office





**IP seminar in Indonesia
(December 2014)**



知財高裁平20(行ケ)第10311号商標登録取消決定取消訴訟 (シーサ事件)

【登録商標】

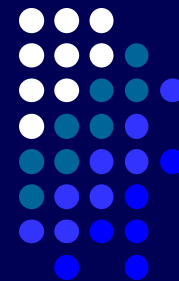


平成17年6月21日出願
平成19年4月13日登録
(第5040036号)
商標権者 日本の個人X
(原告)

【引用商標】



平成6年12月20日出願
平成9年6月20日登録
(第3324304号)
商標権者 ドイツ国プーマ社
(登録異議申立人)



知財高裁平24(行ケ)第10454号審決取消訴訟(クーマ事件)

【登録商標】



平成18年4月3日出願
平成18年10月13日登録
(第4994944号)
商標権者 北海道デザイン
(原告)

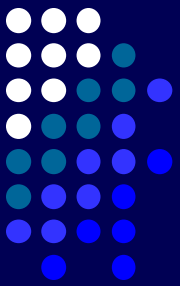
【引用商標1】



平成6年12月20日出願
平成9年6月20日登録
(第3324304号)
商標権者 ドイツ国プーマ社
(無効審判請求人)

3. International Cooperation among Intellectual Property Courts

3.3 Hosting the Judicial Symposium on Intellectual Property/TOKYO 2017

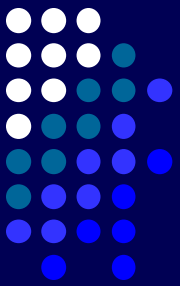


This year, the IP High Court will, as an initiative to respond to internationalization, host the Judicial Symposium on Intellectual Property/TOKYO 2017 for three days from Monday, October 30, to Wednesday, November 1, (cohosted by the Ministry of Justice, the Japan Patent Office and the Intellectual Property Lawyers Network Japan).

In this symposium, Japan, China, Korea and 10 ASEAN states will participate to discuss with each other various means of resolving IP disputes.

3. International Cooperation among Intellectual Property Courts

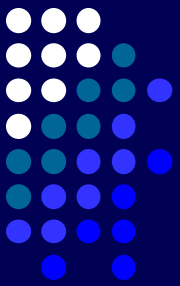
3.3 Hosting the Judicial Symposium on Intellectual Property/TOKYO 2017



Especially on Day 1, the IP High Court will hold mock trials based on the same case in which practicing judges and lawyers in Japan, China, Korea and Singapore will participate. The theme of the mock trials will be the means of gathering evidence in patent infringement suits, and a panel discussion will also be held.

3. International Cooperation among Intellectual Property Courts

3.4 Cooperation among Intellectual Property Courts in East Asia

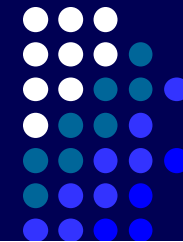


Cooperation is being promoted among intellectual property courts around the world. Especially in East Asia, courts specialized in intellectual property have been successively established.

To be more specific, the Patent Court of Korea was established in 1998 in Korea, the IP High Court was established in 2005 in Japan, the Intellectual Property Court was established in 2008 in Taiwan, and the Beijing, Shanghai and Guangzhou Intellectual Property Courts were established in 2014 in China.

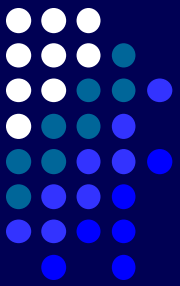
September 2017

International IP Court Conference in Korea



3. International Cooperation among Intellectual Property Courts

3.4 Cooperation among Intellectual Property Courts in East Asia

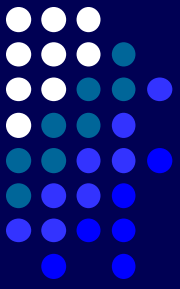


Communication between these courts that specialize in intellectual property is actively increasing as well as particular systems and their operation are being shared to a partial extent.

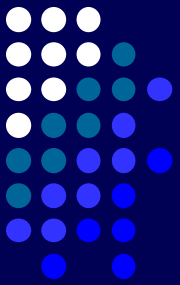
For example, technical specialists(Judicial research officials) are assigned to all intellectual property courts. And in Korea, the validity of a patent asserted by the defendant as a defense can be judged in the course of a patent infringement suit since 2016. In China, an intellectual property high court is planned to be established.

3. International Cooperation among Intellectual Property Courts

3.4 Cooperation among Intellectual Property Courts in East Asia



Although social and economic systems differ among these states, there are very many common points in IP litigation. In the future, these courts will mutually understand the circumstances of IP litigation in the other states, further promoting personnel exchange.

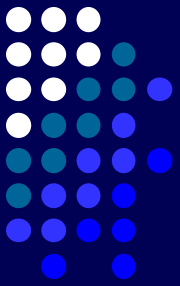


4. Conclusion

In Asia, where economies are significantly developing, the establishment of a special esystem to technically handle IP litigation will become a challenge from now on.

The IP High Court will cooperate with Asian states towards the realization of this challenge. Cooperation will be further promoted among intellectual property courts worldwide in the future.

Thank you for your attention!



IP High Court