

The Change in the Court----The Intellectual Property High Court

1 The Intellectual Property High Court ("IP High Court") was established as of April 1, 2005 as a "special branch" of the Tokyo High Court, taking over its duties from the IP Divisions of the Tokyo High Court which had carried its responsibility for more than half a century.

(1) The establishment of the IP High Court attracted public interest. Editorials of national newspapers played up this news, reporting that "a court having a rather unfamiliar name is created in Japan, whose speedy and appropriate service is expected to contribute to the nation" (*Yomiuri Shimbun* of April 4, 2005), and "no other courts have ever started with such a high reputation and expectation" (*Nikkei Shimbun* of April 6, 2005).

(2) In April 2004, the Code of Civil Procedure was amended so as to provide the Tokyo High Court with nation-wide appellate jurisdiction over the enforcement of any patent rights, utility model rights, rights of layout-designs of integrated circuits and rights of the author of a program work (hereinafter "patent and other related cases") , and the Tokyo and Osaka District Courts have jurisdiction in the first instance over patent and other related cases arising in eastern and western part of Japan respectively. After the establishment of the IP High Court, IP High Court now has a nation-wide exclusive jurisdiction over appeal cases of patent and other technical related cases.

(3) The transition from the IP divisions of the Tokyo High Court to the IP High Court was smooth. This is principally because we had already increased the number of divisions and judges and improved case management methods in order to deal with a rapid increase of intellectual property-related cases. Infrastructure of the IP High Court such as chief judge's chamber, secretariat office and website was also reinforced. All the cases then pending before IP Divisions of the Tokyo High Court were taken over as a whole by the IP High Court.

2 Framework of the IP High Court-----Organization

(1) The IP High Court is a "special branch" of the Tokyo High Court. The IP High Court is a court specializing in intellectual property cases established by new legislation rather than the conventional Court Organization Law. The Court has a chief judge, its own judicial conference and administrative office, and has been given independent authority over its administrative matters. Those matters are decided by its own judicial conference which is separate body from that of the Tokyo High Court.

(2) Human Resources

The IP High Court has 18 judges in 4 divisions. This size, 18 judges, is equivalent to a medium-sized high court. The IP High Court is expected to resolve intellectual property disputes in an expeditious and professional manner by making reliable and persuasive decisions supported by scientific knowledge. Judges of the IP High Court are supported with technical aspects involved in patent and utility model cases by full-time research officials and expert commissioners who work part-time for the court.

(3) Research Officials

The IP High Court has 11 research officials. Ten of them have experience in the fields of machinery, chemistry or electricity as an examiner or appeal examiner of the Japan Patent Office ("JPO") and the remaining one has experience as a patent attorney. They will return to the JPO or patent firm after spending a certain period at the IP High Court. A research official is not attached to a particular judge but works together with a judge who is in charge of the lawsuit to which the research official is assigned.

One of frequently asked questions by foreign visitors who are not familiar with the research officials system in Japan is: How a court can ensure fairness if judges are supported by staffs who comes from an office which appear as a party? It is our tradition, however, that research officials faithfully accomplish their duty as court officials by strictly reviewing the JPO Board decisions and submitting a fair and precise report to judges. This proud tradition of independence and fairness has been continued for generations starting from the era of IP Divisions of the Tokyo High Court.

3 Comparisons to the Counterpart High Courts in the World

(1) Federal Circuit

Comparison of the IP High Court with foreign judicial systems is useful to understand the distinctive features of the IP High Court. The U.S. Court of Appeals for the Federal Circuit ("the CAFC") founded in 1982 has been frequently referred to as a model of IP specialized court. The CAFC differs from the IP High Court in that the CAFC does not have jurisdiction over copyright cases and instead does have jurisdiction over other categories of cases which are not related to intellectual property rights.

(2) Germany and Korea

The Federal Patent Court of Germany founded in 1961 and the Patent Court of Korea founded in 1998 handle appeals from the patent offices, which are equivalent to lawsuits against JPO Board decisions in Japan. The German court has so-called "technical judges system," in which persons with technical background constitute a panel as qualified judges. The Korean court has technical officials as supporting

staff to deal with technical aspects involved in intellectual property cases. Neither court has jurisdiction over infringement cases, which are handled by ordinary civil courts with the assistance of expert opinions if necessary.

Each country's national court system is built on its own legal system, tradition, and culture. The IP High Court is deeply rooted in the Japanese legal system and tradition which gives it unique features as compared to foreign equivalents.

4 Intensified and scheduled proceeding

Efforts to improve management of lawsuits against JPO Board decisions related to patents and utility models had already started during the era of the IP Divisions of the Tokyo High Court.

In 2002, the number of lawsuits against JPO Board decisions reached a level of more than doubles that of a few years before. In order to address this situation, a project team of judges was established. After they studied the existing case management method and style of judgment, they proposed more intensified case management in their published report. Those proposals were adopted into practice by the IP Divisions in 2003. The gist of the proposals is, first, the court should encourage parties to submit briefs and evidence by the date of a preparatory hearing agreed upon by the parties; second, judges and parties should make intensive discussion in the hearing on factual and legal issues; third, parties should be given enough time in the hearing to make explanations on technological or scientific aspects to the judge.

5(1) Grand Panel Division

In addition to the four divisions, the IP High Court has a special division (the Grand Panel Division) in its organization to handle the Grand Panel cases heard by five judges. Although the IP High Court is the court of the second instance and the Supreme Court is the court of last instance in terms of legal interpretation, the business community has requested the judiciary to form reliable rules and standards at an appeal stage so that they do not have to wait for decisions by the Supreme Court. For those reasons, the Grand Panel system was introduced starting in April 2004 by the amendment of the Code of Civil Procedure in order to provide with unified opinions at the second instance level. This system applies to both lawsuits against JPO Board decisions relating to patents and utility models and appeals from district courts regarding patent and other related rights. The Grand Panel hears cases where critical legal questions are involved or whose outcome might have significant impact on corporate activities.

A Grand Panel consists of five judges instead of three judges for ordinary appeal cases.

(2)The Grand Panels have already rendered three decisions in total, two infringement appeals (*Ichitaro* case and *Ink Cartridge* case) and a lawsuit against a JPO Board decision (*Parameter* case).

(3) The IP High Court is expected to actively use the Grand Panel system actively so as to form reliable rules, unify judgments at the appellate level, to accumulate precedents in significant cases.