

# III

## System of IP-related Litigation

For IP-related litigation, which requires specialized, technical knowledge, the following system has been adopted in order to conduct proceedings properly.

### 1 Definition of IP-related Litigation

IP-related litigation can be roughly divided into two types: IP-related civil cases and suits against appeal/trial decisions made by the JPO.

#### ( 1 ) IP-related civil cases

IP-related civil cases include cases where a claim is filed for damages or an injunction against an act of infringement of the following rights: a patent, utility model right, design right, trademark right; the rights specified in the Copyright Act, namely, rights of authors, right of publication, and neighboring rights; a layout-design exploitation right for semiconductor integrated circuits specified in the Act on the Circuit Layout of a Semiconductor Integrated Circuits; or a breeder's right specified in the Plant Variety Protection and Seed Act. Cases in which a claim is filed for damages or an injunction against an act of infringement of business interests as a result of unfair competition specified, as well as cases where a claim is filed for the employer's payment of value for an employee invention or device, are also included.

Usually, the first instance for a civil lawsuit is filed with a district court if the value of the subject matter of litigation exceeds 1.4 million Japanese yen and with a summary court if the value of the subject matter of litigation is not more than 1.4 million Japanese yen. Most of the first instances of IP-related civil cases are handled by district courts. Since Japan has adopted the three-tiered judicial system, which allows either party to a lawsuit who is dissatisfied with a judgment to seek further proceedings and trials up to three stages in principle, a party who is dissatisfied with the judgment handed down by a district court for the first instance with regard to the court's fact finding or interpretation of law may file an appeal with a high court. A dissatisfied party may file a final appeal or a petition for acceptance of final appeal with the Supreme Court on a question of law against the judgment of a high court. In this respect, there is no difference between IP-related civil cases and other civil cases.

# III

## 知的財産権関係訴訟の仕組み

知的財産権関係訴訟は、専門的、技術的要素を有することから、これを適正に審理運営するための次のような仕組みがとられています。

### 1 知的財産権関係訴訟とは

知的財産権関係訴訟には、主に、知的財産権関係民事事件と審決取消訴訟があります。

#### (1) 知的財産権関係民事事件

知的財産権関係民事事件には、特許権、実用新案権、意匠権、商標権、著作権法に基づく著作者の権利・出版権・著作隣接権、半導体集積回路の回路配置に関する法律に基づく半導体集積回路の回路配置利用権、又は種苗法に基づく育成者権の侵害、あるいは不正競争による営業上の利益の侵害を理由として、損害賠償や侵害行為の差止めを請求する事件や、従業者が職務上行った発明や考案について、使用者に対価を請求する事件などがあります。

訴訟の目的の価額が140万円を超える民事訴訟事件の第一審は地方裁判所、同額を超えない民事訴訟の第一審は簡易裁判所ですが、知的財産権関係民事事件の第一審の大半は地方裁判所が取り扱っています。そして、我が国は、訴訟事件について、当事者が判決に不服があれば、原則として3段階までの審理及び裁判が受けられるという三審制度を採用していますので、地方裁判所の第一審判決の事実認定や法律の適用に不服がある場合には高等裁判所に控訴することができ、控訴審判決に対しては、法律問題について不服がある場合などに、最高裁判所に上告又は上告受理の申立てをすることができます。この点で、知的財産権関係民事事件は、他の民事事件と違いはありません。



The Front Entrance of the IP High Court  
(知財高裁入口)

## ( 2 ) Suits against appeal/trial decisions made by the JPO

With regard to a patent, utility model right, design right or trademark right, these rights arise upon registration at the JPO. An applicant who is dissatisfied with a JPO examiner's decision of refusal or an interested person who seeks to invalidate the registration of such rights may file a request for a trial with the JPO. In the case where the JPO makes a decision in such trial, the applicant or the person who is dissatisfied with the JPO decision may file an administrative suit to seek the rescission thereof. This is called a suit against appeal/trial decision made by the JPO.

Suits against appeal/trial decisions made by the JPO are under the exclusive jurisdiction of the Tokyo High Court (Article 178, paragraph (1) of the Patent Act, etc.). These suits shall be handled by the Intellectual Property High Court, which is a special branch of the Tokyo High Court (Article 2, item (ii) of the Act for Establishment of the Intellectual Property High Court). A party who is dissatisfied with a judgment handed down by the Intellectual Property High Court may file a final appeal or a petition for the acceptance of a final appeal with the Supreme Court.

Unlike an ordinary lawsuit, proceedings at a district court are omitted in the case of a suit against appeal/trial decision made by the JPO. This is because the JPO trial procedure is conducted as quasi-judicial proceedings, which require a high level of fairness similar to that required in judicial proceedings, and also because the JPO makes decisions based on specialized, technical knowledge possessed by the JPO.

## ( 3 ) Initiative to introduce information technology in IP-related litigation

In Japan, the introduction of information technology in court proceedings of civil cases is currently making progress, and a web conferencing system (a system for video-calling via an ordinary internet connection, which enables communications by means of not only audio and video but also texts and other files) has already been put into use in proceedings to arrange issues and evidence. There are two types of proceedings using this system: proceedings wherein both parties do not appear in court (Written Preparatory Proceedings); and proceedings wherein one of the parties appears in court (Preparatory Proceedings).



Examination by a Panel (合議体による審理)



Discussion by a Panel (合議体による評議)

## (2) 審決取消訴訟

特許権，実用新案権，意匠権，商標権に関しては，特許庁の登録を受けることで権利が発生します。特許庁の審査官の拒絶査定に不服がある者，又はこのような特許等を無効にすることを求める者は，一定の要件のもと，特許庁に審判請求をすることができます。審判請求について特許庁が行う審決等に対してさらに不服がある場合に，その取消しを求める行政訴訟が，審決取消訴訟です。

審決取消訴訟は，東京高等裁判所の専属管轄に属しており（特許法178条1項等），その支部である知的財産高等裁判所がこれを取り扱い（知的財産高等裁判所設置法2条2号），その判決に対しては，最高裁判所に上告又は上告受理の申立てをすることができます。

このように，審決取消訴訟について，通常の訴訟事件とは異なり地方裁判所での審判が省略されているのは，特許庁の審判手続が裁判に類似する公正さが必要な準司法的手続として行われること，審決等が特許庁の専門的，技術的知見に基づいて行われていることによります。

## (3) 知的財産権関係訴訟におけるIT化の取組

我が国では，現在，民事訴訟手続のIT化の検討が進められており，このうち争点整理手続においては，ウェブ会議（一般のインターネット回線を介したビデオ通話で，音声及び映像だけでなく，文字やファイル等を用いたコミュニケーションが可能なシステム）が利用されています。この場合，双方の当事者が裁判所に出頭せずに行う手続（書面による準備手続の場合）と一方の当事者のみが裁判所に出頭して行う手続（弁論準備手続の場合）があります。

Proceedings without the appearance of the parties  
（書面による準備手続・双方当事者不出頭型）



Proceedings where one of the parties appears in court  
（弁論準備手続期日・一方当事者不出頭型）

## 2 Jurisdiction over IP-related Litigation

### ( 1 ) IP-related civil cases

Some of the IP-related civil cases, namely, actions relating to patents, etc. (so-called technology-related actions relating to patent rights, utility model rights, layout-design exploitation rights for semiconductor integrated circuits, or the rights of authors for a computer program work), need to be handled by a court that has a well-established sector for specialized proceedings, due to the specialized and technical nature of such cases.

For this reason, such actions relating to patents, etc. are under the exclusive jurisdiction of the Tokyo District Court or the Osaka District Court, both of which have divisions specialized in IP-related civil cases (Article 6 paragraph (1) of the Code of Civil Procedure). Any appeal against decisions of those courts shall be handled by the Intellectual Property High Court (Article 6, paragraph (3) of the Code of Civil Procedure, Article 2, item (i) of the Act for Establishment of the Intellectual Property High Court).

Among IP-related civil cases, so-called non-technology-related actions relating to design rights, trademark rights, the rights of authors (excluding the rights of authors for a computer program work), publication rights, neighboring rights, or breeder's rights; or infringement of business interests caused by unfair competition, are under the jurisdiction of fifty district courts located throughout Japan while the Tokyo District Court or the Osaka District Court concurrently has non-exclusive jurisdiction. Any appeal against decisions of those courts will be under the jurisdiction of one of the eight high courts located throughout Japan, that corresponds to the district court in charge of the first instance. The Intellectual Property High Court will be in charge of any case that is under the jurisdiction of the Tokyo High Court (Article 2, item (i) of the Act for Establishment of the Intellectual Property High Court).

### ( 2 ) Suits against appeal/trial decisions made by the JPO

Any suit against appeal/trial decisions made by the JPO that is under the exclusive jurisdiction of the Tokyo High Court will be handled by the Intellectual Property High Court (Article 2, item (ii) of the Act for Establishment of the Intellectual Property High Court).

### ( 3 ) Other cases

Cases other than those mentioned in (1) and (2) that are to be handled by the Intellectual Property High Court include any civil lawsuit or administrative lawsuit under the jurisdiction of the Tokyo High Court that requires specialized knowledge on intellectual property in order to examine major issues (Article 2, item (iii) of the Act for Establishment of the Intellectual Property High Court).

It should be noted that the Intellectual Property High Court and the intellectual property divisions in other courts do not handle any criminal case such as a case involving an offense of infringing an intellectual property right.

## 2 知的財産権関係訴訟の管轄

### (1) 知的財産権関係民事事件

知的財産権関係民事事件のうち、特許権等に関する訴え（特許権，実用新案権，半導体集積回路の回路配置利用権及びプログラムの著作物についての著作者の権利に関するいわゆる技術型の訴え）については，専門的，技術的な要素が特に強いことから，専門的な処理体制の整備された裁判所が取り扱う必要があります。

そこで，このような特許権等に関する訴えは，知的財産権関係民事事件を取り扱う専門部を有する東京地方裁判所又は大阪地方裁判所の専属管轄に属するとともに（民事訴訟法6条1項），その控訴事件は，知的財産高等裁判所が全て取り扱います（民事訴訟法6条3項，知的財産高等裁判所設置法2条1号）。

知的財産権関係民事事件のうち，意匠権，商標権，著作者の権利（プログラムの著作物についての著作者の権利を除く。），出版権，著作隣接権，育成者権，不正競争による営業上の利益の侵害に関するいわゆる非技術型の訴えは，全国50か所にある地方裁判所とこれと競合して東京地方裁判所又は大阪地方裁判所が管轄を有しています。その控訴事件は，第一審を取り扱った地方裁判所に対応して，全国8か所にある高等裁判所が管轄を有します。そのうち，東京高等裁判所の管轄に属する事件を知的財産高等裁判所が取り扱います（知的財産高等裁判所設置法2条1号）。

### (2) 審決取消訴訟

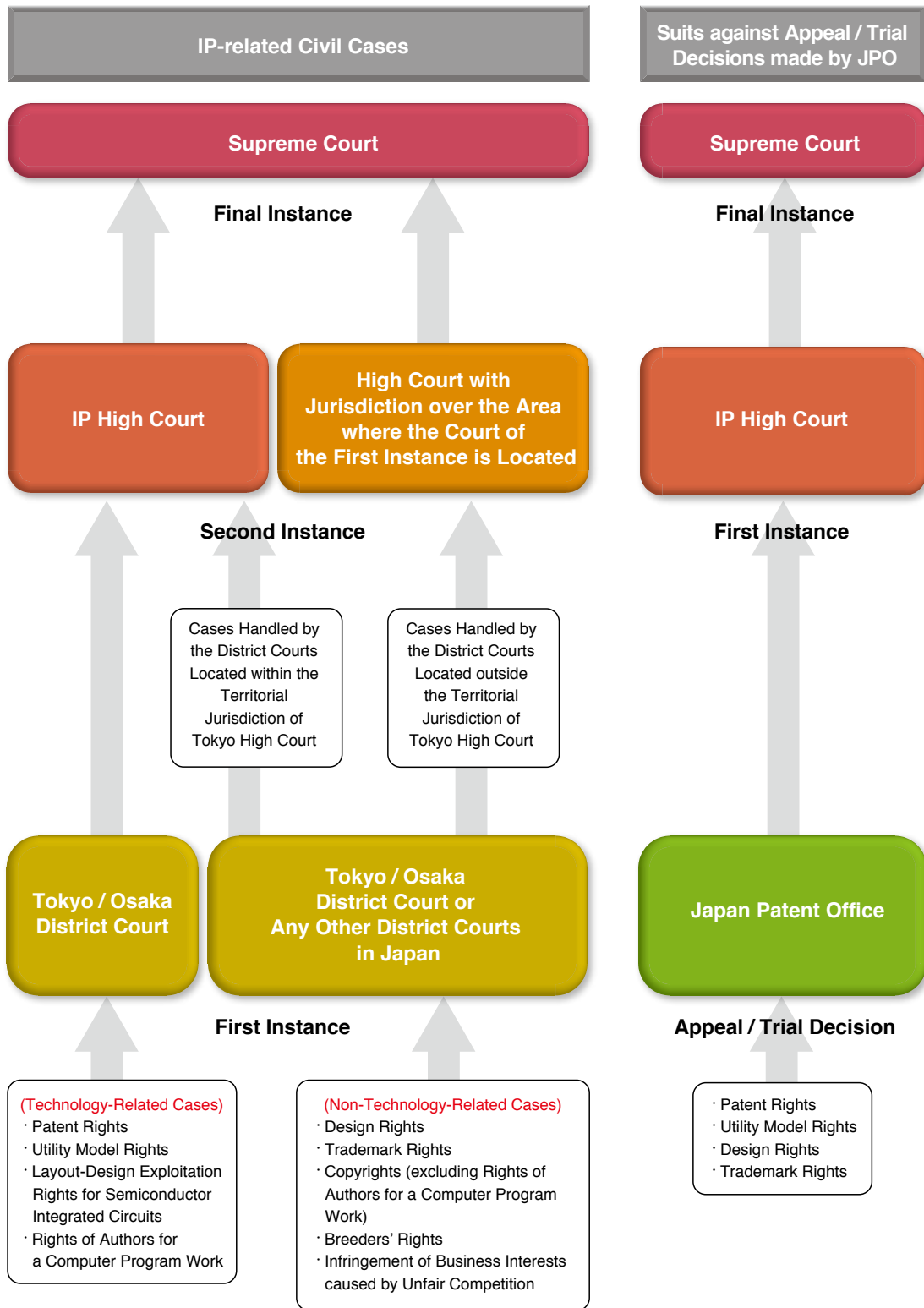
東京高等裁判所の専属管轄に属する審決取消訴訟は，知的財産高等裁判所が取り扱います（知的財産高等裁判所設置法2条2号）。

### (3) その他の事件

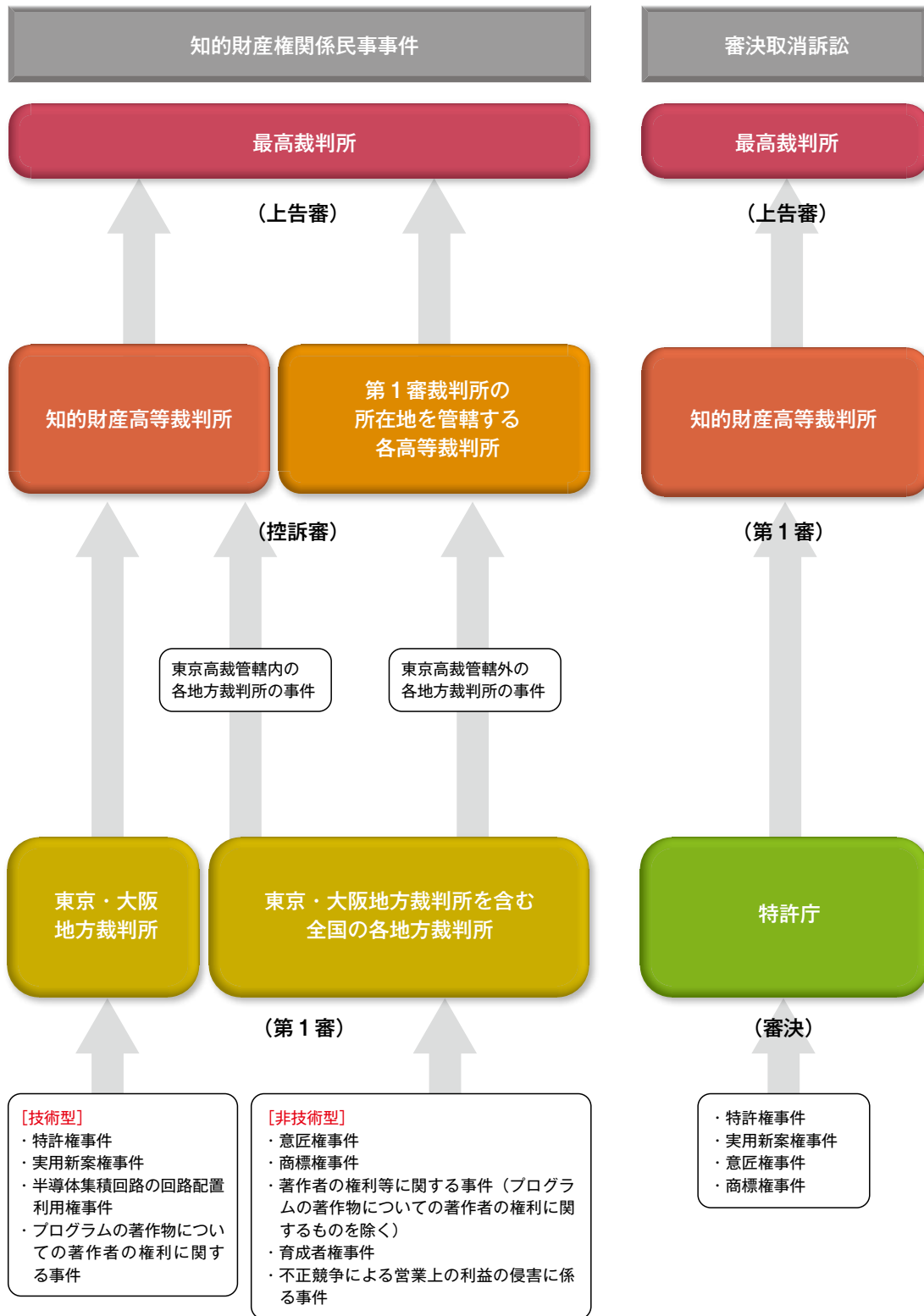
(1)，(2) で述べた以外に知的財産高等裁判所が取り扱う事件としては，東京高等裁判所の管轄に属する民事訴訟事件及び行政訴訟事件のうち，主要な争点の審理につき知的財産に関する専門的な知見を要する事件があります（知的財産高等裁判所設置法2条3号）。

なお，知的財産高等裁判所及びその他の裁判所の知的財産権部は，知的財産権を侵害する罪のような刑事事件は取り扱いません。

**Jurisdiction over IP-related Litigation**



知的財産権関係訴訟の管轄





### 3 Organizational Structure of the Intellectual Property High Court

(1) The Intellectual Property High Court has been designated as a special branch of the Tokyo High Court and is recognized to have unique power over certain judicial administrative tasks, such as assignment of court cases, which are closely related to the exercise of its special functions. In this way, the Intellectual Property High Court is considered to have a higher level of independence in comparison with other ordinary branches of high courts.

(2) The Intellectual Property High Court consists of the Litigation Department, which comprises four ordinary divisions and the Special Division (Grand Panel), and the IP High Court Secretariat, which is in charge of administrative affairs.

(3) The Intellectual Property High Court consists of the Chief Judge, other judges, judicial research officials dealing with IP cases, court clerks, and court secretaries. Technical advisors may also be involved in IP cases as part-time officials on a case-by-case basis.

The judges are legal experts, appointed from among those who have passed a bar exam and completed the required legal apprenticeship in principle. On the other hand, judicial research officials and technical advisors consist of those who have specialized knowledge on technical fields (please refer to Chapter V).

(4) In principle, the Intellectual Property High Court handles cases through a panel of three judges (Article 18 of the Court Act). In addition, the Intellectual Property High Court may handle the following cases through a panel of five judges (Grand Panel), : any appeal against a decision on actions relating to patents, etc. (technology-related actions relating to patent rights, utility model rights, layout-design exploitation rights for semiconductor integrated circuits, or rights of authors for a computer program work.), which is under the exclusive jurisdiction of the Tokyo High Court, as well as any suit filed against appeal/trial decision made by the JPO with regard to a patent or utility model (Article 310-2 of the Code of Civil Procedure, Article 182-2 of the Patent Act, Article 47, paragraph (2) of the Utility Model Act). This is a system established to conduct proceedings with greater care for cases which require highly specialized technical knowledge and also for those the outcome of which would give great impact on business activities and the industrial economy. For this reason, when a case is to be handled by a Grand Panel, the four presiding judges from each of the four ordinary divisions are taken on as members of the panel in practice.

The Intellectual Property High Court maintains the consistency of its legal interpretation by the Grand Panel System.

### 3 知的財産高等裁判所の組織

(1) 知的財産高等裁判所は、東京高等裁判所の特別の支部と位置付けられ、その専門的な事件処理に密接に関係する裁判事務の分配等の一定の司法行政事務について、独自の権限が認められるなど、高等裁判所の通常支部よりも独立性が高いものとされています。

(2) 知的財産高等裁判所には、通常部4か部と特別部（大合議部）からなる裁判部門と、庶務をつかさどる知的財産高等裁判所事務局が置かれています。

(3) 知的財産高等裁判所には、所長が置かれるほか、裁判官、知的財産に関する事件を扱う裁判所調査官、そして、裁判所書記官、裁判所事務官が配置されています。また、事案に応じて、非常勤職員である専門委員が事件に関与することがあります。

裁判官は、法律の専門家であり、原則として、司法試験に合格し、司法修習を終えた人の中から任命されます。これに対し、裁判所調査官及び専門委員は、技術分野についての専門的知見を有する人によって構成されています（V参照）。

(4) 知的財産高等裁判所は、原則として裁判官3名の合議体で事件を取り扱います（裁判所法18条）。さらに、知的財産高等裁判所は、知的財産権関係民事事件の控訴事件のうち東京高等裁判所の専属管轄に属する特許権等に関する訴え（特許権、実用新案権、半導体集積回路の回路配置利用権、プログラムの著作物についての著作権の権利に関する訴えなどの技術型の訴え）に係るものと、特許及び実用新案に関する審決取消訴訟については、裁判官5名の合議体（大合議体）で裁判を行うことができます（民事訴訟法310条の2、特許法182条の2、実用新案法47条2項）。これは、これらの事件の中には、特に審理において高度な専門的、技術的事項が問題となったり、その結果が企業活動や産業経済に与える影響が大きい事件があることから、より慎重な審理判断を行うための制度です。このため、大合議体の構成員のうち4名は、通常部4か部の裁判長が務めるという運用がされています。

大合議制度により、知的財産高等裁判所としての法的解釈の統一も図られることとなります。



Grand Panel on the Bench（大合議体による審理）