



Strategic Enforcement of Patent Rights in Japan and Its Merit

- What US Patentees Should Know
When Enforcing Japanese Patents -

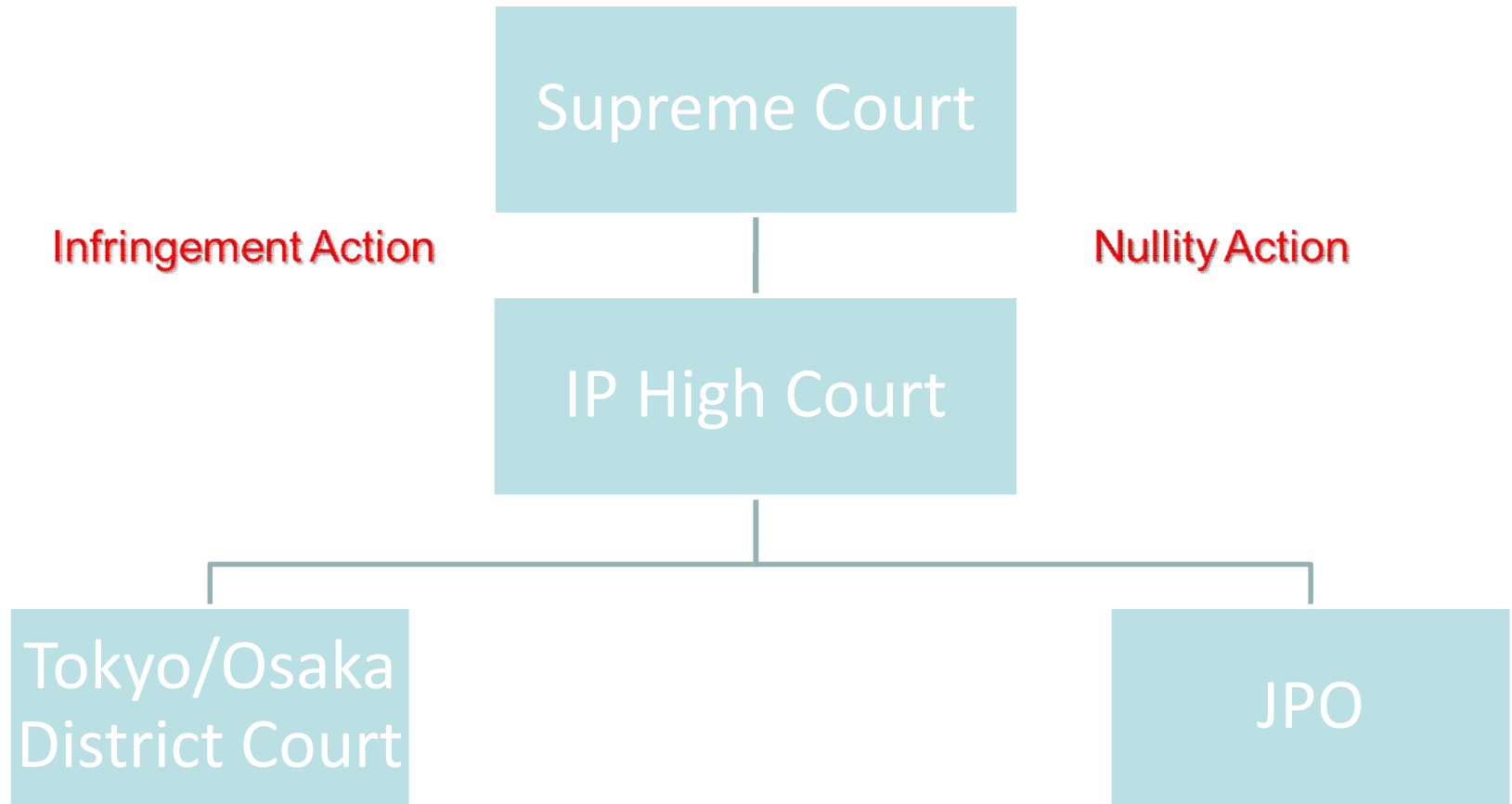
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**Discover IP JAPAN
Conference 2017**

Overview of Japanese Judicial System



Overview of Japanese Judicial System

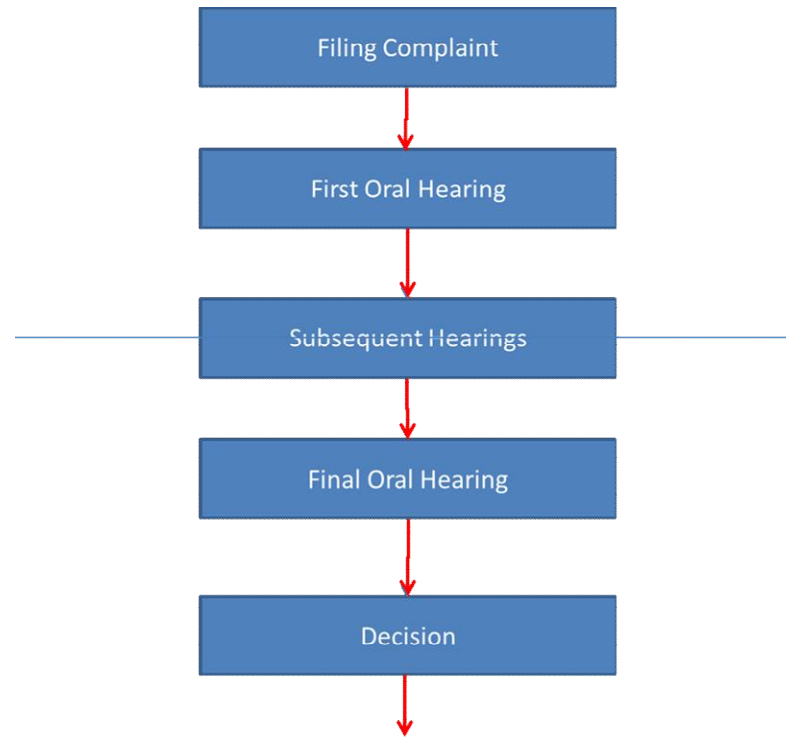
- *First Instance* District Court
 - Tokyo/Osaka District Courts have exclusive jurisdiction on patent infringement cases
- *Second Instance* IP High Court
- *Final Instance* Supreme Court
 - Constitutional Issues
 - Inconsistency with past SC case laws.
 - Important legal issues

Overview of Japanese Judicial System

- Regular Action
 - Injunction and Compensation for damages
 - Effective and enforceable after judgment becomes non-appealable
 - No need for bond
 - A panel of three(3) judges
- Preliminary Action
 - Injunction only
 - Effective and enforceable upon decision
 - Bond required
 - Single judge

Overview of Japanese Judicial System

Sequence of First Instance



Overview of Japanese Judicial System

- First Stage
 - Focus on ***Infringement*** and ***Validity***
- Second Stage
 - Focus on ***Damage Calculation***

Overview of Japanese Judicial System

How to specify a infringement product:

- Name and Features of suspected product/method
- Comparison between claim elements and suspected product/method
- Specify an action regarding the suspected product
ex. Use, sale, offer to sale, manufacture, import, export??

Remarkable Differences

- **Negotiation before litigations**

In most of the cases, negotiations are general ways before litigations, to avoid litigations. It implies to pressure third parties by attorneys.

- **Settlements on litigations**

Most of the cases ends by settlements out of litigations or on litigations. It is important to get convictions of judges.

Remarkable Differences

- **No jury system in civil procedure**

Professional judges are all procedure including fact finding and application of law. It implies uncertainty is removed.

Documentary evidences are important in litigation in Japan. Examination of a witness is irregular process in litigations in Japan.

Remarkable Differences

- **Participation of Judicial Research Officials System**

A Court has judicial research officials assigned from appeal examiners of Japan Patent Office and patent Attorney. In all cases, collegial body by judges have a judicial research officials. A judicial research official conducts researches, by order of judges, on technical matters as required to conduct proceedings and render judgments in cases relating to patents, utility models, and other intellectual property.

Remarkable Differences

- **Participation of Technical Advisers**

Technical advisors may be involved, by decision of the court, to assist judges by providing explanation of technical knowledge in cases where their expertise is necessary to clarify issues of the case or to facilitate progress of the proceedings. Technical advisors are appointed by the Supreme Court as part-time officials, from among experts such as university professors and researchers of public research institutes who have expertise in various scientific fields.

Remarkable Differences

- **Civil Code** Country
- **In-camera procedure**
No discovery system



Thank you for your attention

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