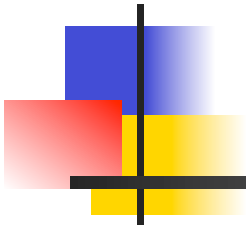


# Patent Invalidity Examination in Patent Infringement Dispute -Comparative View among Japan, US and Europe-



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Eiji Katayama  
Abe, Ikubo & Katayama  
Tokyo Japan



# Japan “Double Track”

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- Infringement Court and JPO will examine simultaneously the invalidity issue.

JPO + Court

- Historical Background: JPO took time. Court wanted no stay.
- Defendant may win either in one of the two jurisdictions.



U.S.

## Inter Parte Review vs Infringement Court

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- If IPR is filed, Court may and seems stay the case.
- Invalidity reasons for IPR are restricted, but limited discovery is available, and IPR seems increasing.
- As a result, invalidity examination seems shifting to USPTO from Court.

Court - - - - - ➔ USPTO



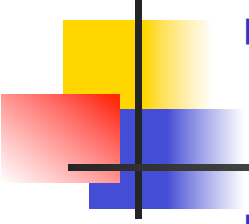
# Europe Unified Patent Court

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- Invalidation and infringement will be determined by basically the same court. 3 options:
  - ✓ If invalidity defense, appoint technical judges.
  - ✓ Invalidation may be transferred to Central Division.
  - ✓ Transfer whole case to Central Division.

Bifurication(G ) - - - - - ➔ Court

# Issues to Discuss

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- One jurisdiction had better decide both infringement and validity same time?
  - U.S. : moving to partial bifurcation?
  - Europe: moving to unification (departing from German bifurcation)
  - Japan: “simultaneous examination”
    - ✓ No jurisdiction except Japan does simultaneous validity examination.
    - ✓ Historical reason:
      - If stay, takes long.
      - If claim corrected, can court decide?
    - ✓ But, result is against Patentee.
  - What should be the future?



Thank you!

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Eiji Katayama

[eiji.katayama@aiklaw.co.jp](mailto:eiji.katayama@aiklaw.co.jp)

*ABE, IKUBO & KATAYAMA*