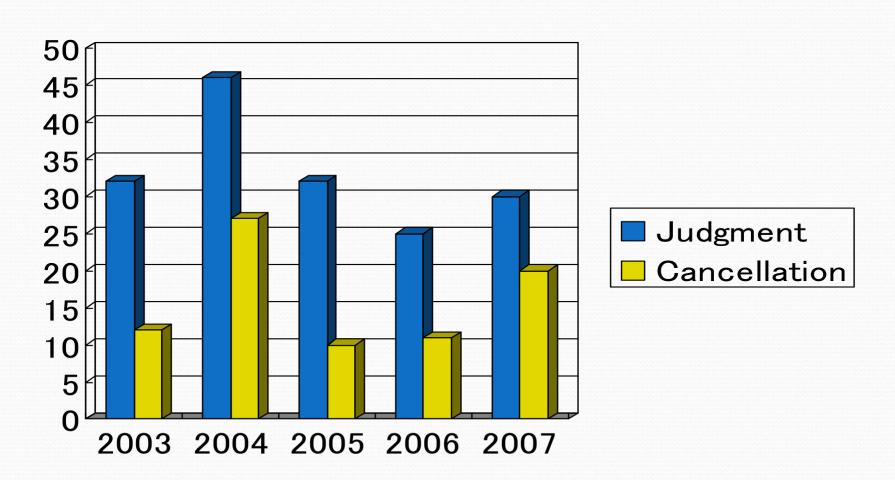
# Strict Scrutiny? IP High Court of Japan

- 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

Civil cases relating to intellectual property

(Final instance)

Supreme Court

(Second instance)

**IP High Court** 

Relevant high court with jurisdiction over the area where the court of the first instance is located

Cases handled by the district courts under the jurisdiction of the Tokyo High Court Cases handled by the district courts under the jurisdiction of high courts other than the Tokyo High Court

(First instance)

Tokyo/Osaka District Courts

Technological cases

- · Patent rights
- · Utility model rights
- Rights of layout-designs of integrated circuits
- Rights of the authors of a program work

Tokyo/Osaka District Courts or anyother district Courts in Japan

Non-technological cases

- · Design rights
- Trademark rights
- Copyrights

   (excluding rights of the authors of a program work)
- · Breeders' rights
- Infringements of business interests by acts of unfair competition

Suit against appeal/trial decision made by JPO

(Final instance)

**Supreme Court** 

(First instance)

**IP High Court** 

- Patent rights
- · Utility model rights
- Design rights
- Trademark rights

### 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

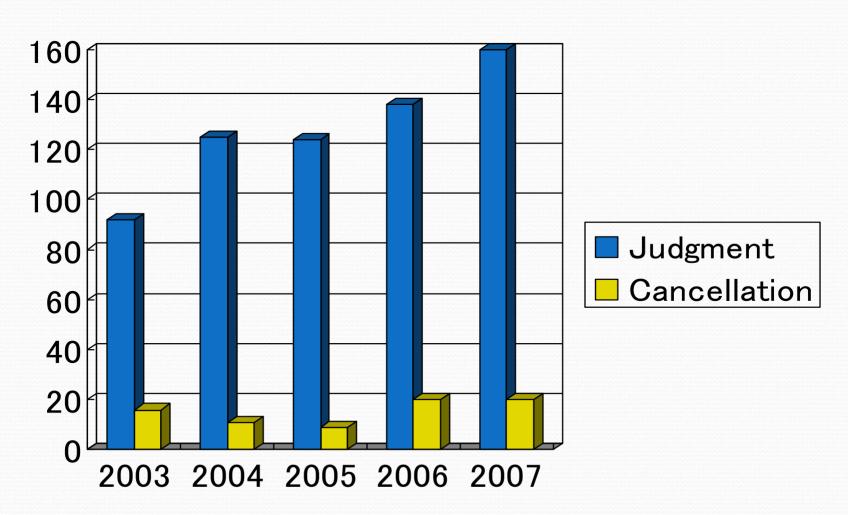
Appeal against the JPO decision that dismissed the motion to invalidation of a patent, i.e. sustained the patent

The requesting party

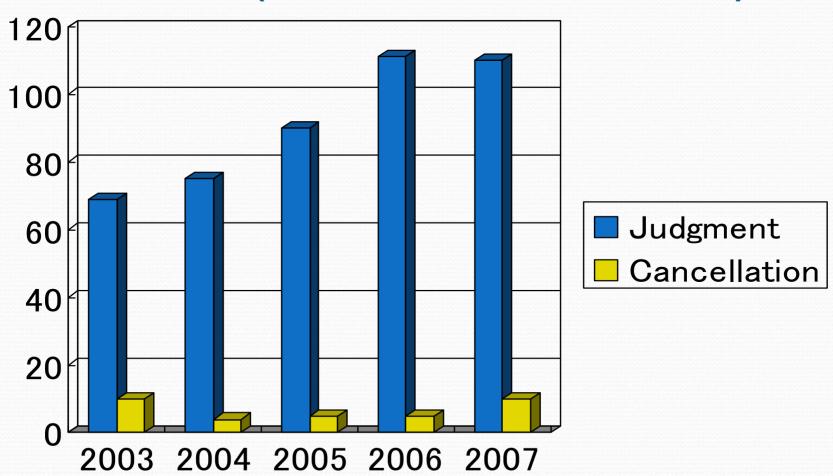
V.

The patent holder

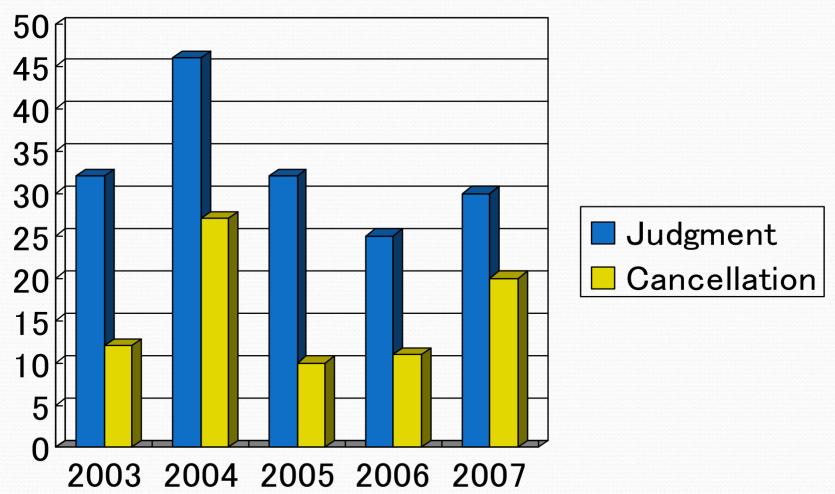
## Statistics (JPO Refused)



## Statistics (JPO invalidated)



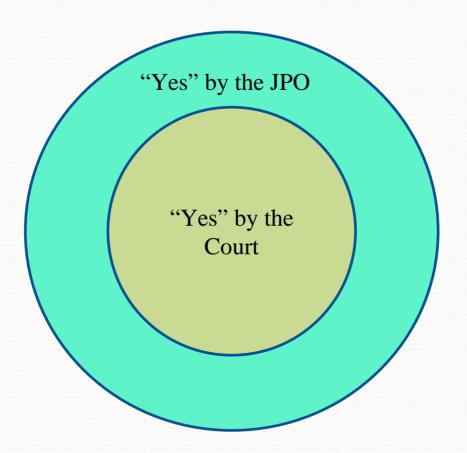
### Statistics (JPO sustained)



### 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."

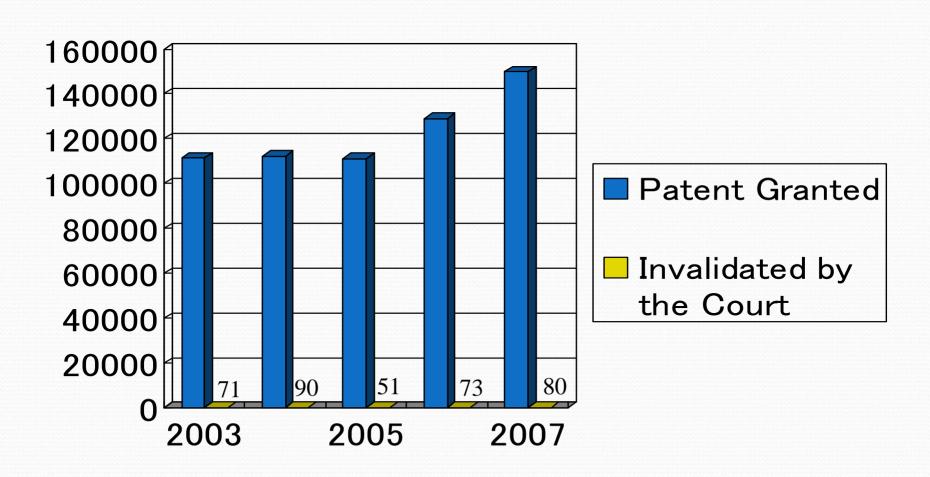


What does this mean?

#### 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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