1 Research and Study on Alternative Dispute Resolution (ADR) for Intellectual Property Rights

*With recent increase in disputes on intellectual property, use of Alternative Dispute Resolution (ADR) including arbitration is drawing attention in the U.S. and Europe as a means to settle such disputes. According to the type of dispute, ADR enables speedy, simple and low-cost resolution, resolution through closed-door proceedings in cases involving highly confidential matters, and resolution by participation of experts in cases of special fields, and is expected to become an effective means for settlement especially in disputes concerning intellectual property including patent. In Japan, the Arbitration Center for Industrial Property(*1) was initiated in 1998, and whether it will be able to establish its status as an ADR organization depends on its future efforts. Currently, development and expansion of ADR including the Arbitration Center for Industrial Property is an urgent task. For these reasons, this research and study considers means for developing and expanding ADR in Japan in the intellectual property field, including utilization of the Arbitration Center for Industrial Property and the Hantei (Advisory Opinion) System of the Japan Patent Office and cooperation with courts.*

I Establishment of Speedy and Accessible Systems for Settling Disputes

1 Current Situation of Intellectual Property Infringement Lawsuits

In the 21st century, the "Age of knowledge", promoting creation, acquisition of rights and utilization of "intellectual property" as well as activating strategic utilization of intellectual property are required. Accordingly, reinforcement of protection of intellectual property is indispensable, and the industrial circles desire "speedy and accessible systems for settling dispute" to be established and are demanding improvement especially in terms of "compensation for damage" and "duration of court deliberations".

Number of Intellectual Property Infringement Lawsuits and the Duration of Court Deliberations

Japan	642 cases	18.0 months	(1999)
U.S.	7,748 cases	8.2 months	(1998)

Japan :Reported by the Administrative Affairs Bureau of the Supreme Court

U.S. :The Administrative Office of the United States Courts

For this reason, the Ministry of Economy, Trade and Industry revised the Japanese Patent Law in 1997 and 1998 in terms of intellectual property infringement lawsuits and extended remedial measures against infringement of rights to ensure proper compensation for damage, by facilitating proof of infringment through expanded documents court orders to supply and introducing an accountant-appraiser system in calculating the amount of damage. At the same time, efforts for rapidly improving the issue of "compensation for damage" are being made in the context of lawsuits, such as the decision that accepted "the Doctrine of Equivalent" that permitted a broader scope of right (1998, the Supreme Court) and the decision that admitted the claim for the record high damages of about 3 billion yen (1998, the Tokyo District Court).

The issue of "duration of court deliberations" was also improved as the average duration of court deliberations in Japan in 1999 was reduced by 7.7 months over the previous year to 18.0 months (The Tokyo District Court achieved the average duration of court deliberations of 15.0 months.) However, there is room for improvement as compared to the situation in the U.S. in this regard, so that speedier proceedings are desired.

2 Efforts for Achieving "Speedy Proceedings in Intellectual Property Infringement Lawsuits"

(1) Tasks to be addressed for achieving "speedy proceedings in intellectual property infringement lawsuits" are suggested as follows.

(i) Organization of courts involved in intellectual property infringement lawsuits

Recently, since technological advances are so remarkable due to development in science and technology that it has become difficult to deal with lawsuits in the traditional organization of courts, it is necessary to promote improvement of

(*1) The Center changed its name into "Japan Intellectual Property Arbitration Center" on April 21, 2001.

organization of courts including increase in judges and technical staff specialized in intellectual property.

(ii) Shortage in attorneys at law and patent attorneys specialized in intellectual property

The population of legal professionals in Japan is much smaller than that in the U.S. and Europe. The number of attorneys at law is as small as one-fourth of that of France whose population of legal professionals is the smallest in Europe and the number of patent attorneys is also one-fourth of that of the U.S. For these reasons, the necessity to increase the number of attorney at law and patent attorneys who deal with intellectual property infringement lawsuits is pointed out.

Comparison in the Number of Legal Professionals (1999)

Japan	Attorneys at law	1.7 thousand	Patent attorneys	4 thousand
U.S.	Attorneys at law	90.0 thousand	Patent attorneys	1.6 thousand

(iii) Lack of linkage between the litigation proceedings and the trial procedure before the Japan Patent Office

In connection with patent infringement lawsuit, according to legal precedents and the reigning theory, only the Japan Patent Office (hereinafter called JPO) can make a judgment on validity of patent with erga omnes effect. Consequently, when either party to a dispute files a demand for trial for the invalidation of the patent in dispute before the JPO, the court may suspend the proceedings until a trial decision has become final and conclusive, which lasts long and may cause delay in the infringement lawsuit.

(2) To address these issues, the following actions have been taken.

(i) Drastic reinforcement of the divisions specialized in intellectual property in courts

① Increase in the number of Intellectual Property Divisions in the Tokyo District Court from one to three

② Increase in the number of judges (Tokyo and Osaka District Courts)
14 judges in 1998 to 20 judges in 2000

③ Increase in the number of research officials of courts as technical specialists
17 officials in 1998 to 19 officials in 1999

④ Introduction of the concurrent jurisdictions over patent lawsuits in both the Tokyo and Osaka District Courts which have the Intellectual Property Divisions (to make both courts substantially function as "patent courts").

(ii) Increase in the population of legal professionals and patent attorneys

Firstly, the population of patent attorneys is planned to be quantitatively expanded (current 4,000 patent attorneys will be increased to about 10,000 in 10 years) by simplifying the patent attorney examination system (in which the ratio of successful applicants is 4% and the average age of them is 33 years old) according to the revised Patent Attorneys Law of 2000 .

As for attorneys at law, the interim report by the Judicial Reform Council (as of November 20, 2000) presented a suggestion to create about 3,000 new legal professionals annually (nearly thrice as large as the current number). Some opinions argue that the number of legal professionals should reach 50,000 in 10 years. Furthermore, those who are technically skilled are expected to enter the legal professions as the result of realization of the law school plan.

(iii) Relationship between the litigation proceedings and the trial procedure before the JPO in patent infringement lawsuits

Following the Supreme Court decision in the Kilby case in 2000 that accepted "defense of invalidation of patent", the Tokyo and Osaka District Courts which have the Intellectual Property Divisions have been dismissing an action against infringement where "the patent appears to be apparently invalid" before the trial decision for invalidation before the JPO has become final and conclusive so that speedy litigation proceedings can be achieved. On the other hand, the JPO cooperates in ensuring speedy litigation proceedings by reducing the duration until the conclusion of a trial for invalidation (to within 6 months.)

3 Future Tasks (Expectation for Alternative Dispute Resolution)

As to the efforts for "achieving speedy proceedings in intellectual property infringement lawsuits", as mentioned in **2** (2), the basic direction has already been suggested.

The judicial organizations are expected to be operated for achieving efficient dispute resolution through continuous efforts to improve the organization of courts by further increasing the number of judges and research officials specialized in intellectual property as well as to intensively cast research officials into divisions in courts so that more complex cases in special fields such as intellectual property can be dealt with.

The task of quantitative increase in attorneys at law and patent attorneys should be carried out with necessary attention not to cause deterioration in their quality while introducing competition in their business so that users such as companies can receive quality legal services

and intellectual property related services.

Meanwhile, the number of intellectual property infringement lawsuits has grown since 1993 by about 7.5% in annual average, and intellectual property infringement lawsuits are expected to increase significantly, so the capacity of courts to deal with such lawsuits might reach a limit in the future if any other actions than improving the organization of courts are not taken. In addition, though the average duration of court deliberations has been reduced due to speedy litigation proceedings before courts, there is room for improvement as compared to the situation in the U.S. in this regard, and the industrial circles continuously desire speedier proceedings.

Under these circumstances, it is suggested that in intellectual property disputes, such cases that are essentially not fit for litigation proceedings or that could be autonomously settled between parties concerned without going through litiation proceedings are eventually imposed on courts. The fact that alternative dispute resolution is yet to be developed in the intellectual property field is pointed out as a cause of this situation (see Table 1 below).

For example, where a patent is possibly invalid, if the dispute goes into litigation just because no agreement on license fee is reached, even in case that a party to the dispute does not intend to go so far as seeking invalidation of the patent, it may be invalidated over such party's will.

In addition, if the loss caused by the negative impact of litigation on images of the company or its products is larger than the damages that could be recovered in litigation, such litigation proceedings are not always the best solution to settle a dispute for the party concerned.

Furthermore, while an industrial property right is granted in return for disclosure of invention as a rule, if the parties desire to settle a dispute behind closed doors for the reason that technical know-how is involved or to settle a dispute without disclosing its business information to the other party, civil procedures are not always the best solution for dispute settlement, as civil procedures should, in principle, be conducted in public (Article 82 of the Constitution of Japan).

Table 1 Situation of Alternative Dispute Resolution

	Year of establishment	Number of cases
Civil conciliations (Minji Choutei)	1951 (enforcement of the Law for Conciliation of Civil Affairs)	received 263,498 (1999)
Traffic Accident Dispute Settlement Center (Koutsu Jiko Funsou Shori Center)	1978	16,869 (FY1999)
Consumers and Public Liability Center (Shouhisha Seikatsu Seihin PL Center)	1995	924 (FY1999)
Japan Commercial Arbitration Association (Kokusai Shoji Chusai Center)	1967	12 (1999)
Arbitration Center for Industrial Property	1998	5 (FY1999)

Since disputes on intellectual property are expected to significantly increase in the future, such efforts should also be made as to ① promotion of autonomous settlement of disputes between parties concerned before going to court and ② screening cases that are essentially not fit for llitigation proceedings, in parallel to those efforts mentioned in **2** (2) above.

It is suggested that alternative dispute resolution (ADR) has advantages over court proceedings in such respects that it can secure secrecy including trade secrets because proceedings may be conducted behind closed doors, it can secure anonymity and it is suitable for adjusting both parties' interests due to simplicity and flexibility of procedures. In this regard, ADR is considered effective for autonomous settlement of disputes between parties concerned and settlement of cases not fit for litigation proceedings.

Thus, in order to achieve "speedy proceedings in intellectual property infringement lawsuits", such efforts to "improve organization of courts" and "quantitatively increase attorneys at law and patent attorneys" should be continuously made, and in addition, in view of promoting autonomous settlement of disputes between parties concerned before going to court and screening cases that are essentially not fit for litigation proceedings, further efforts should be actively made to develop and improve ADR in the intellectual property field.

When ADR becomes available as effective means to settle disputes in addition to court proceedings, parties to disputes will be able to achieve resolution that makes use of their initiatives, protects their privacy and trade secrets through closed-door procedures, and is fit for the actual condition irrespective of whether legal right or obligation exists, and it will be possible to

realize "a user-friendly administration of justice" that is stated by the Judicial Reform Council in the intellectual property field.

II Significance of ADR in Achieving Speedy Proceedings in Intellectual Property Infringement Lawsuits

How can ADR contribute in achieving speedy proceedings in intellectual property infringement lawsuits? Before considering specific measures in this regard in III and onwards, the functions that users such as companies desire ADR to carry out are presented here, focusing specifically on patent infringement disputes among intellectual property infringement disputes.

1 Dispute Resolution at the Stage prior to Litigation Proceedings

If any patent infringement dispute occurs, it does not immediately lead to a lawsuit. Instead, parties concerned discuss issues such as "definition of the technical scope", "finding of possible infringement" and "designing of the terms and conditions of reconciliation" and try to come to a compromise and settle the dispute.

In such cases, what role is ADR expected to play when the parties seek an agreement or compromise with respect to "definition of the technical scope" and "finding of possible infringement"? To figure out this issue, an interview survey was carried out, targeting companies which have used the *Hantei* (Advisory Opinion) system of the JPO. Requests from the companies interviewed are as follows.

① Companies expect ADR to provide fair judgment as guidance for both parties concerned to reach a compromise with respect to the issues such as "the technical scope" and "infringement" that are the prerequisites for dispute resolution, rather than to conclusively settle the dispute (providing a judgment as guidance for forming a compromise.)

② Where parties concerned have yet to reach the stage of finding a compromise for dispute resolution, it is still useful for them to argue with each other on the issues such as "the technical scope" and "infringement" before an ADR institute to seek a third party's opinion on the validity of their arguments in order to clarify points of dispute (providing the opportunity of argument to clarify points of dispute.)

③ According to such requests from companies for ADR, they seem to primarily demand ADR to make speedy judgments rather than to make more accurate judgments by guaranteeing procedural due process that is as strict as court proceedings, even though the substance of such speedy judgments is rather rough (attaching a high value to speediness.)

④ With respect to the effect of judgments made by an ADR institute, it is not necessary that they are "binding" but it is sufficient that they are effective as "expert opinion" as far as they serve as guidance of negotiation between parties concerned (expert opinion).

⑤ In order for judgments through ADR to be considered as "expert opinion", it is important that an ADR institute is recognized as fair and neutral institute in the society and is granted a certain authority. An expert opinion shall be valid not only between parties concerned but also between the parties and their business partners (social confidence.)

⑥ At present, though there are no ADR institute reliable enough for disputing parties to entrust with judgments on "assessment of damage" and "reconciliation or arbitration", such a reliable ADR institute is likely to be available in the future depending on cases.

2 Use of ADR at the Stage of Litigation Proceedings

(1) Types of Lawsuits in Which Use of ADR Should Be Considered

(i) Use of ADR at the stage of litigation proceedings

The Judicial Reform Council has revealed a future policy to improve out-of-court ADR in combination with a basic policy to improve existing in-court ADR (civil conciliation), in view of development of means for settling disputes that can meet various needs. Accordingly, it will be a major task to ensure that ADR will be used at the stage of litigation proceedings in patent infringement disputes.

Since parties concerned could not settle a dispute to resort to a lawsuit, they desire to clear it up once and for all through litigation proceedings; therefore, it is true that they are not much interested in settling the dispute by "mediation". However, many cases that should be essentially settled or can be settled between parties concerned with the guidance of a third-party organization are brought into litigations and dealt with in courts.

(ii) Cases that are fit for ADR

There are two types of cases that are not always fit for court proceedings: ① cases that are not cost-effective by comparison ofthe litigation cost and the results to be obtained in the litigation; ② cases that cause serious damage to companies concerned where they are required to disclose the secret such as technology in the

litigation, which they want to keep secret.

In these cases, dispute resolution through simple alternative means for settling disputes alternative to court proceedings is more desirable to parties concerned. In addition, they would have to spend significant costs in the end of court proceedings even if they choose to seek "provisional disposition". Taking into account the business culture, in which disclosure of technologies and know-how in the course of llitigation proceedings brings a loss on companies and companies generally do not want to make public the very fact that they are involved in lawsuits, it is significant even at the stage of litigation proceedings for them to consider using ADR that can deal with cases flexibly.

(2) Use of In-Court ADR (Civil Conciliation) in Litigation Proceedings

(i) Administration of litigation proceedings aiming at use of in-court ADR

In light of "speedy resolution of dispute", it is important for courts to try to lead parties concerned to seek dispute resolution through reconciliatory means including mediation (improving the court's leadership in litigation proceedings.)

Since intellectual property infringement disputes are conflicts in terms of business between companies and the companies concerned can make a reasonable decision from the economic perspective in many cases, such disputes are relatively fit for reconciliation. In view of ensuring cost-effectiveness and keeping trade secrets, companies may expect courts to arrange reconciliation even after they bring the case before the court. Accordingly, it seems useful for the court to try to arrange reconciliation or submit a dispute to mediation, presenting the court's general and provisional impressions to parties concerned as a kind of "guidance" for dispute resolution.

It has been pointed out that attorneys are nowadays trying to deal with cases while considering arrangements for reconciliation in such manners that they accept cases with possibility of resolution through reconciliation in mind, try not to unnecessarily stimulate the other party's feelings by sending a warning letter, and avoid making hasty decision without sufficient information on the other party.

(ii) Securing initiatives of parties concerned in mediation procedures

It is suggested, however, that the fact that parties concerned have no initiative in appointing members of the mediation committee, because a judge (in many cases, the judge in charge of dealing with that litigation) takes the post of the chief mediator and the court designate members of the mediation committee in civil conciliation procedures, makes practitioners hesitate to use the mediation system and prevent promotion of utilization of the system.

In these circumstances, some opinions suggest that it might be possible to entrust judgments only on technical matters such as "technical issues" and "infringement" to an ADR institute or a third party which is designated by parties concerned (or to practically allow parties concerned to appoint the person who will judge their case with respect to part of the mediation procedures), by introducing some features of "the Early Neutral Evaluation (ENE) system"(*2) into the mediation system. In such a case, the ADR institute or the third party designated by the parties concerned would be entrusted with arrangement of points of dispute and evaluation of both parties' arguments, and the mediation committee members would try to achieve reconciliation in consultation with the parties concerned, accordingly.

This system seems to be able to be used under the existing mediation system, if parties concerned agree to and actually comply with the third party's judgment under the mediation procedure. How to secure smooth liaison between the mediation procedures and the ADR procedures as well as the necessity of legislative preparations should be considered in the future.

(iii) Facilitating termination of the mediation procedures

Under the mediation procedures, parties concerned may terminate the procedures for submitting the dispute to mediation at their will. However, it is pointed out that even when the negotiation between both parties begins to take a weaving course due to inappropriate mediation proceedings, the applicant for mediation would hesitate to make an offer of termination of the

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(*2) Under the "Early Neutral Evaluation" system in the U.S., the court appoints "an evaluator" from a list of registered attorneys with wide experience in arbitration and mediation and instructs him or her to organize and evaluate points of issues and arguments which are premises of dispute resolution in order to promote autonomous settlement of disputes between parties concerned. This system is characterized by the fact that the judgment of such an "evaluator" serves only as support for autonomous reconciliation between parties concerned without any binding effect.
The U.S. system is different from the mediation system of Japan in that a third party who is not involved in the litigation proceedings at all shall act as "an evaluator" and "the evaluator" shall be appointed from the list of attorneys in each state with with experiences in arbitration and mediation (about 200 attorneys within the jurisdiction of the San Francisco District Court).

procedure for submitting the dispute to mediation, because the judge in charge of the litigationbefore the same court often takes the post of the chief mediator.

Consequently, in some cases, the infringing party goes on with their infringing acts while the mediation procedures continues but no clue to a dispute settlement is found. In order to ensure that parties concerned can easily discontinue their mediation procedures in such cases, the ideal mediation system should be reviewed by taking measures such as designating in principle any other judge than the judge in charge of the litigation as the chief mediator.

(3) Use of Out-of-Court ADR (Arbitration) in Litigation Proceedings

With respect to cases that are fit for autonomous settlement between parties concerned or settlement with the participation of a third party rather than litigation proceedings in view of ensuring cost-effectiveness and keeping trade secrets, it would be one of the options for the court to indicate the way to settle the dispute through the use of an ADR institute in addition to settlement through reconciliation and mediation.

It is suggested that the existing Law for Conciliation of Civil Affairs provides the procedures for submitting a dispute to mediation (Article 20) but no procedure for submitting a dispute to arbitration by a third-party institute, which makes it difficult for the court to use a private ADR institute.

Establishing "the procedure for submitting a dispute to arbitration" by law may require careful consideration because the significance of ADR in dispute resolution has just recently begun to be understood in Japan and the ADR institutes have not necessarily reached the sufficient level to be relied on by the court.

With future expectation on development of private ADR institutes including the Arbitration Center for Industrial Property, establishment by law of the procedure for submitting a dispute to arbitration should be considered, following the procedure for submitting a dispute to mediation provided in Article 20 of the Law for Conciliation of Civil Affairs(*3). It is also significant to establish by law the procedure for submitting a dispute to arbitration in view of increasing the court's options in operating litigation proceedings.

III Support for Autonomous Settlement of Disputes between Parties Concerned — Use of the *Hantei* (Advisory Opinion) System as ADR —

There are needs among companies to use ADR as "a tool" for autonomous settlement of disputes between parties concerned and for obtaining a fair interpretation on "the technical scope" and "infringement". From this point of view, the "*Hantei* (Advisory Opinion) System" which currently functions as a kind of ADR is outlined here with evaluation and consideration of the system.

1 Outline of the Hantei System

(1) Purpose of the System

(i) Since it is far more difficult to define the technical scope of patent than the scope of real right, a number of disputes occur over the technical scope. Furthermore, if the technical scope is indefinite, both the right holder and third party would be put in an unstable position in exploiting a technology.

(ii) Though such the issue should be settled at court in the end, it is useful, in terms of dispute resolution, for a technically specialized government office that grants patents to give fair expert interpretation. For this reason, the *Hantei* System was established under the revision of the Patent Law in 1959 (Article 71 of the Patent Law).

(iii) The original purpose of the *Hantei* System was likely to prevent troubles in advance. Under the existing system, however, not only an allegedly infringing party can seek a negative advisory opinion that an allegedly infringing product or process "is not included in the scope" of the other party's patent, but also a patentee can seek a positive advisory opinion that an allegedly infringing product or process "is included in the scope" of the patent.

(2) Effect of Advisory Opinion

Nevertheless, an advisory opinion under the existing law is an official interpretation of the JPO and effective only as expert opinion. As indicated in the Supreme Court decision(*4), since such an advisory opinion has no legally binding effect, it is held that it is impossible to make an appeal against the interpretation and it shall not bind the court.

However, the *Hantei* procedure is carried out

(*3) Article 20 (Conciliation by virtue of the court of the suit) The court of the suit may ex officio refer a case to conciliation and make the competent court handle or handle by itself the case unless no agreement is made between parties concerned after the points of issue or evidence on the case are completely organized.

(*4) Supreme Court decision, April 18, 1968.

by the JPO with as much care as in the trial procedure and the advisory opinion is considered as a fair intepretation made by a neutral, technically specialized government office as compared to a private expert opinion that is often given from either party's standpoint. Accordingly, it is estimated that the advisory opinion has obtained a certain social reputation.

(3) *Hantei* Procedures

Prior to the revision of the Patent Law in 1999, the *Hantei* System for patent adopted more simplified procedure than the trial procedure under the Cabinet Order concerning the Patent Law. Under the revision of the Patent Law in 1999, however, *Hantei* procedure following the trial procedure is stipulated "in order to secure fair and speedy examination and judgment supported by due examination process." As a result, the *Hantei* procedures have the following features similar to the trial procedures.

(i) Principle of examination by documentary proceedings

Since the purpose of the advisory opinion is to define the technical scope of a patent, it often requires judgments on technical matters of the patent and may be fit for examination by documentary proceedings. Consequently, the principle of examination by documentary proceedings is adopted.

(ii) Ex officio principle

As a civil lawsuit deals with a dispute on a private right between private persons for which the principle of private autonomy is essentially suitable, the adversary-accusatorial system is appropriate for civil lawsuits. On the other hand, an advisory opinion has a legal effect only as an expert opinion, and the ex officio principle is adopted in the *Hantei* procedure.

(4) Use of the *Hantei* System

Since defining the technical scope of a patent requires expertise on the claims and is not always easy, it may turn out to be difficult in many cases to make a judgment on infringement. In this regard, the *Hantei* system is a system in which a technically-specialized government office that examines patent applications and grants patents gives expert interpretation on the issues concerning the technical scope from a technical point of view in a fair and neutral position. This system seems to be essentially useful for settlement of disputes on patents.

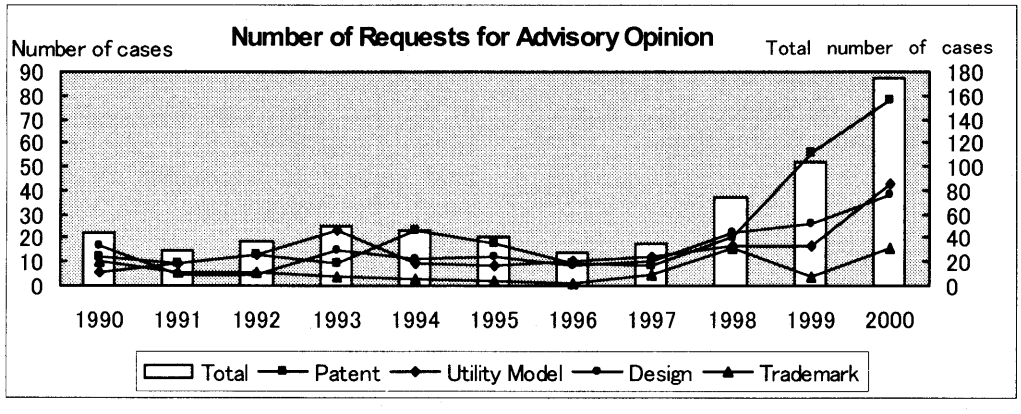
Prior to the operational improvement achieved in 1999, it took nearly two years to obtain an advisory opinion, so the *Hantei* system was not always attractive to companies that desired speedy settlement of dispute on patent. Consequently, the number of cases where the *Hantei* system was used for settlement of dispute on patent or utility model was as small as about 20 to 30 annually from 1990 to 1998.

However, as speedy advisory opinion procedure was achieved due to the operational improvement in 1999, an advisory opinion is currently obtained in around six months in principle under the existing operation. Accordingly, the number of cases where the system is used has rapidly increased in recent years, and 73 cases in 1999 and 121 cases in 2000 for settling disputes on patent and utility model matters.

Number of Requests for Advisory Opinion

	Patent	Utility Model	Design	Trademark	Total
1990	12	6	17	10	45
1991	9	9	5	6	29
1992	13	13	5	6	37
1993	9	23	15	4	51
1994	23	9	11	3	46
1995	18	8	12	2	40
1996	9	10	8	1	28
1997	8	12	10	5	35
1998	20	17	22	16	75
1999	56	17	26	4	103
2000	78	43	38	16	175

(See the JPO Annual Report 2000)



2 Opinions on the *Hantei* System as ADR

How does the *Hantei* system with respect to patent meet the demands of users including companies mentioned in Section II? To figure out this issue, an interview survey was conducted targeting companies that have used the *Hantei* system for settling patent infringement disputes. The survey results are as follows.

(1) Positive Opinions

(i) Though an advisory opinion is effective only as "an expert opinion", it is a fair interpretation made by a neutral, technically-specialized government office with respect to "the technical scope" and "infringement", therefore, it is useful as guidance for parties concerned to come to a compromise in settling autonomously their disputes. In addition, it is still useful for parties concerned in clarifying points of dispute including "the technical scope" where they are yet to reach the stage of finding a compromise.

(ii) When companies concerned seek to settle a dispute autonomously without going to court for settlement by the public authority, the problem is whether either company can win the understanding within their company on the compromise. In such a case, it would be easy to build a consensus of the company by basing the compromise on the advisory opinion. An advisory opinion made by a neutral government office has a major effect for a company claiming for damages by abusing a patent right to give up.

(iii) Even when parties concerned cannot reach a compromise or agreement based on an advisory opinion, either party can see if its own argument will be accepted in the litigation proceedings, which will finally help early settlement of dispute. The *Hantei* system is also helpful for parties concerned in conducting an objective and efficient negotiation for dispute resolution, since either party can figure out how its own argument is persuasive in the negotiation with the other party.

(iv) When a patent infringement dispute occurs, trading partners of the allegedly "infringing" company usually not only avoid purchasing products which might be infringing or voluntarily restrain their trade with the company but also change the supplier as the case may be. For this reason, whether the "infringing" company can survive depends on whether it can secure its distribution channel for its products. Since an advisory opinion is an interpretationmade by a socially neutral and technically specialized government office with a certain degree of authority, obtaining an advisory opinion would be an extremely effective means for such an allegedly infringing company in managing to avoid losing the confidence of its trading partners and maintain transactions, if the company can obtain an advisory opinion that it does not infringe another's patent right.

(v) In the past, it took two or three years to obtain an advisory opinion after filing a request. It should be appreciated that such the period has been reduced to about six months according to the operational improvement in 1999. Speediness is critical for the *Hantei* system, since it would cause major damage on the operation of small- and medium-sized enterprises if it took more than one year to settle a dispute.(*5)

(2) Negative Opinions

(i) The *Hantei* procedure as a kind of administrative service does not need to be so strict as litigation proceedings. Nevertheless, the *Hantei* procedure is sometimes carried out without necessary attention; for example, the hearing procedure is skipped in the course of examination. In addition, they have an impression that trial examiners have different levels of ability to make a technical interpretation. Some measures should be taken to improve their quality.

(ii) Though it is understandable that sufficient evidence is not available for making an interpretation due to lack of the procedure for production of evidence and therefore an advisory opinion has to be somewhat imprecise, we expect it to be able to go through deliberation even in the litigation.(*6)

(iii) They wonder if it is possible to improve the system so that users can obtain not only an interpretation on whether an allegedly infringing product or process is included in the technical scope of a patent but also an official view on individual technical matters. Company need adviser to consult with about technical matters

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(*5) Some of the companies that responded to the interview survey suggested that companies would not survive if the *Hantei* procedures took one year; six months were the limit for companies, and if possible, an advisory opinion should be obtained in two or three months. According to another suggestion, the system should be improved so that requests for advisory opinion or documents for examination can be filed through the Internet for speedy procedure.

(*6) Some pointed out that if judicial due process was guaranteed in view of enabling an advisory opinion to go through deliberation in a litigation, the advantage of the *Hantei* system, the speedy procedure, would not be able to be secured, and the accessibility of the system to users would be finally reduced. They requested improving the existing *Hantei* system into a system more accessible to local companies by way of allowing use of the Internet, rather than guaranteeing stricter procedural due process.

irrespective of possibility of infringement.(*7)
(iv) Some revision of the system may be necessary so that a party dissatisfied with an advisory opinion can file an appeal against it (or, a dissatisfied party can file an appeal where parties concerned have concluded a contract that they would recognize the binding effect of the advisory opinion.) (*8)

3 Basic Idea on the Future *Hantei* System

(1) Basic Direction of the *Hantei* System

Considering the situation shown above, in order to promote autonomous settlement of dispute between companies concerned without going through litigation proceedings, some measures should be taken to segregate the area covered under the *Hantei* system and the area covered under private ADR, since both systems compete with each other with respect to judgment on "10the technical scope" and "infringement". To achieve this, it is desirable in the long term to focus the scope covered under the *Hantei* system on the fields suitable for " administrative services", in view of users' opinions and the development of private ADR institutes including the Arbitration Center for Industrial Property.

It will take considerable time for such institutes including the Arbitration Center for Industrial Property to train their personnel who can make technical judgments in dealing with the arbitration procedure. As one of the measures for focusing the scope, accordingly, it may be required to seek to reinforce cooperation between the *Hantei* system and the Arbitration Center in order to complement the Center's capability to make technical judgments. For example, when the Center uses the *Hantei* system as a part of the arbitration procedure, the case referred to from the Center should be dealt with in a priority procedure.

Another measure may be focusing the scope covered under the *Hantei* system, which is a kind of administrative service, on the fields in which interpretations on rights made by the administrative authorities are extremely and urgently required, such as the case where an advisory opinion is used in taking action to prohibit import of product infringing intellectual property (customs' enforcement).

(2) Direction of Focuses (Fields Where Judgments on Rights Made by the Administrative Authorities Are Extremely and Urgently Required)

(i) Use of the system in taking actions to prohibit import of products infringing intellectual property (customs' enforcement)

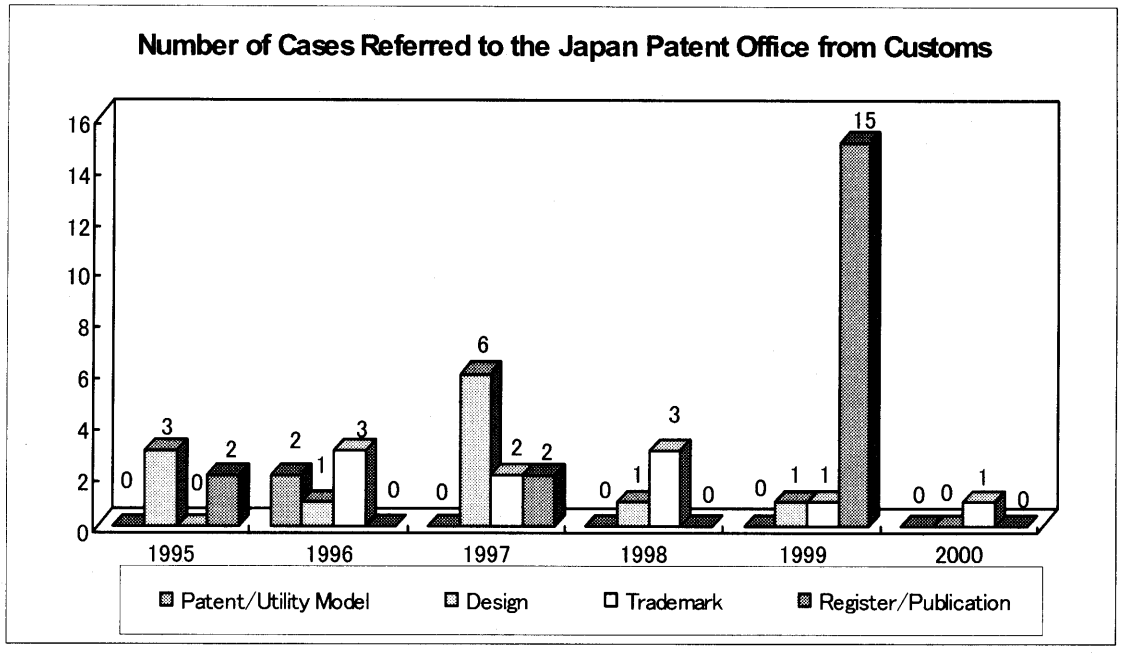
As customs' enforcement, import of products infringing intellectual property (so-called counterfeits) into Japan has been prevented by two ways; injunction from the court and prohibition of import at customs. The customs commissioner has traditionally certified the finding of infringement and prohibited import of certified infringing products. According to the TRIPs Agreement, a new procedure was established (Article 21(2) of the Customs Tariff Law) by which a right holder can request prohibition of import from the custom authorities, and currently, trademark holders and copyright holders can also request the customs commissioner to prohibit import of goods that would infringe their rights.

To carry out this procedure, a right holder has to demonstrate that imported goods are likely to infringe his or her trademark right or copyright. In this regard, the JPO, a technically specialized government office that grants patent and trademark rights or the like, seems to be suitable for interpretationent on infringement. According to the number of cases that have recently been referred to the JPO from customs, troubles concerning prohibition of import of products infringing intellectual property have constantly occurred, though not so many. Furthermore, in recent years, quite a few counterfeits of Japanese products have been sold in China and East Asian countries. For these reasons, the issue of customs' enforcement against products infringing intellectual property is expected to become more important in the future.

Consequently, it is an effective means for protecting rights for trademark holders and patent holders to use the *Hantei* system as a part of the procedures for requesting prohibition of import in order to prove the infringement, and this measure is worthy to be positively pursued as one of the measures for focusing the scope covered under the *Hantei* system.

(*7) In this regard, other opinions suggest that it is not necessary to extend the subjects of the *Hantei* system; it would be sufficient for dispute resolution if a judgment on whether or not the subject to be interpreted is included in the technical scope of a particular patent can be obtained. Rather, some companies recommended that the availability of the *Hantei* system should be improved, such as by using the *Hantei* system to determine the possibility of infringement of intellectual property in the case of requesting the customs to prohibit import of products infringing intellectual property.

(*8) In this regard, there seems to be no substantial problem without the appeal system since it is possible to request for again an advisory opinion on the same case. Some of the companies that responded to the survey suggested that they used the advisory opinion as a kind of means for reconciliation and did not have any intention to request for another advisory opinion in the first place.



(ii) Measures on the cyber society

When a program infringing an intellectual property right is distributed on the Internet, the primary tort liability for the illegal program should be imposed on "the sender", but the provider (the intermediary) who placed the program on its website and made it accessible to anybody may also bear tort liability. For this reason, in terms of the development of business on the Internet, it has being considered in Japan to establish a law (Intermediary Liability Act) following the U.S. Digital Millennium Copyright Act (DMCA.) so that such providers will be exempted from liability by going through certain procedures.

Under the provisions of the DMCA, ① a provider shall be exempted from liability of contribution to the infringement, if a provider: does not have actual knowledge of is infringing; or in the absence of such actual knowledge, is not aware of facts or circumstances from which infringement is apparent; or upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the infringing program: and ② a provider shall be exempted from liability, if the provider, upon notification of claimed infringing program from the right holder, responds expeditiously to remove, or disable access to, the program, if the provider informs the sender of the infringing program to that effect and does not receive any objection from the sender within a certain period of time.

Without any information from the right holder, a provider who becomes aware of the program that is (likely) infringing has to take reasonable measures in order to be exempted from tort liability. Because it is difficult for providers not skilled in the art to judge the possibility of patent infringement, and, illegal programs are likely to be widely diffused on the Internet quicker than in the real world, speedy actions are needed.

Accordingly, with the expansion of business on the Internet, it is expected that, in many cases, providers will seek official interpretation on whether an up-loaded program is infringing any intellectual property right in order to be exempted from tort liability. Therefore, measures should be considered to focus the *Hantei* system on the means to deal with infringement of intellectual property.

(3) Measures to Be Taken in Paralell to Measures for Focusing the System

In view of segregation from the area covered under private ADR institutes, it is necessary in the long term to focus the subjects covered under the *Hantei* system. In parallel to this, in order to make the *Hantei* system more accessible to users such as companies, additional measures should be taken to (i) improve accessibility of the *Hantei* system (with an eye on use of the Internet in the future), and (ii) change the procedure of the *Hantei* system, in which company names and technical matters concerned are currently disclosed, to achieve a closed-door procedure.

(i) Improve accessibility of the *Hantei* system

Attorneys at law and patent attorneys, especially those in the intellectual property field, concentrate in the Tokyo and Osaka areas. When a local company is involved in a dispute on intellectual property infringement, the company cannot find near them a attorney at law or patent attorney with whom they can consult, and has more difficulty in dealing with such a dispute than companies located in the Tokyo or Osaka area.

Especially in the case of small- and medium-sized enterprises, it is more difficult to deal with such problems, because they do not have own division or personnel specializing in intellectual property in many cases.

As the Interim Report by the Judicial Reform Council suggests the necessity of "improving the accessibility of attorneys at law" corresponding to geographically uneven distribution of lawyers, efforts should be made to improve the accessibility of attorneys at law and patent attorneys. In addition, in view of promoting autonomous settlement of disputes between parties concerned, it is also important to make it easier for local companies to access the *Hantei* system.

To improve the accessibility of the *Hantei* system to local companies, further actions should be taken so that companies located in distant places will be able to access the *Hantei* system via the Internet in the future. It is difficult to immediately carry out the procedures on the Internet due to the restrictions in the system development at the JPO. However, the JPO is planning for the system to be altered so as to enable on-line processing also for inter partes procedure of trial for invalidation in 2003. In conjunction with this, additional measures should be considered to enable companies having a computer terminal for patent applications to conduct the *Hantei* procedure online.

Since the advisory opinion itself does not have any binding effect, neither oral proceedings nor examination of evidence in pubic are necessarily required. In focusing the subjects of the *Hantei* system on the fields in which an interpretation made by administrative authorities is urgently required, such as the case where the advisory opinion is used for customs enforcement, improvement of the *Hantei* system as procedure to be speedily processed via the Internet will be more important.

(ii) Achieve closed-door procedure under the *Hantei* system

Since the *Hantei* procedure is conducted following the trial procedure, company names and technical matters concerned are disclosed under the *Hantei* system like the trial procedure. In this regard, the *Hantei* system seems to leave much to be improved in order to be ADR. (There is no legal provision that the advisory opinion and other information should be disclosed.)

One of the advantages of ADR is that it is possible to settle a dispute behind closed doors while protecting privacy and trade secrets of parties concerned. However, under the existing *Hantei* system, the advisory opinion is disclosed, for example, even if a provider wants to see in secret whether a program presented on its website by a subscriber is really infringing an intellectual property right, with respect to the subscriber.

Consequently, in order to make the *Hantei* system function as a means for autonomously settling disputes between parties concerned, efforts should be made to achieve a closed-door procedure under the *Hantei* system. For this purpose, it is not sufficient not to disclose the advisory opinion in the operation (after confirming the intention of the company concerned), but it should be considered to provide in the law that the advisory opinion shall not be disclosed in principle.

Ⅳ Improvement and Reinforcement of the Arbitration Center for Industrial Property

In the intellectual property field, the "Arbitration Center for Industrial Property"(*9) is established and administered jointly by the Japan Federation of Bar Associations and the Japan Patent Attorneys Association aiming for a future comprehensive ADR institute, and it is expected to play the key role as an institute that will undertake comprehensive ADR concerning intellectual property.

This section presents the situation of the Arbitration Center for Industrial Property and considers what efforts should be made to improve the Arbitration Center.

1 Present Situation of the Arbitration Center for Industrial Property

(1) The Arbitration Center for Industrial Property was established in April 1998 as an institute for the purpose of "alternative dispute resolution" with respect to industrial property such as patents, utility models, designs and trademarks, at the request of the Japan Patent Attorneys Association to the Japan Federation of Bar Associations. As seen from the number of cases that the Arbitration Center has handled for three years since its establishment as shown in the table below, 4.5 cases annually, the Arbitration Center is at the first stage as an ADR institute. Following the trend of emphasis on intellectual property as represented by the recent pro-patent policy and the movement in strategic use of them, the Arbitration Center is making efforts to

(*9) The Center changed its name into "Japan Intellectual Property Arbitration Center" on April 21, 2001.

increase companies' interests in ADR by organizing seminars concerning the trend in arbitration procedure and intellectual property.

List of Cases Handled by the Arbitration Center for Industrial Property

Secretariat of the Center, as of November 8, 2000

1998

Type of Procedure	Category	Days Required	Frequency of hearings	Final Result
Mediation	Trademark	184	7	Reconciliation achieved
Mediation	Trademark	123	5	Reconciliation achieved
Mediation	Patent	100	2	Reconciliation not achieved
Mediation	Patent	504	9	Reconciliation achieved

1999

Type of Procedure	Category	Number of Days Required	Frequency of hearings	Final Result
Mediation	Design	79	3	Reconciliation achieved
Arbitration	Patent	Pending	2	
Mediation	Patent	211	6	Reconciliation not achieved
Mediation	Patent	131	4	Reconciliation achieved
Mediation	Patent	504	6	Withdrawn, reconciliation achieved between parties concerned

2000

Type of Procedure	Category	Number of Days Required	Frequency of hearings	Final Result
Mediation	Trademark	Administrative procedure in progress		
Mediation	Patent	Administrative procedure in progress		
Mediation	Patent	Administrative procedure in progress		
Mediation	Patent	71	0	Withdrawn

(2) The Arbitration Center for Industrial Property is now at the first stage, less than three years after its establishment, and it should make efforts to build up its foundation as an organization body for playing the key role as an ADR institute in the intellectual property field.

The Arbitration Center is a joint organization belonging to the Japan Federation of Bar Associations and the Japan Patent Attorneys Association and has neither the status of a legal entity nor its own secretariat or administrative organization. In addition, with its annual budget being as small as 10 million yen, its field of activities is naturally restricted. Thus, it is handicapped in carrying out its autonomous operation.

Since alternative dispute resolution (ADR) is, as its name suggests, to be pursued as an alternative to litigation proceedings in court, an ADR institute is required to become no less independent and functional as a dispute-resolution organization than the courts.

In this regard, if the ADR institute is yet to build up its foundation as an organization body, including organizational and fiscal bases, it is hard to avoid the situation where the confidence of the third parties including parties involved in disputes is affected by such fact. As some companies answered in the survey "though we have never used the Arbitration Center for Industrial Property, if the reliability of the Arbitration Center improves, we may use it," it is necessary to build up its foundation as an organization body as soon as possible in view of improving its reliability in society.

(3) To become no less independent and functional as a dispute-resolution organization than the courts, the Arbitration Center should make specific efforts for the following points.

(i) Acquire the status of a legal entity

Though at present, it is an organization jointly operated by the Japan Federation of Bar Associations and the Japan Patent Attorneys Association, it should acquire the status of a legal entity, establish its own decision-making and administrative organizations, and secure its own secretariat in order to establish its status as an independent body.

(ii) Reinforcement and increase of the members of the body and fosterage of the personnel

① In order to establish the human base of the Arbitration Center for Industrial Property, efforts should be made to secure not only the members affiliated to the Center through the Japan Federation of Bar Associations and the Japan Patent Attorneys Association but also individual

members, corporate members including companies, and group members including economic organizations.

② As special staffs in charge of arbitration and mediation cases must be equipped with reasonable techniques and experience, the Arbitration Center should make efforts to foster personnel who specialize in handling arbitrations and mediations. Even if the Arbitration Center cannot easily provide such training alone, it should secure personnel who actually handle arbitration cases by providing training on arbitration and mediation in cooperation with the Japan Federation of Bar Associations or so.

(iii) Build up the financial base

Since the Arbitration Center needs a budget for recruitment of special staffs necessary for establishing the secretariat, rent on all facilities such as its own office rooms and conference rooms, and activities for enlightenment and public relations on arbitration, it should make efforts to build up its financial base in addition to the efforts mentioned above.

2 Ideal Image of the Arbitrations Center for Industrial Property in the Future

(1) Establishment of Social Confidence as a Third Party Organization

Companies expect that the judgments by ADR institutes will serve as guidance for parties concerned to reach a compromise as well as function as information used to convince trade partners of the fact about infringement.

As guidance for parties concerned to reach a compromise and information used to convince trade partners of the fact about infringement, such judgments should be recognized in society as reliable judgments made by a fair and neutral institute.

In order to play the key role as an ADR institute in the intellectual property field, the Arbitration Center should make efforts to establish social confidence as a third party organization. To achieve this, the Arbitration Center will have to provide the following services.

(i) Services for dispute resolution on domain names

As cyber-squatting of domain names is now a big social problem, dispute resolution on domain names is an eligible subject for the Center to obtain social recognition.

In order for the Arbitration Center to establish its social image as a dispute-resolution institute that contributes to the public interests, it should accumulate sufficient actual achievement and social confidence by steadily handling the arbitration cases concerning domain names that it has started to take charge of in cooperation with the Japan Network Information Center (JPNIC), an organization administrating national domains for the Internet.

(ii) Consulting services for small- and medium-sized enterprises and venture companies

Since the primary duty of the Arbitration Center is ADR concerning industrial property, it has to gain recognition from users such as companies with respect to fairness and reliability of judgments made by the Center in the industrial property field.

To achieve this, it is more important than anything to provide steady consulting services (technical and legal consultingtservices for samall- and medium-sized enterprises and venture companies rather than advanced services such as arbitration or mediation). It seems essential for the Center to provide in technical or legal consulting services such judgments that parties concerned including those involved in disputes can be satisfied with, listening to arguments of each party.

It is expected that the Center will provide detailed consulting services on technical and legal matters to find out companies' needs towards ADR.

(iii) Implementation of diffusion activities

In close association with consulting services on technical or legal matters for small- and medium-sized enterprises and venture companies, the Center is required to hold seminars for users such as companies and legal professionals in cooperation with economic organizations, samall- and meium-sized enterprises organizations and each bar association and win the understanding of users on the significance and availability of ADR by presenting successful cases settled through domestic and foreign ADR.

Through such diffusion activities, it is expected that the Arbitration Center will be recognized better and patent attorneys or the like who have not always been willing to use ADR will correct their understanding of ADR so that more companies will bring disputes to the Center at least on a trial basis.

(2) Efforts to Become a Comprehensive ADR Institute in the Industrial Property Field

(i) Linkage with the *Hantei* System

Due to the improvement of the *Hantei* system, the number of users of the system is rapidly increasing. As mentioned above, in view of appropriate segregation from the area covered under the private ADR institutes, it will be extremely necessary as a long term task to try to focus the subjects covered under the *Hantei* system specifically on the fields in which interpretations on rights are extremely and

urgently required.

With respect to arbitral judgments made by the Arbitration Center for Industrial Property, judgments on highly technical matters are required in many cases in addition to judgments on "assessment of damage" and "reconciliation or arbitration". In such cases, the Center should also take a measure for identifying the technical matters that will be the premise for dispute resolution at sessions with parties concerned as well as using the *Hantei* system in which the JPO provides technical interpretations on such technical matters. If such a linkage with the *Hantei* system is secured, judgments on technical matters will be speedily obtained, which will have an important effect for achieving more speedy and accurate arbitral judgments made by the Center.

If such the linkage is secured, it will also bring benefits to the JPO, in that it will be possible to provide "advisory opinions" on only matters that are considered essential for dispute resolution between parties concerned at private ADR institutes including the Arbitration Center for Industrial Property and to use the limited administrative resources effectively for substantial settlement of disputes on intellectual property infringements.

On the other hand, it is difficult for parties involved in disputes to achieve effective resolution of disputes on the basis of the advisory opinions, if they use the *Hantei* system without closely investigating the technical matter which is the premise of dispute resolution. Consequently, it is useful for them to closely investigate technical matters necessary for dispute resolution first at private ADR institutes such as the Arbitration Center for Industrial Property and then use the *Hantei* system with respect to such investigated technical matters.

Thus, the linkage between the *Hantei* system and the arbitral procedures at private ADR institutes will bring major benefits to the Arbitration Center for Industrial Property, the JPO and users including companies. Considering how to actually achieve such the linkage between the *Hantei* system and private ADR institutes will be an important task for increasing cases handled by the Center.

(ii) Establishment of a consultative body for the future of the Arbitration Center for Industrial Property.

To activate the Arbitration Center for Industrial Property that is expected to play the key role of ADR in the intellectual property fields in the future, a conference should be established where related bodies and organizations such as the Japan Federation of Bar Associations, the Japan Patent Attorneys Association, the Japan Patent Office and the Agency for Cultural Affairs shall discuss.

V Environmental Improvement for the Development of ADR

With respect to infrastructural development for expansion and activation of ADR, "the Interim Report" prepared by the Judicial Reform Council (published in November 2000) suggested that "in order to foster and improve various kinds of ADRs while developing each ADR's characteristics, courts, related ministries and agencies and organizations concerned should promote necessary infrastructural development in close cooperation with one another" and "they should carry out infrastructural development for securing appropriate bodies that take charge of ADR, improve legal system concerning ADR early on, including laws related to arbitration, and establish comprehensive information and consulting services concerning judicial matters including ADR."

"The Interim Report" further suggested, with respect to the linkage between ADR and the litigation proceedings, that "it is necessary to strengthen the linkage in terms of procedures, human resource and information; for strengthening the linkage in terms of procedures, procedural developments should be achieved for smooth transfer of cases from ADR to the litigation proceedings or vice versa, if such transfer is reasonable", "without causing substantial harm to the public's right to access to the court." In addition, "measures such as granting the interruption (suspension) effect of prescription to ADR or allowing parties concerned to request compulsory execution based on the results obtained through ADR should be considered."

As for "strengthening of the linkage in terms of human resources," the Report suggested promotion of mutual exchange of personnel and sharing of knowledge and know-how between the courts and ADR institutes and, among ADR institutes. As for "strengthening of the linkage in terms of information", the Report suggested that courts should actively provide information on judicial precedents and know-how concerning procedural processes to ADR institutes, and contact points for comprehensive information services and consulting services, including ADR, should be enriched.

For the future development of ADR in the intellectual property field, it is important to make these efforts for the infrastructural development mentioned above. In view of the development of ADR in the intellectual property field, the following matters should be specifically

considered.

1 Infrastructural Development of ADR

The benefit of ADR is dispute resolutions according to not only mere legal finding of right or obligation but also the actual situation, and the success of ADR depends on "human resources". Therefore, a training system and a qualification system with respect to arbitration and mediation should be initiated for "human resource development". In addition, there is an argument that under Article 72 of the Practicing Attorney Law, a person who is not qualified as an attorney at law should not represent a party to dispute as a business for remuneration nor take the position of presiding ADR procedures. Others suggest that the controversy over interpretation of Article 72 prevents use of various specialists. For this reason, Article 72 of the Practicing Attorney Law should be reviewed so that specialized practitioners can be used as an arbitrator or mediator.(*10)

2 Development of Laws Concerning ADR Including Laws Related to Arbitration

In Japan, laws related to arbitration are left undevelpoed. Therefore, legislative measures should be considered for issues such as granting the interruption effect of prescription to civil conciliation and arbitration, closed-door procedure in civil arbitrations, fiduciary obligation of private mediators, and granting the executive power to civil conciliation. In addition, as mentioned in "2. Use of ADR at the Stage of Litigation Proceedings" in Section II, establishment of the procedure for submitting a dispute to arbitration under the Law for Conciliation of Civil Affairs should be considered in view of linkage between the litigation proceedings and ADR.

3 Development of Information Services and Consulting Services

For the development of information services and consulting services, measures should be taken to build a network of related organizations so that the portal site on the Internet can be developed and cases can be transferred to ADR institutes suitable for dispute resolution as well as to share ADR-related information among those organizations.

VI Conclusion

This research and study has addressed the issue of how to promote dispute settlement through ADR, by considering the litigation proceedings and ADR as an integrated system in view of achieving a "prompt and effective dispute resolution system" in the intellectual property field, in the case of disputes that should be autonomously settled between parties concerned and that are fit for settlement according to not only mere legal finding of right or obligation but also the actual situations.

A matter-of-course fact that "dispute resolution should be considered in view of actual conditions and characteristics of the dispute" are often overlooked. This research and study analyzed ideal systems and uses of ADR according to actual conditions and characteristics of intellectual property disputes at the stage before and during the litigation proceedings. Furthermore, based on the intereview survey targeting companies, the research and study suggested what roles the *Hantei* system and the Arbitration Center for Industrial Property should play now and in the future.

[On April 21, 2001, the "Arbitration Center for Industrial Property" changed its name to the "Japan Intellectual Property Arbitration Center" to expand their services to deal with disputes on all kinds of intellectual property including disputes on copyright.]

(Researcher: Shinichi Aihara)

(*10) According to the revision of the Patent Attorneys Law in April 2000, patent attorneys are allowed to conduct services as a representative in arbitrations.