

Proceedings Model for Patent Infringement Suit (Stage for examination on damages)

The fifth date for preparatory proceedings (following the expression of the court's view on infringement)

* For processes before this date, please refer to Proceedings Model on Patent Infringement Suit (Stage for examination on infringement)

When the court proceeds to the stage for examination on damages, the plaintiff should clarify the allegations regarding the amount of damage, including the relevant statutory provision that constitutes the basis for the plaintiff's claim for damage. If the plaintiff does not make any change to the statement of the claim written in the complaint, the plaintiff should state so on this date.



The sixth date for preparatory proceedings

Plaintiff	(1) Clarify the statement of the claim (by examining whether the underlying provision should be changed) (2) Allege the amount of lost profit, etc.
Defendant	(1) Admit or deny the statement of the claim, and counter-argue the plaintiff's argument regarding the damage amount (2) Based on the clarified statement of the claim, disclose the number of infringing articles that have been transferred, etc.

On the sixth date for preparatory proceedings, the plaintiff or the defendant presents their arguments on the prices, quantities, costs and others that are necessary to determine the amount of damage, depending on the nature of the damage claim as stipulated below. Then, the other party admits or denies those arguments and makes counterargument.

Claim based on Article 102 (1) of the Patent Act

The plaintiff describes the selling price per unit of the plaintiff's product and costs to be deducted from the selling price, and the defendant describes the number of infringing articles that have been transferred.

Claim based on Article 102 (2) of the Patent Act

The defendant describes the selling price of the infringing articles (the unit price and the number of transferred articles) and costs to be deducted from the selling price.

Claim based on Article 102 (3) of the Patent Act

The plaintiff argues the royalty rate or the value equivalent to the per-unit royalty, and the

defendant argues the quantities of infringing items to be transferred.

- Considerations

If the prices, quantities, costs and others introduced by the plaintiff or the defendant are contested by the other party, the court as well as the other party need to verify the accuracy of them. Therefore, the contested party will be requested to prepare and submit materials supporting those numbers which the contested party introduces (such as sale records for the infringing period claimed by the plaintiff). When submitting such supporting documents, the submitting party may mask the other information included in the documents that is irrelevant to the verification of the damage amount (such as sales of non-infringing items) or request restriction of inspection of confidential portion of the documents (Article 92 (1) of the Code of Civil Procedure).

If the prices, quantities, costs and others are disputed and materials submitted are questioned by the other party with a concrete reason, the introducing party should solve such questions as much as possible to reach a common understanding about those numbers at an early stage. (Attorneys may disclose original documents to each other on a voluntary basis outside the court proceedings.)



Seventh date for preparatory proceedings

Plaintiff	(1) Organize the plaintiff's arguments regarding the damage amount based on the quantities and values introduced by the plaintiff and the defendant (2) Submit materials supporting the quantities and values based on the plaintiff's argument (if they were contested by the defendant)
Defendant	(1) Submit materials supporting the quantities and values based on the defendant's argument (if they were contested by the plaintiff) (2) Counter-argue the plaintiff's argument regarding the damage amount and state defense

On the seventh date for preparatory proceedings, the plaintiff presents the preparatory document that re-clarifies the plaintiff's argument regarding the damage amount based on the quantities and values introduced by the plaintiff and the defendant (If the clarification has resulted in a different damage amount claimed in the written complaint, the plaintiff should consider amending the claimed amount. The court may not accept amendment of the claimed amount thereafter (the proviso, Article 143 (1) of the Code of Civil Procedure)).

Following this, the defendant presents the preparatory document that describes the acknowledgement/denial of the damage amount claimed by the plaintiff and counterargument (including defense argument describing any fact that eliminates statutory assumptions and all other arguments in the stage for examination on damage).

If either party has not submitted documents necessary for determining the damage amount on a voluntary basis, at the request of the other party, the court may issue an order to submit such document (Article 105 of the Patent Act).

If disputes remain between the parties regardless of exchanges of arguments based on the submitted materials, the court may order that an expert opinion be obtained for the calculation of damage upon the motion of a party. In such a case, the parties have the obligation to make explanations to the expert witness on damage calculation (Article 105-2 of the Patent Act).



Eighth date for preparatory proceedings

Plaintiff	Counter-argue against the defendant's argument and supplement evidence
Defendant	Counter-argue against the plaintiff's counterargument and supplement evidence

The plaintiff counter-argues against the defendant's argument introduced in the seventh date for preparatory proceedings and supplements the evidence. Following the plaintiff's counterargument, the defendant counter-argues against it and supplements the evidence.

Following this, the stage for the examination on damage is closed, in principle. The court will compose its final view regarding the damage amount based on arguments and verifications that have been presented by this point, conclude the preparatory proceeding and oral argument, then render a judgment. In some cases, the court may advise the parties to compromise by disclosing its opinion (For some cases, the court may give such advice to the parties at an earlier stage.).