# Approach to Innovation on IP-related Litigation in Japan

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#### Overview

- 1. Matters brought by Innovation
- 2. Measures (1)
  - against Technical Difficulties
- 3. Measures (2)
  - against Difficult Legal Issues
- 4. Others

# Matters brought by Innovation (1)

Technological innovation, especially in ICT field recently, may bring –

#### 1. Technical Difficulties;

The issue in dispute is often related to a complex, highly specialized technical matter.

Necessity to introduce and use expert knowledge of technology

# Matters brought by Innovation (2)

Technological innovation, especially in ICT field, may bring –

#### 2. Difficult Legal Issues;

The issue in dispute is often unprecedented and influential about contract, infringement, validity of IP right, etc.

Necessity to make a decision taking various factors into account carefully

- against Technical Difficulties (1)
- ◆ Judicial Research Officials (1)
  - 1. Full-time court official
  - 2. No statutory term in general
  - 3. Salary paid for full-time official
  - 4. Not expected to be questioned
  - 5. Carry out research on necessary matters as ordered by the court and report the research result.
  - 6. The research results may not be adopted as evidence.

- against Technical Difficulties (2)
- ◆ Judicial Research Officials (2)



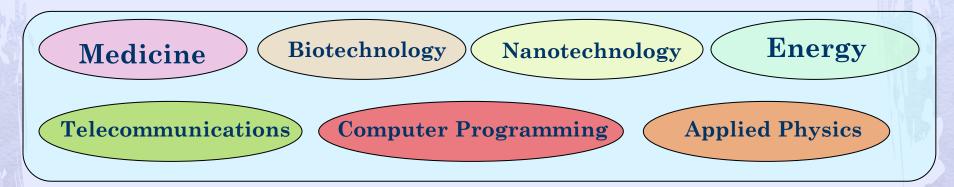
Office of Judicial Research Officials

Technical Briefing by Judicial Research Official



- against Technical Difficulties (3)
- ◆ Technical Advisors (1)
  - 1. Part-time court official
  - 2. Two years
  - 3. Allowance paid for each case
  - 4. Not expected to be questioned
  - 5. Provide easy-to-understand explanations on scientific matters as the court's advisor.
  - 6. The explanation may not be adopted as evidence.

- against Technical Difficulties (4)
- ◆Technical Advisors (2)



Part time court members (more than 200): university professors etc \*All belonging to 3 courts: IP High Court, Tokyo District Court, Osaka District Court



Designated for a case which contains highly difficult technological issues

- against Technical Difficulties (5)

◆ Technical Advisors (3)



Practical case-study seminars for technical advisors

- against Technical Difficulties (6)
- Explanatory Sessions (1)



- Attorney for the Plaintiff
- 2 Technical Advisor
- 3 Judge
- 4 Judicial Research Official
- **5** Attorney for the Defendant

- against Technical Difficulties (7)

Explanatory Sessions (2)

Presentation by both parties (attorneys)

Alleged infringing product

Videogram

Presentation software



Deepening the understanding on technological matters etc

- against Difficult Legal issues (1)
- Grand Panel (1)
  - In principle, IP High Court handles cases through a panel of 3 judges.

 Under some requirements stipulated by law, IP High Court may handle a case through a panel of 5 judges called 'Grand Panel'.

- against Difficult Legal issues (2)
- Grand Panel (2)
  - Appeal against an action relating to a patent, etc., which is under the exclusive jurisdiction of the Tokyo High Court

 Suit filed against an appeal/trial decision made by JPO with regard to a patent or utility model

- against Difficult Legal issues (3)
- Grand Panel (3)
  - To control proceedings with greater care for -
    - cases which require especially highly specialized, technical knowledge
    - cases the outcome of which would give great impact on business activities and the industrial economy

- against Difficult Legal issues (4)
- Grand Panel (4)



- against Difficult Legal issues (5)
- Grand Panel (5)
  - The four presiding judges from each of the four ordinary divisions are usually taken on as members of the panel in principle.

◆ This system allows the IP High Court to maintain the consistency of its legal interpretation.

- against Difficult Legal issues (6)
- ◆ An attempt to ask a large number of people interested in issues like Amicus Curiae
  - Whether there is any restriction on practice of rights to seek an injunction or damages based on a patent that is essential to the standard set by a standard setting organization when so-called (F)RAND declaration is made.'(from the website of Morrison & Foerster LLP)
  - Both parties advertised it and submitted 58 opinions(39 persons and 18 organizations/companies from 8 countries) as documentary evidences.

#### Others

- Dissemination of Information
- International Harmonization

- Participation in international conferences
- Study groups with a global perspective
- ♦ Website <a href="http://www.ip.courts.go.jp/eng/index.html">http://www.ip.courts.go.jp/eng/index.html</a>
  - IP judgments are translated into English.

-see <a href="http://www.ip.courts.go.jp/eng/hanrei/index.html">http://www.ip.courts.go.jp/eng/hanrei/index.html</a>

Thank you!