

Strict Scrutiny?

IP High Court of Japan

- Judicial Review of the JPO Decisions

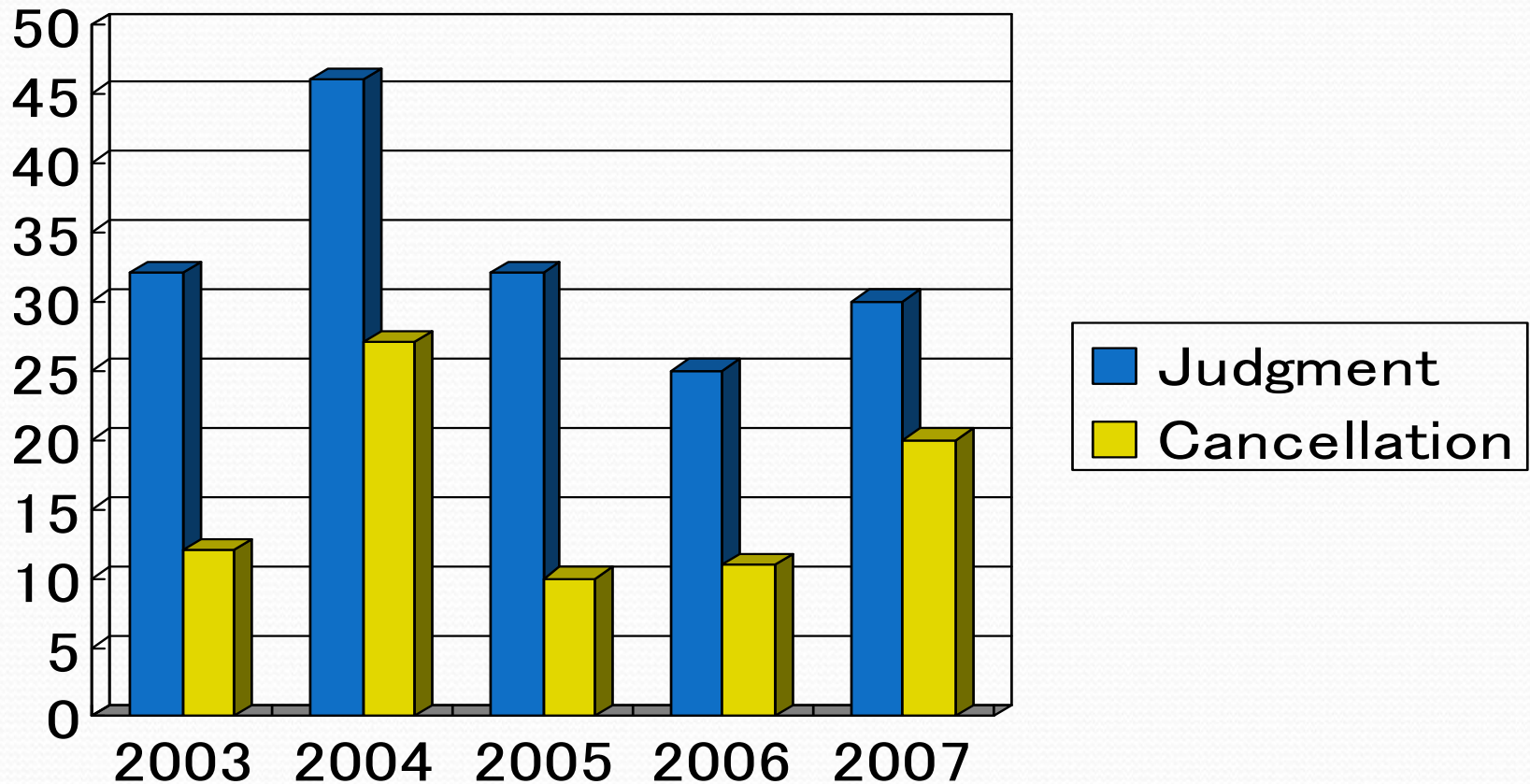
Ken Asai

Judge

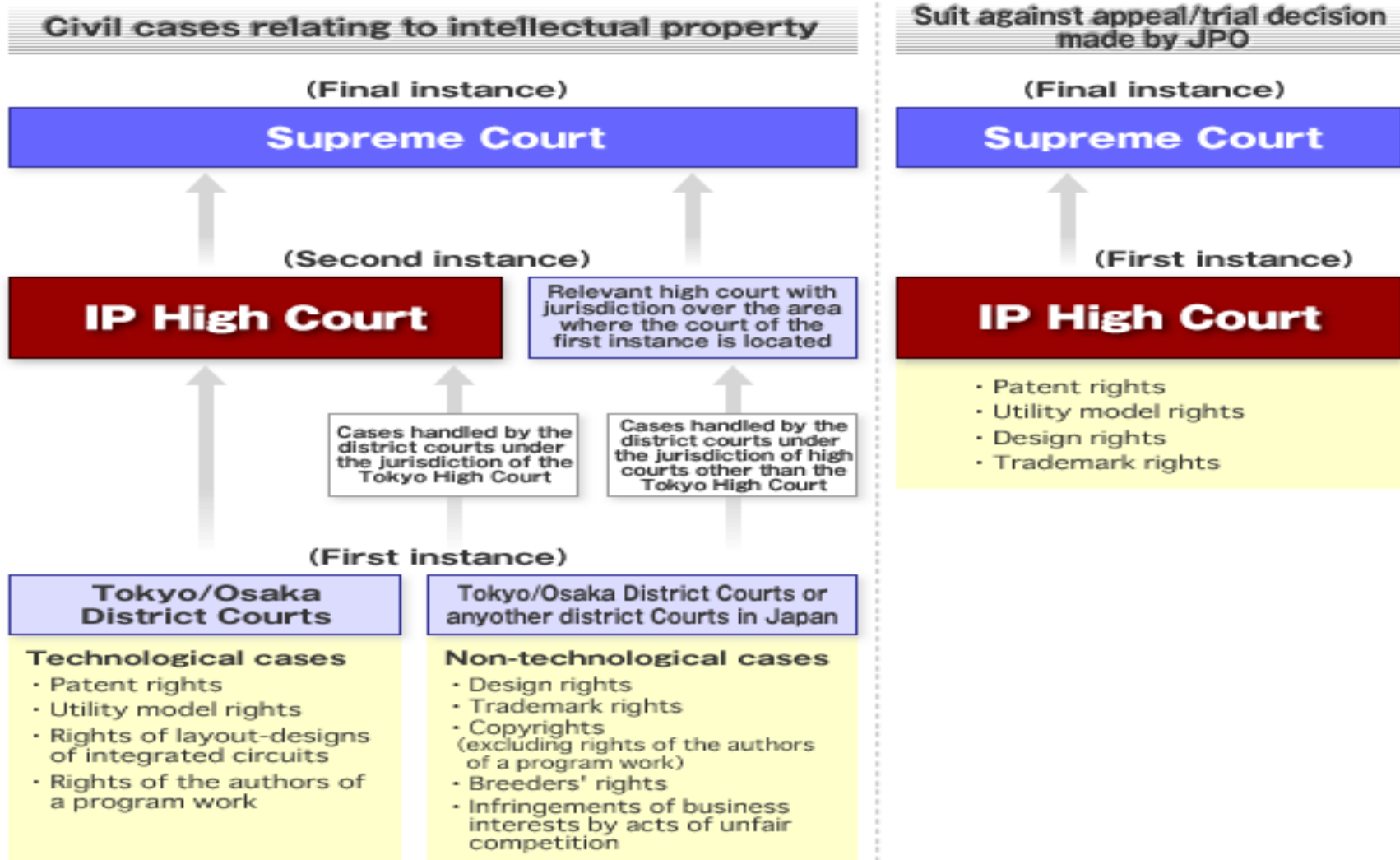
IP High Court of Japan

March 27-28, 2008

Statistics show



Cases Handled by the IP High Court



The Typical JPO Decisions

- Refusal of a patent application
- Invalidation of a patent based on a motion
- Dismissal of the motion above

Refusal of a patent application

Appeal against the JPO decision that affirmed an examiner's decision of refusal of a patent application

The applicant

v.

The Commissioner of the JPO

Invalidation of a patent

Appeal against the JPO decision that invalidated a patent based on a motion of a requesting party (any person)

The patent holder

v.

The requesting party

Dismissal of a motion

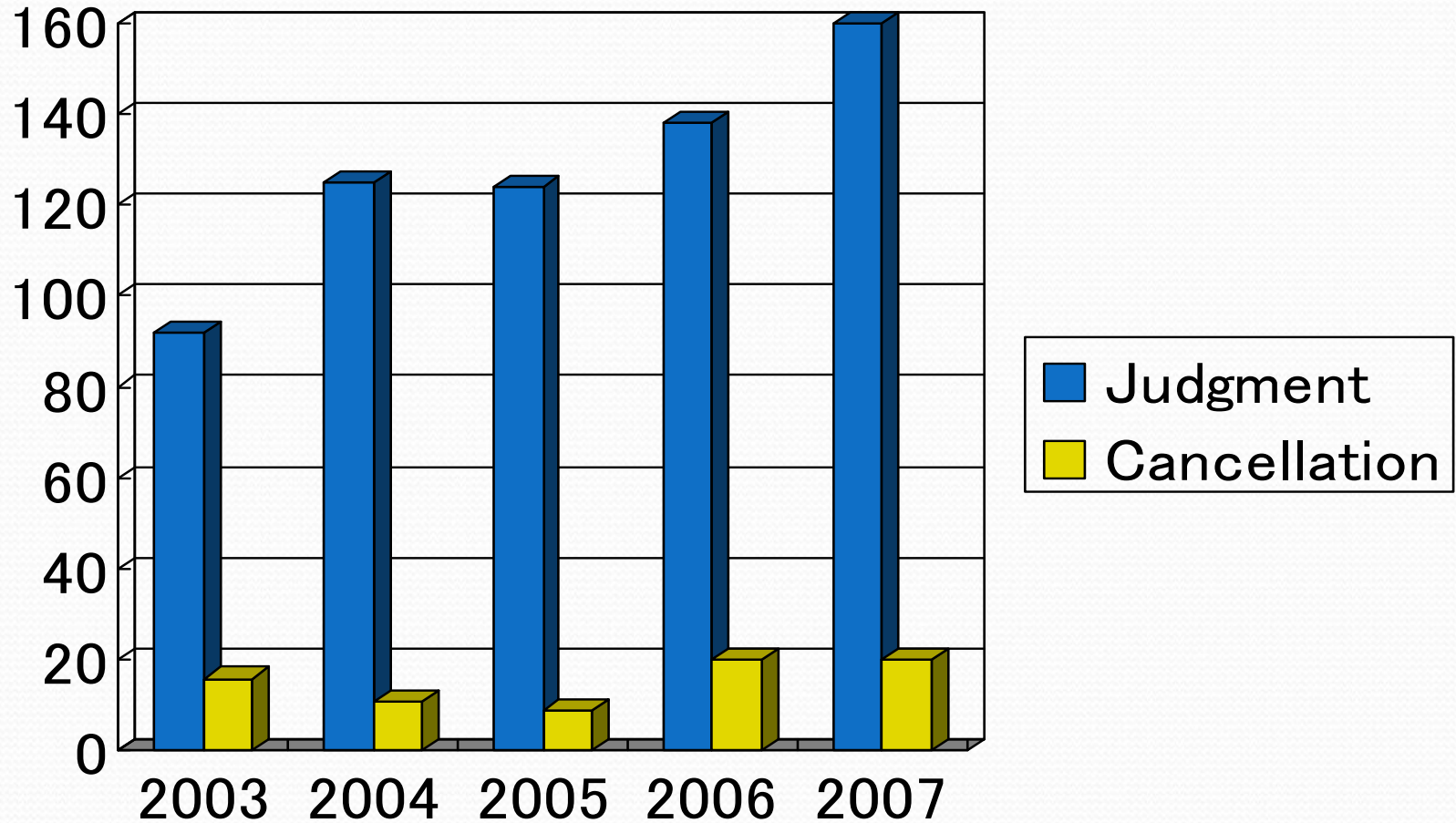
Appeal against the JPO decision that dismissed the motion to invalidation of a patent, i.e. sustained the patent

The requesting party

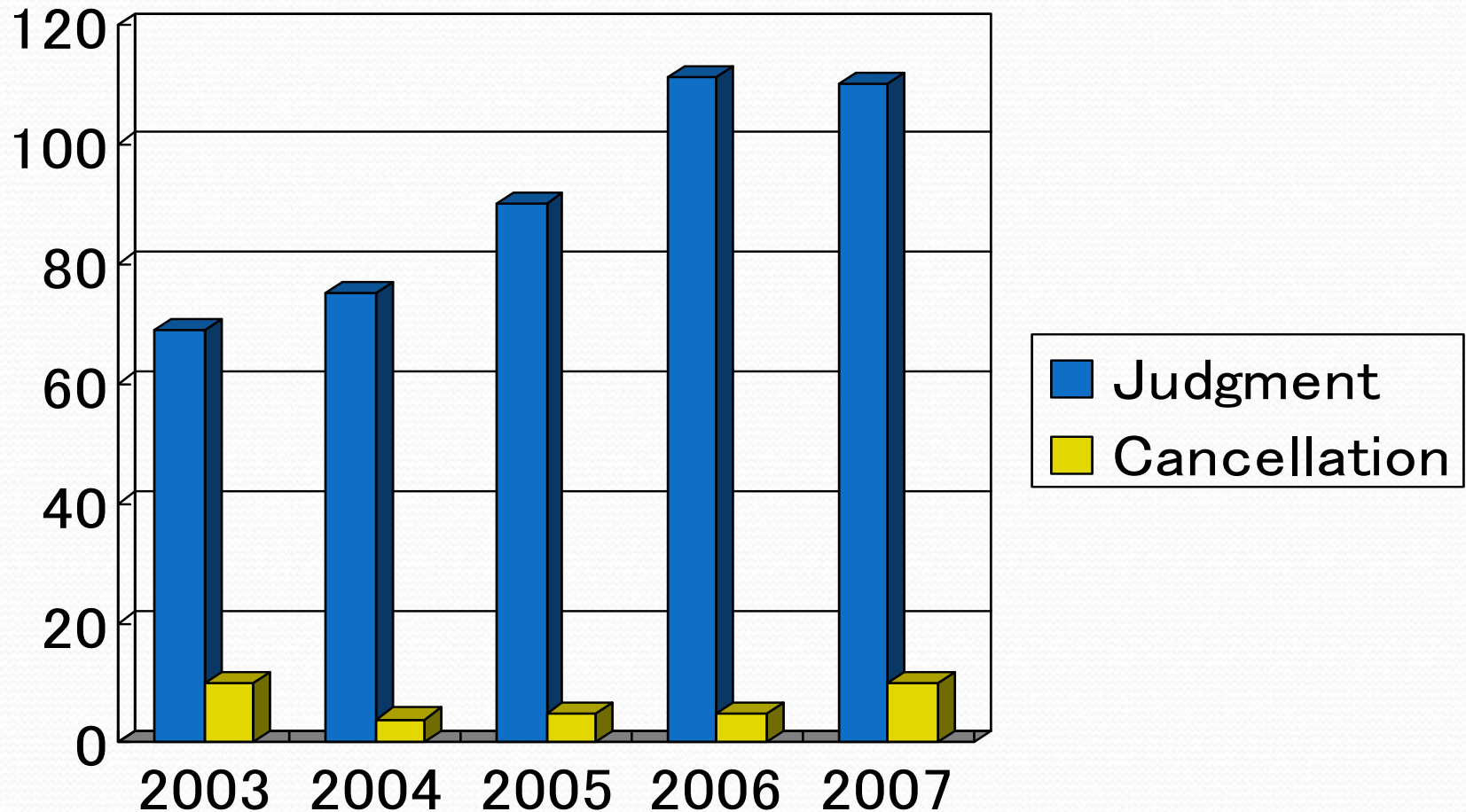
v.

The patent holder

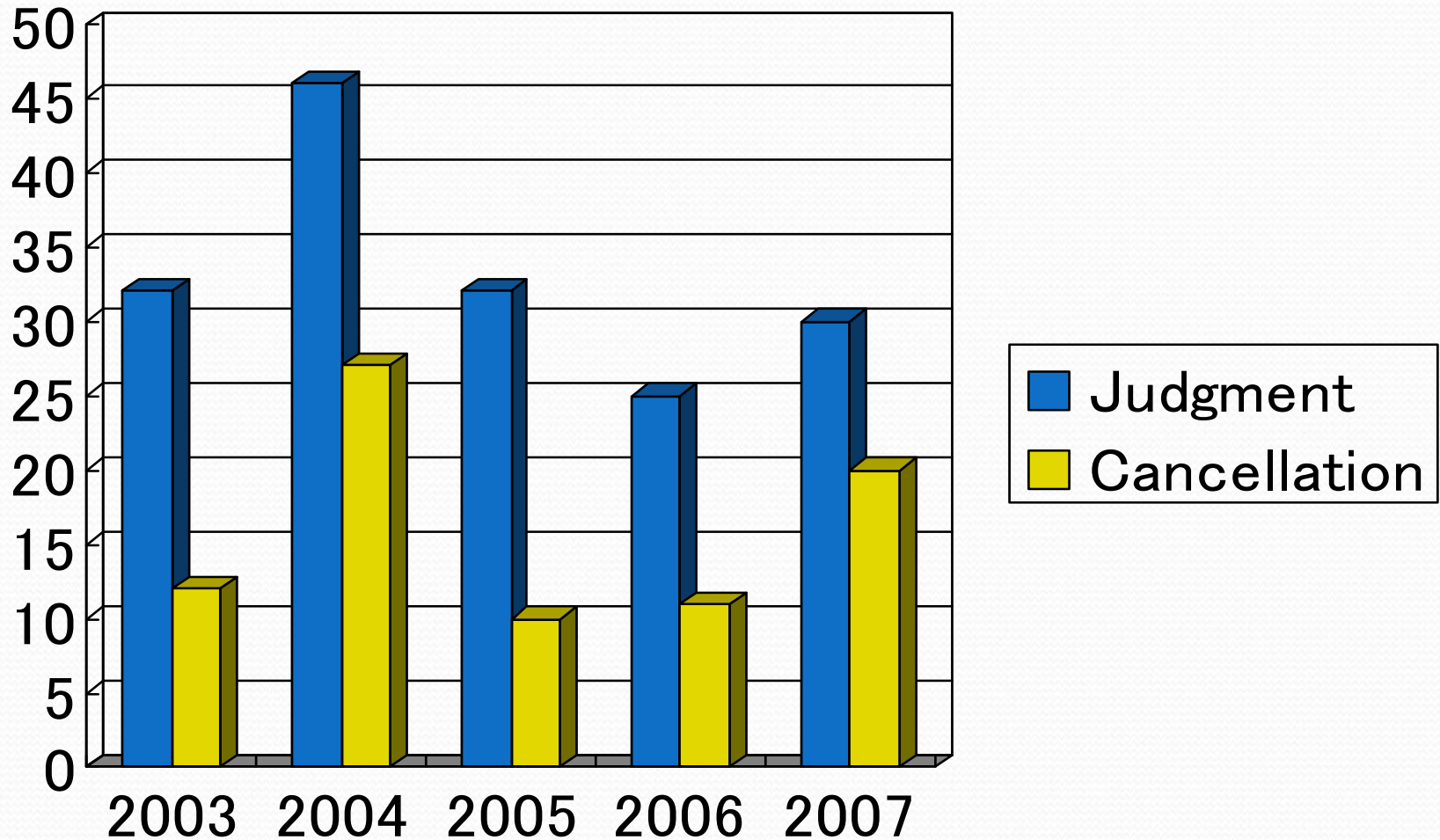
Statistics (JPO Refused)



Statistics (JPO invalidated)

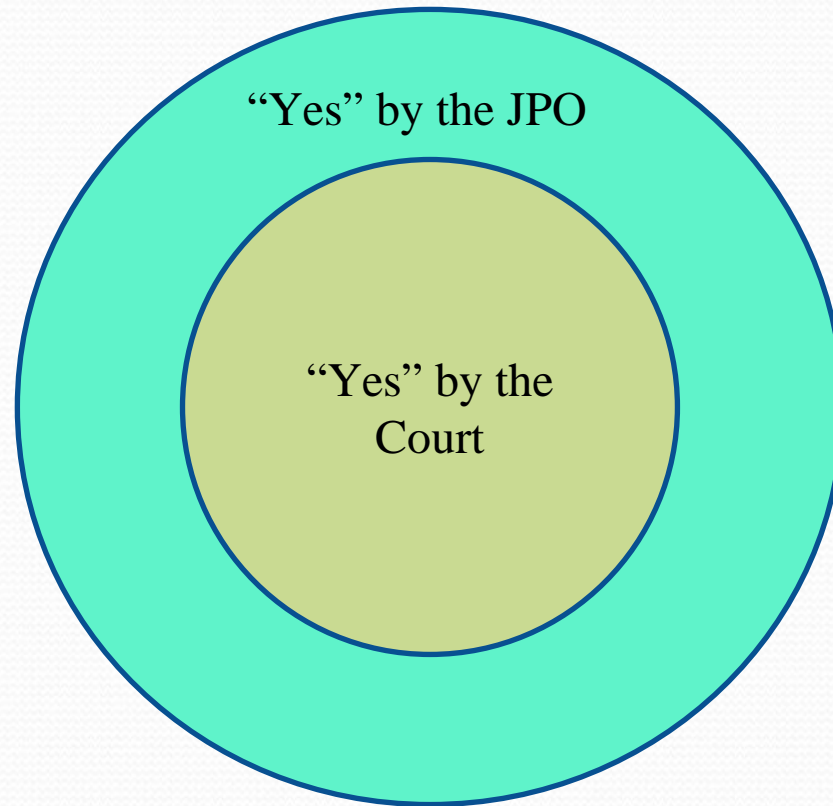


Statistics (JPO sustained)



Simple Analysis

- Where the JPO said “no,” the Court, in most cases, said “no.”
- Where the JPO said “yes,” the Court, in half cases, said “no.”

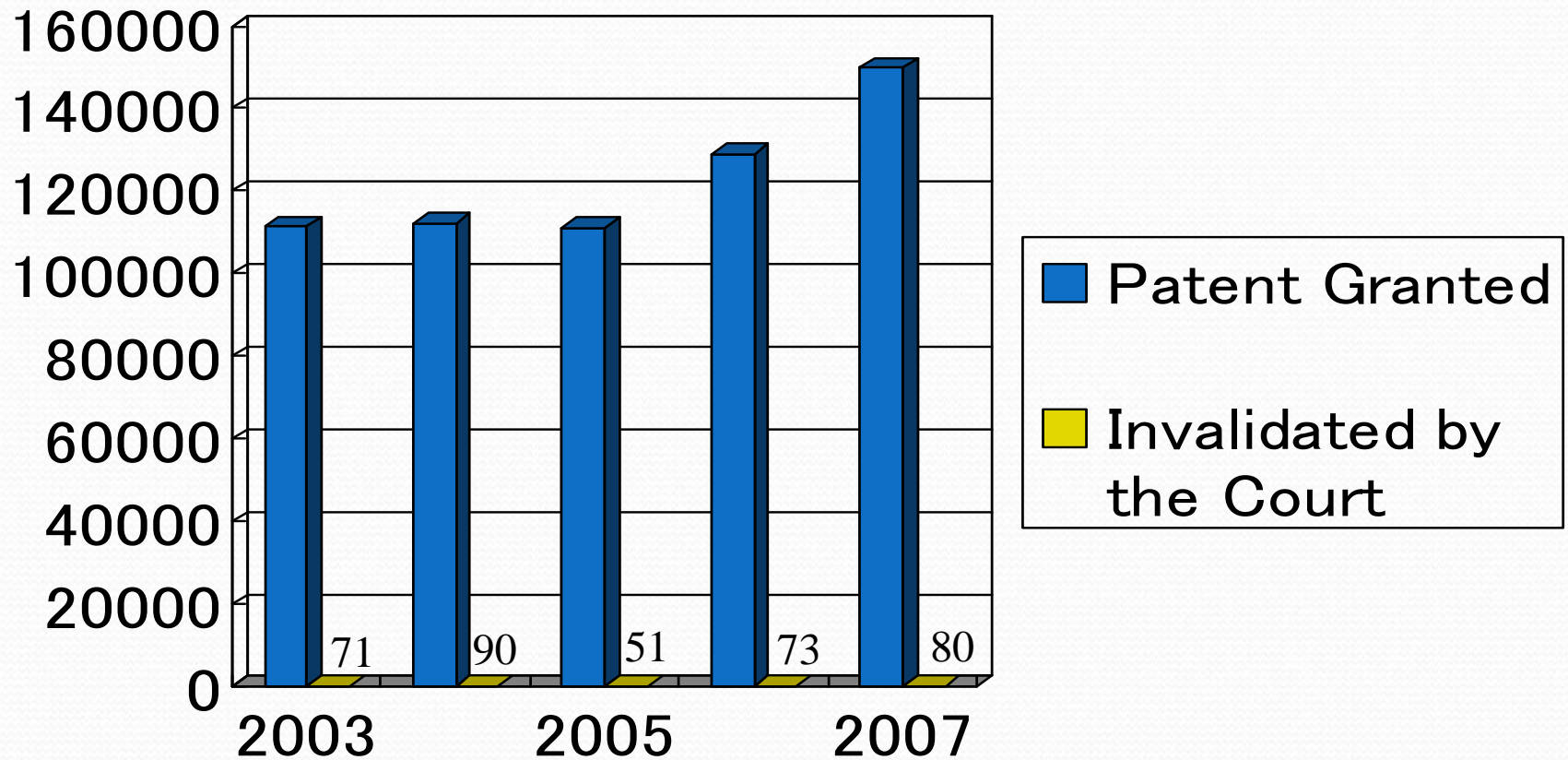


What does this mean?

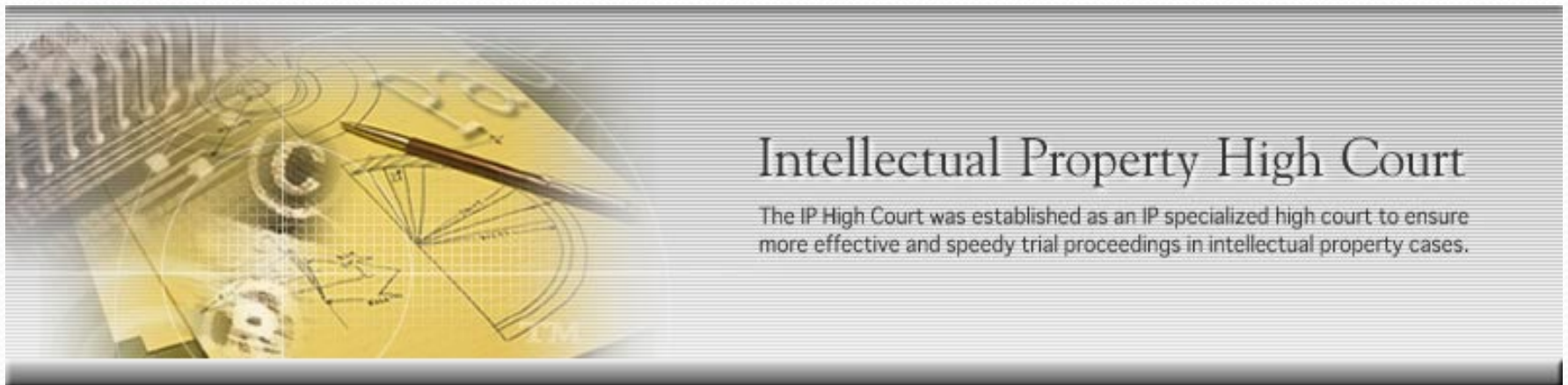
Possible Answers

- There is “another yes” by the JPO
- Even a substantively correct decision might be cancelled
- The Court’s judgment solely depends on arguments and evidence filed by both parties
- Different standards?

“Another yes” by the JPO



THANK YOU SO MUCH



Intellectual Property High Court

The IP High Court was established as an IP specialized high court to ensure more effective and speedy trial proceedings in intellectual property cases.

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Ken Asai

Judge

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