



Further development of patent litigation

2018.4.23

Presiding Judge
IP High Court of Japan
MAKIKO TAKABE

1. Jurisdiction of the IP High Court



IP High Court

1. Appeals from district courts in civil cases relating to patent rights, utility model rights and rights of the authors of a computer program work come under the exclusive jurisdiction
2. Suits against appeal/trial decisions made by JPO



§ 104-3 of the Japanese Patent Act

Where, in litigation concerning the infringement of a patent right, the said patent is recognized as one that should be invalidated by an invalidation trial or the said patent right is recognized as one that should be invalidated by a trial for invalidation of the registration of extension, the rights of the patentee may not be exercised against the adverse party.

Dual System of Patent Litigation

Civil Cases

First Instance
**Tokyo / Osaka
District Courts**

Patent Infringement

Defense of Invalidity

Appeal/Trial Decision

Japan Patent Office

Validity of Patent

Second
Instance

**IP High
Court**

Final
Instance

**Supreme
Court**

First
Instance

Final
Instance



Merit of Japanese System

- 1. Reasonable and equitable conclusion**
- 2. Resolving the case in one time**
- 3. Expediting trials in patent infringement litigation**
- 4. Unification of judgement in invalidity of the patent**
- 5. Unification of the claim interpretation in the scene of finding the technical scope & validity**

2. Grand Panel Cases of the IP High Court





11 cases (2005~2018)

5-judge panel

- **Chief judge(=Presiding judge of 1st division)**
- **Presiding judge of 2nd division**
- **Presiding judge of 3rd division**
- **Presiding judge of 4th division**
- **judge**

Nippon Chemiphar vs Shionogi case

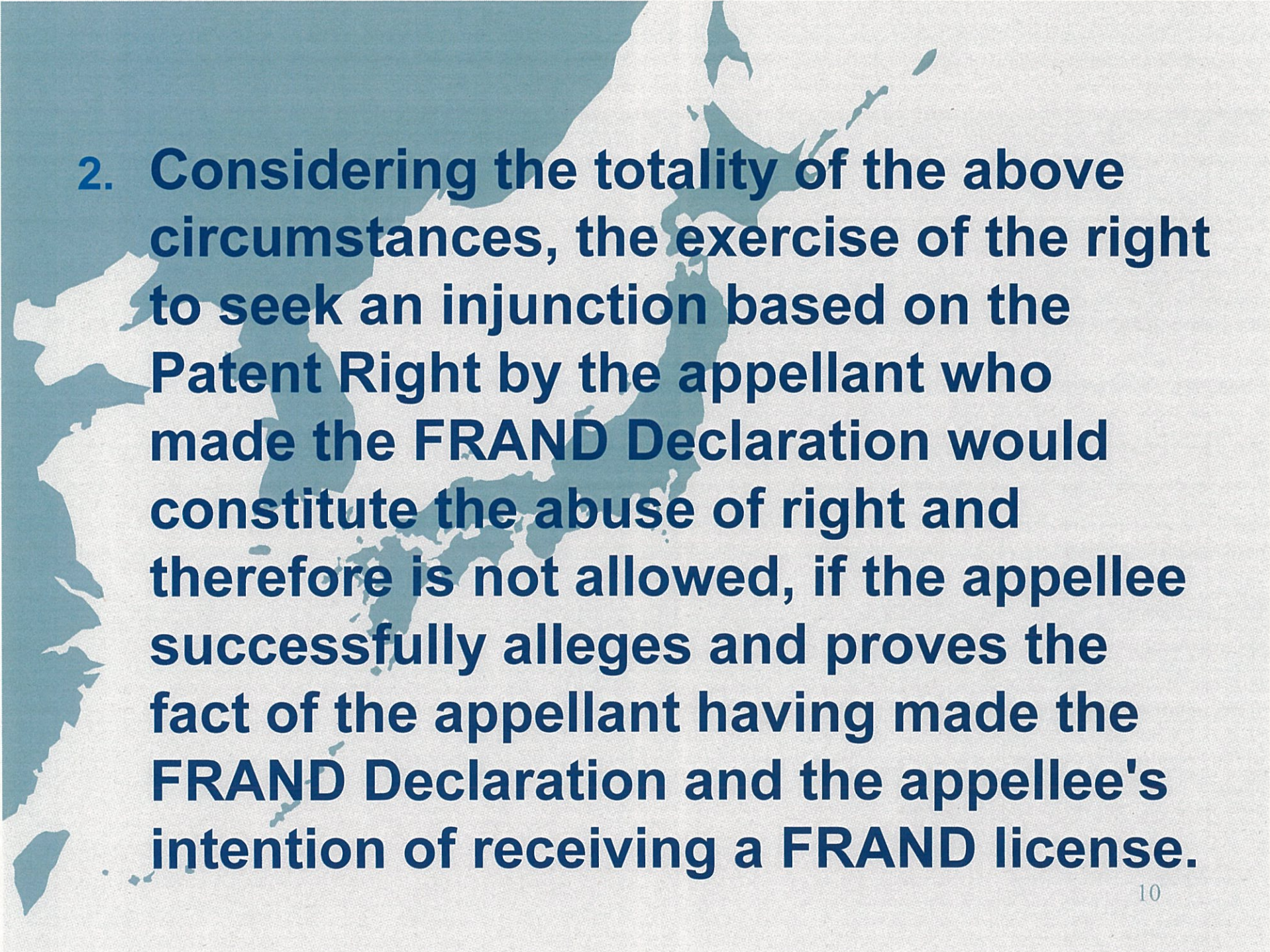
13.Apr.2018

- **inventive step of patent of drugs**
- **the benefits of suits against trial decision made by JPO**

Apple vs Samsung case

16.May.2014

- 1. The court found that the appellant's exercise of the right to seek damages based on the patent right constituted the abuse of right to the extent exceeding the amount of the FRAND royalty, but not to the extent of the amount of the FRAND royalty.**

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2. Considering the totality of the above circumstances, the exercise of the right to seek an injunction based on the Patent Right by the appellant who made the FRAND Declaration would constitute the abuse of right and therefore is not allowed, if the appellee successfully alleges and proves the fact of the appellant having made the FRAND Declaration and the appellee's intention of receiving a FRAND license.



- **Japan version Amicus curie**

3. Judicial Symposium on IP / TOKYO 2017







Thank you for your attention.

**Presiding Judge
IP High Court of Japan**

Makiko Takabe