

## **VII. Appeals**

### **1. Intellectual Property High Court**

#### **(1) Exclusive Jurisdiction and Panels**

An appeal from the decision of first instance by Tokyo or Osaka District Courts in patent infringement case is heard exclusively by Intellectual Property High Court, which is a special branch of Tokyo High Court. Intellectual Property High Court now has four divisions, 1<sup>st</sup> – 4<sup>th</sup> Divisions, each divisions having 4-5 judges who are specialized in IP cases. Each case is handled by a panel of three judges. In each division 2-3 panels are formed.

Intellectual Property High Court is unique in its capability to form a grand panel which is formed by five judges who are appointed on a case by case basis. At least one judge is from each divisions. The grand panel handles a case which involves legal issues not settled by precedents or which may have significant affect in industries or society.

#### **(2) Reasons for Appeal**

An appeal in IP High Court can be based on error of laws or error of finding of facts in the district court decision. Parties in the appeal case may submit new evidences which are not in the record of the district court proceeding, provided such submission is not unreasonably delayed.

#### **(3) Time and Procedure**

A notice of appeal should be filed within 14 days after receipt of the district court decision by the losing party. A party in foreign country may be given additional 30 days for the appeal in the district court decision. After the notice of appeal is received by the court and served upon the appellee, the appellant should file an appeal brief in which the reason for appeal is set forth in about a month by the day specifically set by the court. Then, hearings are held a few times with an interval of 1 – 1.5 months and each time one of the parties files a brief presenting arguments raised on the appeal brief. This process continues until the court comes to conclusion. The appeal proceeding usually takes about a year or less. The IP High Court usually suggests settlement at the end of the series of hearings. If a settlement is not reached, the court renders a decision.

## **2. Supreme Court**

### **(1) Reason of Appeal to Supreme Court**

The reasons for appeal to Supreme Court is very limited. There are two types of appeals, one is an appeal based on absolute reasons for appeal which are, e.g., violation of Constitution and other very serious procedural illegality that should be cured by Supreme Court, and the other type is an appeal based on error of laws involving material issue of interpretation of laws including inconsistency with precedents of Supreme Court. The latter type of appeal may be taken by Supreme Court only by its discretion. Therefore, it is generally said that a chance of reversal of Intellectual Property High Court decision by Supreme Court is very small.

### **(2) Process and Time**

A notice of appeal should be filed within 14 days after receipt of the High Court decision. A foreign party may be given additional 30 days by the High Court decision. An appeal brief setting forth the reasons for appeal should be filed within 50 days after the notice of appeal is received by Supreme Court. Most of the cases are not taken by Supreme Court and such decision to dismiss the appeal or decision not to take the appeal is rendered within a few months after the appeal brief is received by Supreme Court. If an appeal is taken by Supreme Court, it may take some time until the Court makes a decision. When there is high likelihood of reversal of the High Court decision by Supreme Court, oral hearing before the Court is held. Otherwise, no hearing is held before the decision.