

# Intellectual Property Related Litigation in Japan

---

Professor of law  
WASEDA University  
TAKABAYASHI Ryu

# History of IP specialized division in the court

## **1950:**

An IP specialized division, which handled only IP-related cases, was established in the Tokyo High Court. Judicial research officials were assigned to this division, who had specialized knowledge in technical fields.

## **1961:**

An IP specialized division, which handled only IP-related cases, was established in the Tokyo District Court. Judicial research officials were assigned to this division.

## **1964:**

An IP specialized division, which handled only IP-related cases, was established in the Osaka District Court. Judicial research officials were assigned to this division.

## Until Revision of the Civil Procedure Code in 2003

Suits against appeal/trial decisions made by JPO were under the exclusive jurisdiction of the Tokyo High Court. On the other hand civil infringement cases were under the jurisdiction of fifty district court located throughout Japan. However, as so-called technology related suits relating patents need to be handled by court that had a well-established specialized special judicial system, due to the especially strong technical nature of such cases. So such law suits had been dealt with in the Tokyo and the Osaka District Court to 60 % more than 80%.

# Revision of the Civil Procedure Code in 2003

## Exclusive Jurisdiction

The Court of first instance of patent infringement civil litigation is under the exclusive jurisdiction of the Tokyo District Court or the Osaka District Court.

Any appeal related to such action would be handled by the Tokyo High Court.

Among IP-related civil cases, so-called non-technology-related actions such as copyright or trade mark are under the jurisdictions of fifty district courts located throughout Japan while the Tokyo District Court or the Osaka District Court also has non-exclusive jurisdiction.

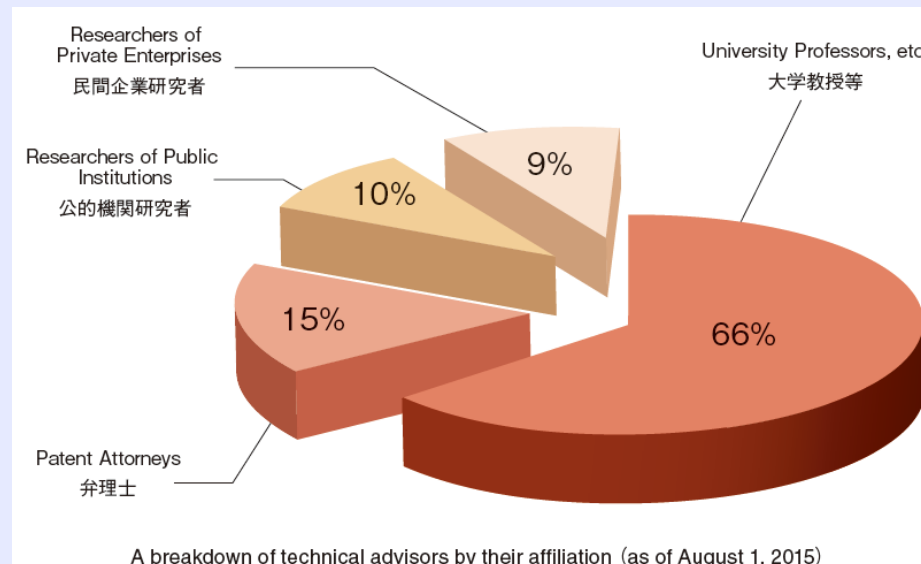
# Revision of the Civil Procedure Cord in 2003

## Use of Expert Knowledge about Technology

In addition to Judicial research officials who are full-time court staff members, consisting of former JPO trial examiners or former patent attorneys, about 200 technical advisors are appointed as part-time national public officers.

They are engaged in research on cutting-edge technology in a wide range of specialized fields.

A breakdown of technical advisors by their affiliations.



Source: Supreme Court of Japan, Intellectual Property High Court, p.27

## Establishment of Intellectual Property High Court(2005)

Under the Act for Establishment of the IP High Court , the IP High Court was created on April 1, 2005, as a special branch of the Tokyo High Court. In conjunction with this, the four specialized divisions for IP-related cases and the sixth Special Divisions that used to belong to the Tokyo High Court were turned into four ordinary divisions and the Special Divisions of the IP High Court.

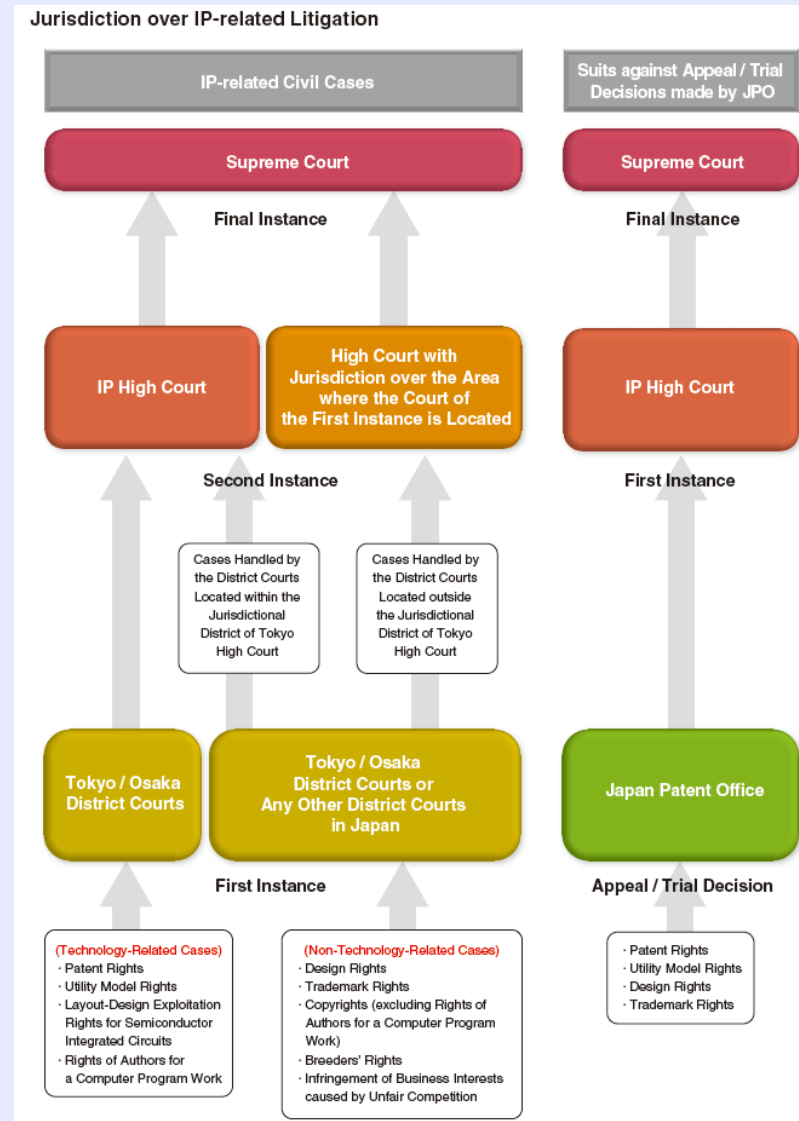
The IP High Court is recognized to have unique power over certain judicial administrative tasks, such as assignment of court cases, which are closely related to the exercise of its special functions.

# Establishment of Intellectual Property High Court(2005)

## Jurisdiction of the IP High Court

- Suits against appeal/trial decisions made by JPO were under the exclusive jurisdiction of the IP High Court.
- Any appeal related to patent infringement civil litigation would be handled by the IP High Court.

# Establishment of Intellectual Property High Court (2005)



Source: Supreme Court of Japan, Intellectual Property High Court, p.14



# Establishment of Intellectual Property High Court(2005)

## Grand Panel

In principle, the IP High Court handles cases through a panel of three judges. Any appeal against an action relating to a patent, etc., which is under the exclusive jurisdiction of the IP High Court, as well as any suit filed against an appeal/trial decision made by JPO with regard to a patent may be handled through a panel of five judges (Grand Panel).

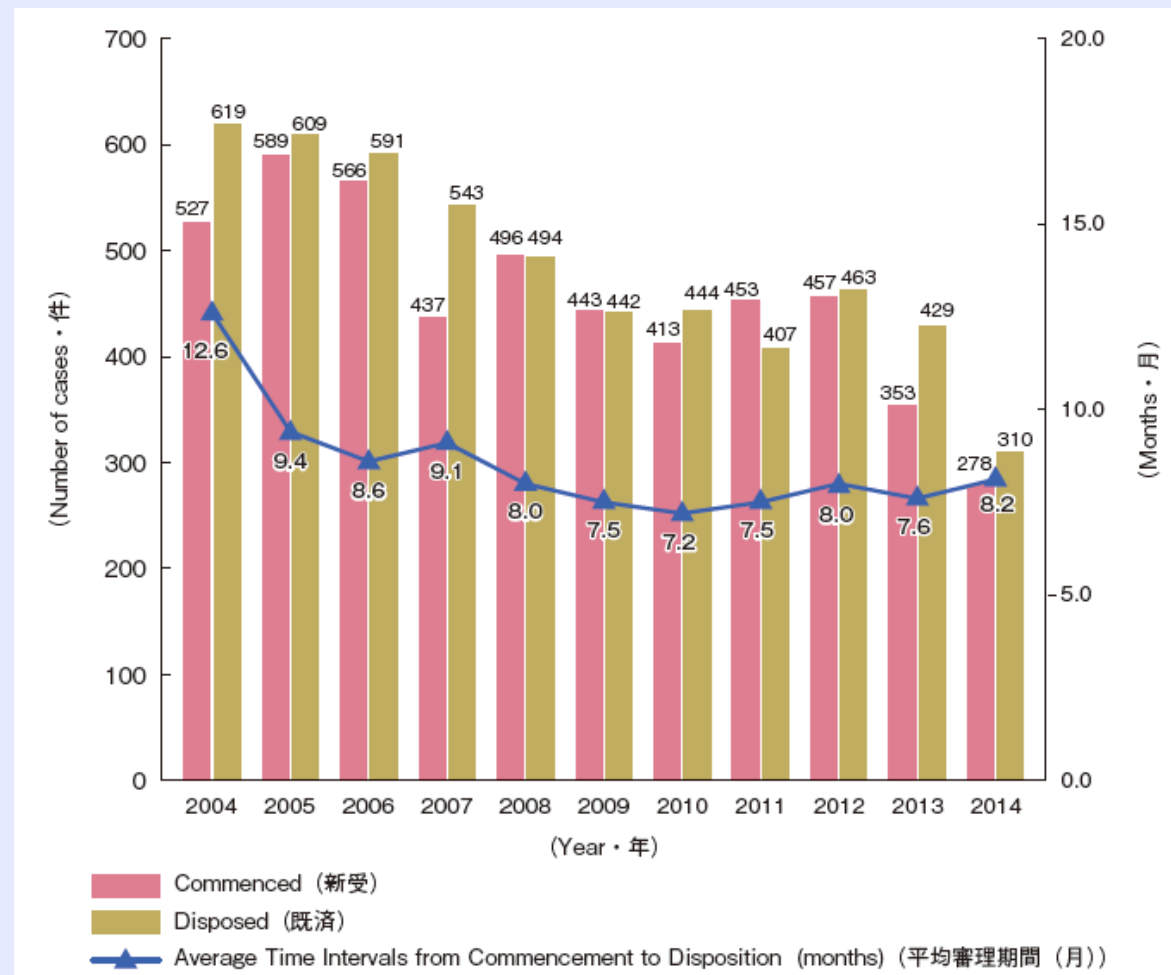
When a case is to be handled by Grand Panel, the four presiding judges from each of the four ordinary divisions are usually taken on as members of the panel in principle.

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

As a recent example, Samsung vs. Apple, “FRAND” case and Product by Process Claim case were handled by Grand Panel.

# Introduction to the Guide book of IP High Court

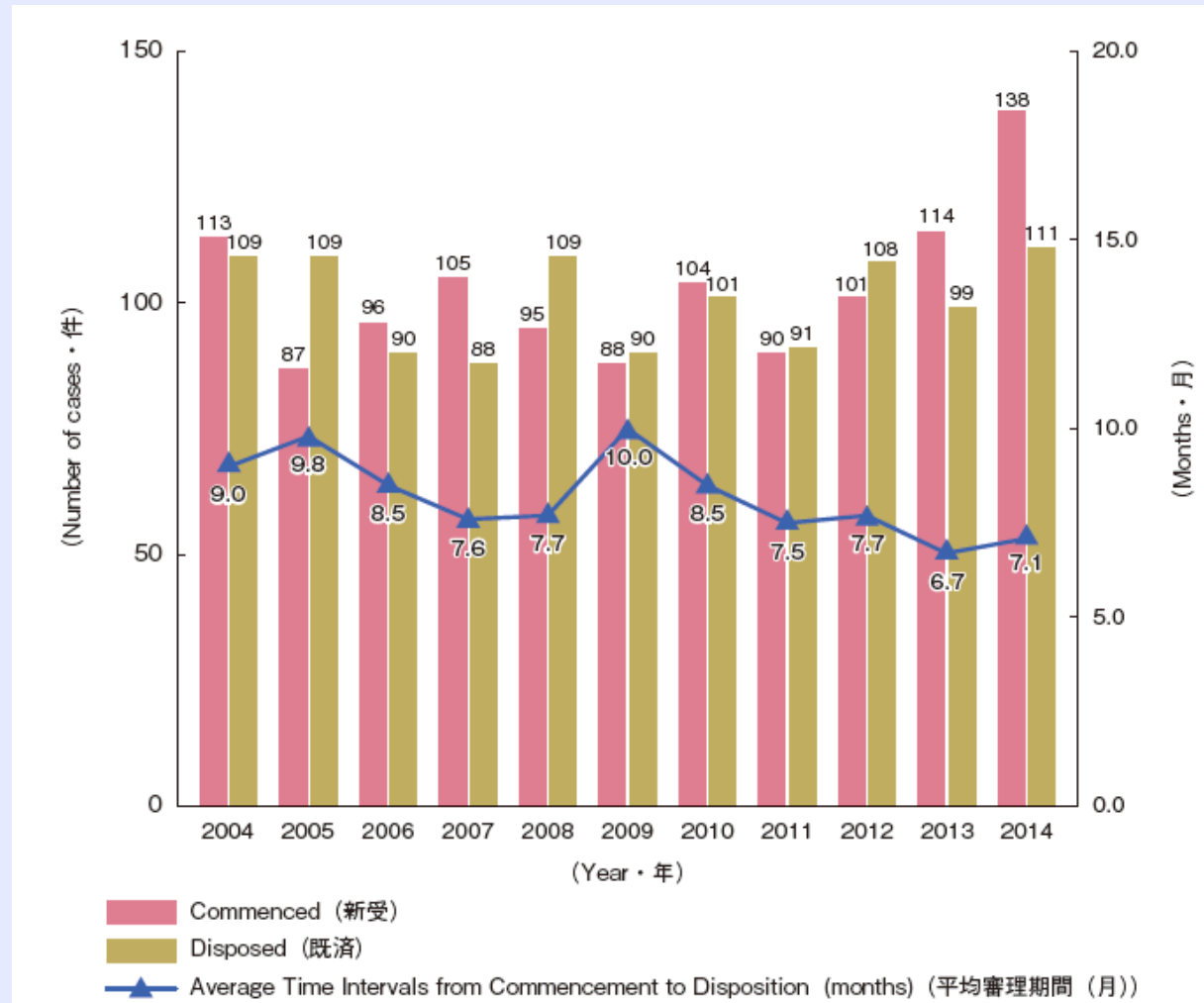
Number of Suites against Appeal /Trial decisions made by the JPO  
Commenced and Disposed and Average Time Intervals from  
Commencement to Disposition



Source: Supreme Court of Japan, Intellectual Property High Court, p.40

# Introduction to the Guide book of IP High Court

## Number of IP Appeal Cases Commenced and Disposed and Average Time Intervals from Commencement to Disposition



Source: Supreme Court of Japan, Intellectual Property High Court, p.41

# Future of IP infringement litigation in Japan

## ① Evidence Collection Prior to Filing Litigation

- Similar to Discovery Procedure in US ?
- Similar to Inspection Procedure in Germany?

## ② Double-track problem

The Article 104-3 of the Patent Act provided statutory ground for disputing the validity of a patent in a patent infringement civil suit. The validity of a patent may be disputed in the course of the JPO trial procedure as well. Therefore, the validity of a patent may be disputed either by raising a patent invalidity defense in a patent infringement civil suit or by following the JPO trial procedure by the same criteria.

# Thank you for listening.

---

Question?  
[saiban@waseda.jp](mailto:saiban@waseda.jp)