

I. Courts, Jurisdictions

1. Japanese Court System in General

The Japanese court system has three levels of hierarchy, i.e., Supreme Court, High Courts and District Courts. At least one District Court is located in each prefecture and handles the first instance of civil and criminal cases. There are eight High Courts in Japan and take appeal cases from decisions of the District Court which are under the High Court in the hierarchy. The Supreme Court is the highest level of the courts in the hierarchy. With regard to intellectual property cases Intellectual Property High Court was established in April, 2005. IP High Court is actually a special branch of Tokyo High Court but is given an appearance of separate High Court which handles exclusively intellectual property cases.

2. Jurisdiction

(1) Subject Matter Jurisdiction

A first instance of all patent and utility model infringement cases are handled by either Tokyo District Court or Osaka District Court. Tokyo District Court has exclusive jurisdiction for all patent and utility model infringement cases which have area jurisdiction in eastern half part of Japan (roughly east of Nagoya including Nagoya) and Osaka District Court has exclusive jurisdiction for all patent and utility model infringement cases which have area jurisdiction in western half part of Japan (roughly west of Nagoya not including Nagoya). Tokyo District Court has four Intellectual Property Divisions (i.e., the 29th, 40th, 46th and 47th Civil Divisions) and Osaka District Court has two Intellectual Property Divisions (i.e., the 21st and 26th Civil Divisions). Each division has several judges and assistant judges. Three of those in combination of judges and assistant judges constitute a panel to handle each case. Other than patent and utility model infringement cases, cases relating to computer software copyright infringement cases, semiconductor circuit chip protection cases and plant protection cases are also exclusively handled by either Tokyo District Court or Osaka District Court. Other intellectual property cases such as trademark infringement cases, design infringement cases, copyright infringement cases other than computer software cases and unfair competition cases may be handled by Tokyo or Osaka District Court, and also by other district court which has area jurisdiction over the case.

Intellectual Property High Court takes all of appeals from decisions of Tokyo District Court and Osaka District Court in patent and utility model infringement cases and other technology oriented cases for which those district courts have exclusive jurisdictions. Intellectual Property High Court also has exclusive jurisdiction of the first instance of appeal cases from decisions of Patent Office Appeal Board. Intellectual Property High Court has four divisions (i.e., the 1st through 4th Divisions).

As noted by the description of subject matter jurisdiction, patent cases are handled by specialized judges in the IP divisions of Tokyo and Osaka District Courts and IP High Court. Most of those judges are not technologically trained but they have sufficient knowledge of patent laws and lots of experience of handling patent cases. Those judges are also supported in the area of technology by court investigators who are temporarily transferred from Patent Office or temporarily hired from patent agents. Each patent case is assigned to one investigator who hears the case and assists the judges.

(2) Personal Jurisdiction

A Japanese court may exercise its power to anyone who is in the territory of Japan. Sometimes a patent infringement action is brought against a foreign entity who is not in Japan. A process of service can be forced through a diplomatic channel. However, careful consideration is required as to whether a Japanese court has personal jurisdiction over the foreign entity on case by case basis.