

How Patentees Obtain Remedies in Patent Infringement Litigation in Japan

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Procedure in Japan

- No jury trial. Patent cases are heard by a **Three-Judge Panel**
- Few expert witnesses, instead, **Judicial Research Officials**
- Judges play an active role in case management
- Discussion among attorneys and judges in hearing session
 - 1) First Oral Argument in open courtroom
 - 2) Preparatory Hearing** in chambers (several times)
 - 3) Explanatory Session (if appropriate)
 - 4) Closing Oral Argument in open courtroom
 - 5) Judgment
- Judges may attempt to arrange a **settlement** at any time

Two-stage procedure

Stage One: Liability

(Infringement & Validity)



If (1) Plaintiff seeks damages, and
(2) Patent is found infringed and not invalid,
then:

Stage Two: Damages



Judgment / Settlement arranged by court

Remedies

Injunctions

granted as a matter of course

Monetary Damages

- 1) Patentee's profit per unit \times
quantity of infringing products
 - 2) Infringer's profit
 - 3) Reasonable Royalty
- Attorney fees (about 10% of damages)
 - 5% interest

Recent Cases

Case 1 (beverage)

1/16/2015	Filing of Complaint (seeking injunctions only)
3/10	First Oral Argument (alleging invalidity only)
5/11	Preliminary Hearing
8/20	Closing Oral Argument
10/29	Judgment (patentee lost)

Case 2 (medicine)

5/8/2015	Filing of Complaint
6/23	First Oral Argument (alleging non-infringement)
8/25	Preliminary Hearing(1) (alleging invalidity)
9/17	Preliminary Hearing(2)
10/26	Preliminary Hearing(3)
12/10	Closing Oral Argument
3/3/2016	Judgment (patentee won)

Recent Cases

Case 3 (ink)

Year 1	Day 1	Filing of Complaint
	Day 66	First Oral Argument
	Day 121	Preliminary Hearing (1) (Stage One: infringement and validity)
Year 2	Day 48	Preliminary Hearing (7) (Stage Two: damages)
	Day 330	Preliminary Hearing (13)
	Day 357	Closing Oral Argument (Settlement tried)
Year 3	Day 55	Judgment

Recent Cases

Case 4 (synthetic material)

Year 1 Day 1 Filing of Complaint

Day 72 First Oral Argument

Day 117 Preliminary Hearing (1)

Day 217 *Defendant requested trial of invalidity at JPO*

Year 2 Day 139 Preliminary Hearing (7) **Explanatory Session**

→ end of Stage One

Day 151 *JPO's prior notice to invalidate the patent*

Day 217 *Plaintiff requested amendment of the claims*

Year 3 Day 9 *JPO's decision to allow amendment*

→ infringement discussed again, and damages

Day 150 Preliminary Hearing (14)

Day 217 Closing Oral Argument → Settlement started

Day 269 3rd Settlement Session : Agreed

Recent Cases

Case 5 (toy)

Day 1 Filing of Complaint (seeking Injunction and damages)

Day 56 First Oral Argument

Day 87 Preliminary Hearing (1) (infringement and validity)

Day 122 Preliminary Hearing (2)

Day 163 Preliminary Hearing (3) (Stage One ended)

Day 196 Preliminary Hearing (4) (Stage Two started)

- Court disclosed tentative conclusion and suggested settlement

Day 239 Settlement (compensation + license agreement)

Number of Cases

Numbers of patent infringement litigation
terminated from April 2013 to March 2016
at the 46th Division of the Tokyo District Court

Total 101

Judgment 57 (Patentee won: 17 / lost: 40)

Settlement 24 (substantially won: 19 / lost: 5)

Others 20 (withdrawal, etc.)

All figures are not official, but based on speaker's personal record, and subject to change.

Time Intervals

Average time intervals in month from filing to termination
of the said 101 cases

Total 18.5 months

Judgment 18.5 (Patentee won: 21.1 / lost: 17.5)

injunction only: 9.8

seeking damages: 25.8

Settlement 22.6 (22.9 / 21.3)

Others 13.5

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Thank you for your attention!

<http://www.ip.courts.go.jp/eng/index.html>

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Judge

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