

WINDS FROM JAPAN

The Licensing Executives Society Japan

Patent Infringement Cases in Japan

By Hisashi Watanabe *

In January 2017, the Japanese Supreme Court published statistics regarding patent infringement cases handled by the Tokyo and Osaka District Courts in 2014 through 2016.

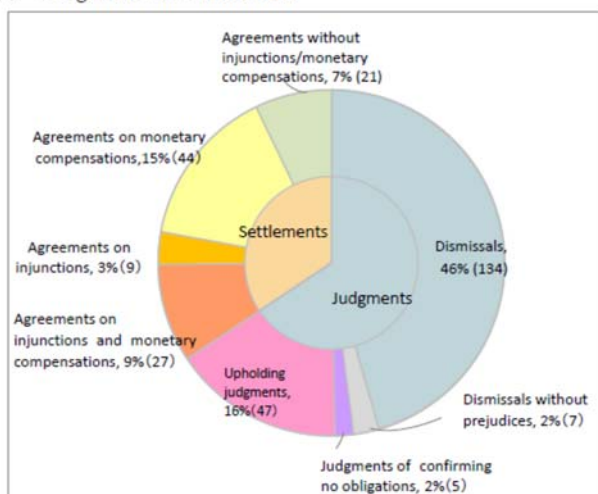
http://www.ip.courts.go.jp/eng/vcms_1f/2017_E_sintoukei_H26-28.pdf

At the first instance, all patent infringement litigations in Japan are handled by either the Tokyo or Osaka District Court. This article discusses part of the statistics which practitioners may find interesting.

According to graph (1) “Judgements and Settlements”, even though the ratio of the judgments in favor of plaintiffs was only 16%, the ratio of the sum of the judgments and the judicial settlements which are in favor of plaintiffs was 43%.

By showing this graph, the Japanese Supreme Court seems to argue that the winning rate is not so low as practitioners are criticizing because a substantial number of patent infringements are resolved through judicial settlements during the court procedure or settlements outside the court.

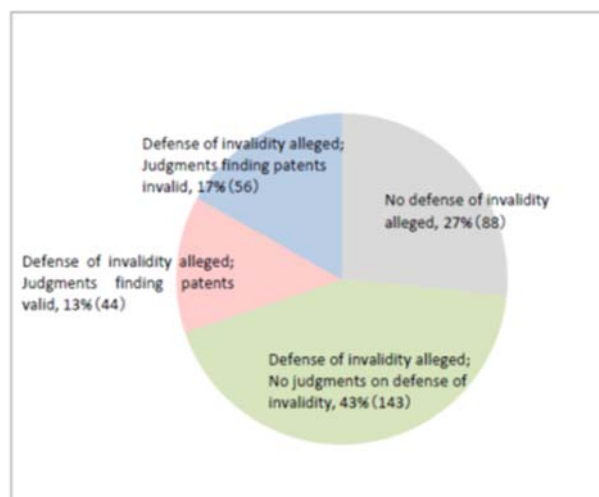
(1) Judgments and Settlements



The defendants may submit “a defense of patent invalidity” during the patent infringement litigation procedure. Graph (2) “Judgements on Defense of Invalidity” shows the ratio of the judgments finding patents invalid was 17% and the ratio of the judgments finding patents valid was 13%. It would be considered that the judgments on validity were well balanced.

The statistics are helpful for practitioners to understand the recent situation in Japanese patent infringement litigations and it is expected to see more improved circumstances in the future.

(2) Judgments on Defense of Invalidity



* Editor / Patent Attorney, Shinjyu GIP

IP News from Japan

By Shoichi Okuyama, Ph.D.*

Grace period to be 12 months

Currently, Japan offers a relatively generous grace period of 6 months for exemption to loss of novelty for disclosures made by an inventor or successor in title. In November 2017, the Japan Patent Office (JPO) announced its intention to submit a new bill during the ordinary Diet session starting in January 2018 to extend the grace period to 12 months. The U.S. and Korea already have 12-month grace periods, and TPP11 (Trans-Pacific Partnership 11, a trade agreement among 11 countries) provides for a 12-month grace period.

JPO cuts fees in half for SMEs

In November 2017, the JPO announced that it would cut certain official fees in half for small and medium-sized companies by 2019, but it also noted that to balance the special account for the JPO, base official fees would have to increase. Currently, discounts of official fees are available for small corporations or individual inventors under limited circumstances. The new scheme will make discounted fees available with a simple procedure to all SMEs.

India agrees to PPH with Japan

On September 1, 2017, the JPO and Indian Department of Commerce adopted a joint statement covering wide-ranging cooperation between Japan and India to improve the patent system in India. A working group of experts from Japan and India will be set up to explore the possibilities of bilateral PPH.

Joint Statement: <https://goo.gl/6oUFaL>

TPP11 and Japan-EU EPA progress

On November 10, 2017, the framework negotiations for TPP11 (Trans-Pacific Partnership 11) concluded. The following nine items will be suspended from the agreed TPP text related to intellectual property, out of 20 suspended items in total. Two other items in the chapter on intellectual property (Chapter 19) appear in the list of 20, but they are related to protection of communication and Internet service providers. Negotiations for the other four unresolved items will continue. The agreement is expected to be signed early in 2018, but the remaining issues may be difficult to resolve.

The members are Canada, Mexico, Australia, New Zealand, Chile, Malaysia, Peru, Singapore, Vietnam, Brunei and Japan. The new official name will be "Comprehensive and Progressive TPP" or "CPTPP."

1. National Treatment - Article 18.8 footnote 4, suspend the last two sentences
2. Patentable Subject Matter - Article 18.37.2, and 18.37 the second sentence
3. Patent Term Adjustment for Unreasonable Granting Authority Delays - Article 18.46
4. Patent Term Adjustment for Unreasonable Curtailment – Article 18.48.
5. Protection of Undisclosed Test or Other Data for General Drugs - Article 18.50
6. Protection of Undisclosed Test of Other Data - Biologics - Article 18.51
7. Term of Protection for Copyright and Related Rights - Article 18.63
8. Removal of Technological Protection Measures (TPMs) - Article 18.68
9. Removal or Alternation of Rights Management Information (RMI) - Article 18.69

Since Article 18.63 will be suspended, it was expected that the term of copyright protection should remain 50 years in Japan. What was not suspended, most notably, is the 12-month grace period.

List of suspended items: <https://goo.gl/zTN2Kv>

On November 2, 2017, the Ministry of Foreign Affairs quietly updated its "fact sheet" detailing the process of negotiations with the EU toward the conclusion of the Japan-EU Economic Partnership Agreement (Japan-EU EPA). The revised fact sheet indicated that Japan agreed to adopt the 70-year term for copyright protection. According to a news report, this was agreed on in July 2017 when the framework negotiations ended.

On December 8, 2017, the conclusion of negotiations for the Japan-EU EPA was announced by Prime Minister Abe and President Juncker of the EC. Currently, it is not clear whether the term of copyright protection will be generally extended in Japan.

EU site for the agreement: <https://goo.gl/A5EFyn>

“Reach site” busted

A growing number of so-called "reach sites" exist that have links to "cyberrockers" containing unauthorized copies of copyrighted materials. On October 31, 2017, nine individuals were arrested for setting up and maintaining a reach site called "Remains of Far-away Dreams" (*Haruka Yume No Ato*). Reportedly, more than 200 similar sites exist. The Agency for Cultural Affairs will review the issue of reach sites from copyright law perspectives.

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\* Editor / Patent Attorney, Okuyama & Sasajima

## *Attractive Yokohama -LES International 2019 Conference-*

### By Mitsuo Kariya\*

LES Japan is going to host the LES International 2019 Conference on 26 through 28 of May 2019 in Yokohama city, Kanagawa prefecture. The Organizing Committee, headed by Ms. Junko Sugimura, President of LES Japan, is actively planning the conference. The LES Japan webpages will be timely updated to provide you with detailed information.

The conference logo of the 2019 LES International Conference in Yokohama was determined through an art college student logo competition. According to the creator's comment she combined the symbols of a ship steering wheel and sea-foams which represent Yokohama as a port city.



Conference Logo  
with Ms. Sugimura and the logo creator

Yokohama is the second largest city in Japan with the population of 3,733,000 and one of the core cities in the Keihin Industrial Zone. The Yokohama Port opened to the world in 1859 after the closure of the country for 220 years and has been always one of the largest international trading ports in Japan. Yokohama is now known as an intersection of people, goods and cultures, and a lot of people are attracted by the beautiful scenery of the port, sea and sky as well as the historical elegant architecture.

The venue of the LES International 2019 Conference is PACIFICO Yokohama, an international conference center located in the Minato Mirai area which is facing Tokyo Bay. Yokohama is only 25 minutes from Tokyo station by train and it is convenient to combine this conference with visits to your friends, colleagues and clients in Tokyo. It is easy to take a bullet train from Shin-Yokohama station to travel to Nagoya, Kyoto and Osaka.

In addition to this conference there are a lot of things to do in Yokohama. You may enjoy not only “WASHOKU; Traditional Dietary Cultures of the Japanese” which is registered as the Intangible Cultural Heritage of UNESCO but also casual dishes like “Ramen” at the Shin-Yokohama Ramen Museum.

You will find more information of Yokohama by visiting the official visitor guide webpages (<http://www.yokohamajapan.com/>).

It is also convenient to visit Kamakura, a historical town where the Kamakura Shogunate was established in the 12th century. It takes 25 minutes to Kamakura from Yokohama by train. More information is available at:

<https://www.city.kamakura.kanagawa.jp/visitkamakura/en/index.html>

Please plan a travel to Japan in 2019 to participate in this conference. We look forward to seeing you in Yokohama.

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*Editor/Licensing Vice President at GE Japan Inc.,
Patent Attorney

Editors' Note

This issue includes articles relating to “Patent Infringement Cases in Japan”; “IP News from Japan”; and “Attractive Yokohama - LES International 2019 Conference.”

Thank you for your support of “*Winds from Japan*.” This newsletter will continue to provide you with useful information on activities at LES Japan and up-to-date information on IP and licensing activities in Japan.

If you would like to refer to any back issues of our newsletters, you can access them via the following URL: <http://www.lesj.org>

(MK)

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