

## **Proceedings Model for Patent Infringement Suit (Stage for examination on infringement)**

### **The first date for oral argument**

Plaintiff	(1) Present the complaint (2) Submit basic documentary evidence
Defendant	(1) Present the answer (description of the outline of the defendant's argument) (2) Submit basic documentary evidence

On the first date for oral argument, the plaintiff presents the complaint and the defendant presents the answer. The answer should describe the outline of all the arguments that the defendant intends to present in the suit, including identification of the alleged product or method and description of its composition, acknowledgment/denial and counter-argument on sufficiency of constituent features, defense of patent invalidity (Article 104-3 (1) of the Patent Act). Detailed arguments by the defendant are assumed to be introduced on and after the next session. The plaintiff and the defendant should submit basic documentary evidence (the patent register, the patent gazette, a pamphlet describing the outline of the defendant's product and others), along with the description of the evidence.

Typically, the court refers the case to preparatory proceedings in order to arrange issues, and appoint the presiding judge and the judge in charge as authorized judges who preside the preparatory proceedings for the case.



### **The first date for preparatory proceedings**

Defendant	(1) Identify the alleged product or method, and argue that it does not fall within the technical scope of the patented invention (2) Argue the defense of patent invalidity
-----------	--

On the first date for preparatory proceedings, the defendant presents a description of the alleged product or method that the defendant prepared from the defendant's viewpoint. Based on this description, the defendant presents the brief that describes the defendant's inclusive argument whether it falls within the technical scope of the patented invention or not. If the defendant argues the defense of patent invalidity, the defendant presents a brief that describes the defense of patent invalidity based on thorough investigation of publicly known prior art documents, and also submits necessary documentary evidence.



### **The second date for the preparatory proceedings**

Plaintiff	(1) Counter-argue against the defendant's denial of infringement in terms of the technical scope of the patented invention (2) Counter-argue against the defense of patent invalidity
-----------	--

On the second date for the preparatory proceedings, the plaintiff presents the brief that outlines the plaintiff's counter-argument against the defendant's denial of infringement in terms of the technical scope of the patented invention, and the counter-argument against the defense of patent invalidity (including the re-defense of correction), and also submits necessary documentary evidence.



### **The third date for the preparatory proceedings**

Defendant	(1) Counter-argue against the plaintiff's allegation regarding infringement in terms of the technical scope of the patented invention (2) Supplement the defense of patent invalidity
-----------	--

On the third date for the preparatory proceedings, the defendant presents the brief that outlines the defendant's counter-argument against the plaintiff's allegation regarding infringement in terms of the technical scope of the patented invention, and the supplementary material for the defense of patent invalidity.



### **The fourth date for the preparatory proceedings**

Plaintiff	Supplement counter-argument against the defense of patent invalidity
Plaintiff and Defendant	Explanatory session

On the fourth date for the preparatory proceedings, the plaintiff presents the briefs that state the supplementary argument against the defense of patent invalidity.

At this stage, essential arguments on infringement including invalidity of the patent, and their verification have been completed. Therefore, as the last step of the stage for examination on infringement, the court will preside over an explanatory session in which both the plaintiff and the defendant will give explanations, if necessary.

In the explanatory session, each of the plaintiff and the defendant makes a last oral presentation summarizing each party's argument. Typically, each party is given about 30 minutes to one hour for this presentation.

In order to complement the expertise of the court, the court may have technical advisers participate in the explanatory session, after hearing the opinions of both parties (Article 92-2 and subsequent provisions in the Code of Civil Procedure). In some cases, an explanatory session may be held on the date for an oral argument.



### **The fifth date for preparatory proceedings**

Court	Express the preliminary view on infringement and decides whether to proceed to the stage for examination on damages or close the proceedings [if non-infringement] Close the proceedings and recommend settlement [if infringement] Proceed to the stage for examination on damages
-------	---

Court composes preliminary view on infringement, taking into account the arguments and evidence including the technical explanations given by the parties.

If the court finds non-infringement, the court closes the proceedings at the following date for oral argument and renders a judgment. In some cases, the court may recommend the parties to compromise by expressing the court's view and designate the date for settlement.

If the court finds infringement, the court expresses its preliminary view, then proceeds to the stage for examination on damages to clarify the arguments and evidence relating to the calculation of damages in the preparatory proceedings. In some cases, the court may recommend the parties to compromise at this stage and designate the date for settlement.

Please note that the court expresses abovementioned view on the premise that both parties have completed the exchange of arguments and the introduction of evidence regarding infringement.