

11 Problems Related to Patent Enforcement in Japan, the United States and South Korea

In recent years, there have been business models in which companies purchase patents from others despite having no intention to use the patents themselves, and enforce patent rights against companies engaged in relevant business solely for the purpose of acquiring royalties. Such enforcement is usually regarded as justifiable, but it is sometimes regarded as abusive enforcement, depending on the mode of enforcement.

Meanwhile, protection of inventions by monopolistic rights—patent rights—is essential for the development of industry, which is the purpose of patent law, and there is hope that intellectual property businesses that support the use and marketing of patent rights will develop in order to stimulate innovations. However, if any mode of enforcement were to be allowed, including abusive enforcement of patent rights, it could hinder industrial development and obstruct the sound business activities of companies in reverse.

This study focuses on problems related to patent enforcement, and investigates the current status of business models related to patent enforcement, in order to create basic materials that contribute to future studies made from the viewpoint of enforcement.

I Introduction

A patent right is an extremely powerful right that can be used monopolistically for a fixed term. However, because of this power, a patent right may excessively restrict the economic activities of others or otherwise hinder the development of industry, which is the purpose of patent law, depending on the mode of enforcement. Therefore, this study focuses on problems related to patent enforcement observed in Japan, the United States and South Korea. Then, research and analysis are conducted from the viewpoint of patent enforcement with regard to the new business models related to patent enforcement that have been drawing attention in recent years, which are dedicated to enforcing patent rights acquired from others mainly for obtaining license fees.

II Laws, Regulations and Systems Relating to Patent Enforcement

This chapter identifies and reviews some assumable problems concerning the current laws, regulations and systems related to patent enforcement in Japan, the United

States and South Korea, particularly with regard to demands for compensation for damage and demands for an injunction against infringement.

1 Japan

(1) Problems concerning demands for compensation for damage

(i) Working of a patented invention by a right holder

A majority of court precedents and academic theories in Japan have construed that a right holder who is not working the patented invention may not make the claims under the provisions of Article 102(1) and (2), but may only claim the amount equivalent to the royalty set forth in paragraph (3) of said Article. However, there are conflicting opinions as to whether a right holder who is not working the patented invention but who is working a competitive product (a product of the same kind) sold on the same market as the infringing product may make the claim under Article 102 (1) or (2).

(ii) When the patented invention relates only to a part of an entire product
Many academic theories and court

precedents state that, when the patented invention relates only to a part of an entire product, the amount of damages should be calculated by taking into consideration the extent to which the part related to the patented invention contributes to the entire product.

(iii) Amount equivalent to royalty

Recently, courts have tended to calculate the reasonable amount of royalty prescribed in Article 102(3) by taking into consideration the general amount of license fee in the same technical field, the content of the invention, and such matters as the gist of the entire oral proceedings, when there have been no royalty rates in past licensing cases or no past licensing cases to refer to.

(iv) When there are multiple infringers

When there are multiple infringers for the same product, such as the manufacturer, wholesaler and retailer of the product, a right holder may claim the amount of profits against each of these infringers as the amount of damages, under Article 102(2). Under Article 102(1), however, the amount of damages is calculated based on the amount of profit per unit of product that the right holder would have sold, which means that the profits lost throughout the whole distribution process is incorporated into the valuation for each infringing product. Therefore, it is construed that the right holder may not claim the amount of damages under paragraph (1) against each of the infringers. Under paragraph (3) as well, when a right holder grants a license, he/she is usually able to receive royalty only once throughout the distribution process of a product using the invention, so the right holder's damage is construed to have been compensated with respect to said product if he/she has received royalty from any one of the infringers.

(2) Problems concerning demands for an injunction against infringement

(i) Whether or not the right holder is required to be working the patented invention

A demand for an injunction against infringement is supported without having the

infringer satisfy subjective requirements, such as intention or negligence, as long as an infringing act is found to be continuing against a valid patent right. Therefore, the question of whether or not the patented invention is being worked is construed not to affect the right to demand an injunction against infringement. With regard to a motion for a provisional injunction against infringement, there have been cases where such motion has been denied on the basis that the right holder was not working the patented invention.

(ii) Infringing acts subject to an injunction

There is a question of the scope of acts against which an injunction may be issued. If such scope is too broad, it could give excessive protection to the right holder. The same question could arise not only for acts subject to an injunction, but also for objects subject to disposal or removal.

(iii) Objects subject to disposal or removal

When a patented invention relates only to a part of the infringer's product, there is a question of whether disposal should be admitted for the entire product. In addition, when the infringer's product, which uses the patented invention, is composed of multiple, independent components, there is also a question of whether disposal of such components should be admitted. When a patented invention relates only to a part of an entire product, the extent of contribution is often taken into account when calculating the amount of damages, and there have been many cases where disposal of the entire product was admitted after giving consideration to the extent of the contribution.

2 United States

(1) Problems concerning demands for compensation for damage

(i) Working of a patented invention by a right holder

Generally, when the right holder is not working the patented invention, he/she may not claim lost profit damages, but only claim reasonable royalty damages. However, there

have been cases where the court awarded lost profit damages to the right holder when he/she was not working the patented invention, but was working a competitive product against the infringing product.

(ii) When the patented invention relates only to a part of an entire product

Even when a patented invention relates only to a part of an entire product, in the United States, there is an established theory that calculates the amount of damages based on the retail price of the entire product, that is, the entire market value of the product. In contrast, there is also a theory that calculates the amount of damages by apportionment based on the partial value of the product relating to the patented invention, but the entire market value rule is applied more frequently in actuality.

(iii) Reasonable royalty

The reasonable royalty is calculated based on the fifteen factors indicated by the court in the Georgia-Pacific case.

(iv) Willful infringement

When the infringer's willful infringement or malicious prosecution has been established, the court may increase the amount of damages up to three times (treble damages). In the Seagate case, the court held that the establishment of willful infringement requires "clear and convincing evidence" of at least "objective recklessness" on the part of the infringer, and it raised the burden of proof on the patentee, indicating that there is no affirmative obligation for the infringer to obtain an opinion from counsel.

(v) When there are multiple infringers

When there are multiple infringers, such as the manufacturer, seller, and user, a patentee may enforce his/her patent right individually against each of these multiple infringers. However, if the full amount of damages has already been collected from a part of the infringers, neither compensation for damage nor an injunction may be demanded from the rest of the infringers.

(2) Problems concerning demands for an injunction against infringement

(i) Whether or not the right holder is

required to be working the patented invention

Until the eBay ruling, an injunction against infringement had been automatically issued if infringement was found. However, the eBay ruling set forth that four factors, which are principles of equity, must be satisfied before a court can issue an injunction against infringement.

(ii) When the patented invention relates only to a part of an entire product

The eBay ruling indicated that an injunction should not be issued when the patented invention relates only to a part of an entire product.

(3) Bill to amend the U.S. Patent Act

Amendment of the U.S. Patent Act is currently under discussion. While the reform bill includes various provisions concerning such matters as the improvement of patent quality and calculation of the amount of damages, opinions are divided between the IT industry seeking reform of the patent system and the pharmaceutical industry seeking a strong patent system.

3 South Korea

(1) Problems concerning demands for compensation for damage

(i) Working of a patented invention by a right holder

Although damages for lost profits are not awarded when the right holder is not working the patented invention, damages of an amount equivalent to royalty awarded regardless of whether or not the right holder is working the patented invention.

(ii) When the patented invention relates only to a part of an entire product

A court calculates the amount of damages by taking into consideration the extent to which the patented invention contributes to the amount of damages for the entire product, in principle.

(iii) Amount equivalent to royalty

The amount equivalent to royalty is to be decided by taking into consideration all of such circumstances as the objective technical

value of the patented invention, the content of any licensing agreement on the patented invention concluded with a third party, and the content of any licensing agreement concluded with the infringer in the past. In particular, if the right holder has concluded any licensing agreement in the past, the royalty that has been set under such licensing agreement must be taken into account, in principle.

(2) Problems concerning demands for an injunction against an infringer

(i) Whether or not the right holder needs to be working the patented invention

In principle, a right holder may exercise his/her right to demand an injunction against an infringement regardless of whether or not he/she is working the patented invention. However, in the case of a provisional injunction, the fact that the right holder is not working the patented invention is sometimes considered a negative factor in determining the need for preservation.

(ii) When the patented invention relates only to a part of an entire product

An injunction is issued against an act of working the patented invention that corresponds to the scope of claim of the patented invention. Therefore, when the patented invention relates only to a part of an entire product, an injunction is issued only for that part of the product. In some cases, the act of manufacturing the entire product, including the infringing act, is suspended as a result, but this does not mean that the effects of the patent right relating to a part of the product are extended to the entire product.

III Legal Principles that Restrict Patent Enforcement Other than the Patent Act

1 Japan

(1) Antimonopoly Act

Patent enforcement that hinders market competition may be regulated by the Antimonopoly Act. The Japan Fair Trade

Commission has released “Guidelines for the Use of Intellectual Property under the Antimonopoly Act” (hereinafter referred to as the “New Guidelines”) by fundamentally revising the “Guidelines for Patent and Know-how Licensing Agreements under the Antimonopoly Act” (hereinafter referred to as the “Old Guidelines”). The New Guidelines state that the restrictions in relation to the use of technology subject to the Guidelines include “any conducts of inhibiting any other entity from using the technology,” “any conducts of licensing other entities to use the technology to a limited scope” and “any conducts of imposing restrictions on activities conducted by other entities licensed to use the technology.” Among these, “any conducts of inhibiting any other entity from using the technology” (including cases where the royalties requested are so expensive that the licensor’s conducts are in effect equivalent to a refusal to license) is a new item that has been added to those under the Old Guidelines. Enforcement of an intellectual property right includes “conducts of inhibiting any other entity from using the technology,” such as the right to demand an injunction. However, the New Guidelines expressly indicated that, in some cases, not even such conduct may be regarded as a conduct recognized as enforcement. The New Guidelines mention that “conducts of inhibiting any other entity from using the technology” from the viewpoint of private monopolization include acts by patent pool participants, interceptions, concentration of rights, and acts related to development of a product standard. Meanwhile, such conducts from the viewpoint of unfair trade practices include a conduct where “a firm acquires the rights to a technology from the right holder, with the recognition that a competitor uses the licensed technology in its business activity and that it is difficult for the competitor to replace the technology with an alternative, and the firm refuses to grant a license for it in order to block the competitor from using the technology,” a conduct where a right holder “refuses to grant a license to stop other firms from using its technology after

urging them to use its technology through deceptive means, such as falsification of licensing conditions and making it difficult for them to shift to other technology,” and where “the technology provides a basis for business activities in a particular product market and a number of parties” “are engaging in business activities, a conduct of discriminately refusing to license a particular entity without justifiable grounds.”

(2) Abuse of rights under the Civil Code

It is said that the abuse of rights prescribed in Article 1(3) of the Civil Code may appear to be an enforcement of rights; but when considering the actual situations, it runs contrary to the social nature of rights and cannot be accepted as an enforcement of rights. This idea is aimed to respect the social functions of rights and coordinate conflicts that arise with the interests of others when enforcing private rights. Thus, when patent enforcement runs contrary to the social nature of rights and cannot be accepted as enforcement of a right, there is a possibility that the patent enforcement will not be allowed, as it is abuse of a right. The Ministry of Economy, Trade and Industry released “Rules on Software Intellectual Property Rights” in 2006. This rule indicates cases where enforcement of a software-related patent may be found to be an abuse of a right. The rule states that “evaluation and analysis of justifiability and wrongfulness of the claiming of the right” and “weighing of interests between the cases of accepting and denying patent enforcement by the patentee” should be conducted when determining whether patent enforcement is an abuse of a right. With regard to the former, the presence or absence and the extent of justifiability and wrongfulness are examined for both the subjective and objective mode of the conduct by the person claiming his/her right (and the person to whom the right is enforced). It is indicated that, when a patentee enforces a patent right solely for “the purpose of inflicting damage” or for “the purpose of gaining unfair profits,” the

enforcement of the right is very likely to be determined to lack justifiability. Furthermore, the rule mentions that a patentee’s conducts in the process leading up to patent enforcement and the manner in which he/she claims his/her right may also be taken into account as factors that support a lack of justifiability.

2 United States

With regard to application of antitrust laws to intellectual property licensing transactions, the U.S. Department of Justice and the Federal Trade Commission have released “Antitrust Guidelines for the Licensing of Intellectual Property.” Since violation standards under antitrust laws are ultimately decided by an accumulation of court judgments, these Antitrust Guidelines compile past court judgments. Further, in April 2007, they released “Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition,” in which they conduct antitrust analysis on unilateral refusals to licensing agreements, industry standards, cross licenses and patent pools, and concluded that the basic ideas set forth in the above-mentioned guidelines are appropriate.

IV New Business Models Related to Use of Patents

New business models related to use of patents have emerged in recent years. Such business models vary widely in terms of their purposes and modes of using patents. For example, in the United States, there are many companies that engage in patent-licensing activities as their main business and are mainly financed by the license fees acquired through patent enforcement (hereinafter referred to as “patent-licensing companies”). This chapter outlines the business models of patent-licensing companies and their current status.

1 Business models of patent-licensing companies

(1) Types of organizations

Many patent-licensing companies directly own or manage patents and engage in patent-licensing activities as their main business. At the same time, some relatively large patent-licensing companies establish subsidiaries and have them own or manage individual patent portfolios or have them engage in licensing activities in a dedicated manner.

(2) Status of engagement in R&D, product manufacture, and sales

Many patent-licensing companies specialize in licensing activities but are not engaged in product manufacture and sales. However, there are also patent-licensing companies that directly conduct R&D, enforce the patents acquired for the research achievements, and use the licensing revenue from such patents as their main source of revenue. Some companies used to engage in product manufacture and sales when they started their business but, due to slackening of such business or for other reasons, specialize in patent-licensing activities at present.

(3) Methods of acquiring patent rights

Many patent-licensing companies purchase patent rights from third parties and license out such patent rights. They mainly purchase patent rights from those who do not have sufficient experience or funds to carry out patent-licensing activities by themselves, such as independent inventors, small- and medium-sized companies (SMEs) and universities. Some patent-licensing companies do not become patentees or licensees, but support the licensing activities of others as consultants, or carry out licensing activities for others as agents.

The business models of patent-licensing companies can roughly be divided into the following categories from the viewpoint of the status of engagement in R&D and the method of acquiring patents:

- (a) Companies that purchase patents from third parties, such as independent inventors, and directly license out individual patents or relatively small patent portfolios as right holders;
- (b) Companies that do not engage in product manufacture or sales (or only engage in such business on a small scale), but mainly engage in R&D, and license out the patents acquired through such R&D;
- (c) Companies that used to engage in (or had planned to engage in) patent manufacture or sales when they began their business, but stopped engaging in such business (or scaled down such business) due to slackening of such business or for other reasons, and mainly engage in the licensing out of patents that remain as assets at present;
- (d) Companies that are established by independent inventors and license out patents on the inventions they have made;
- (e) Companies that collect patents, by such methods as purchasing patents from third parties, to form large patent portfolios, and license out such portfolios;
- (f) Companies that manage patents of independent investors and other companies, and support their licensing activities as consultants; and
- (g) Companies that actively engage in patent licensing as agents for independent investors and small companies.

(4) Technical fields and technical contents of the target patent rights

Many patent-licensing companies handle patents in such fields as electrical machinery, communications, and information. While this may be attributed to various reasons, one assumed reason is that it is easier to acquire and license out patent rights in such fields due to the large number of patent rights involved in a single product. On the other hand, few patent-licensing companies target patent rights in the biotechnology and pharmaceutical fields.

(5) Modes of patent enforcement

As patent enforcement is the core business of patent-licensing companies, the mode of patent enforcement can be regarded as an important strategy that affects their business. Since their main source of revenue is the license fees acquired through patent enforcement, they adopt various strategies in order to acquire more license fees.

(i) Approach and timing of patent enforcement

Companies generally send warning letters in advance when enforcing patent rights, as do patent-licensing companies. However, there are rare cases where they will file a patent infringement lawsuit without sending a warning letter in advance. This is a strategy to make the opposing party consent to the licensing at an early stage. Meanwhile, patent-licensing companies often enforce patent rights at the stage when the target technology has widely spread throughout the market. The reason is considered to be that the wider the technology or product has spread in the market the higher license fees the companies are able to acquire.

(ii) Target licensees

There are cases where patent-licensing companies adopt a licensing strategy to target multiple companies as their licensees. When there are multiple target licensees, patent-licensing companies sometimes enforce the patent right against each of such target licensees one by one rather than enforcing the right against all of them at once. This strategy uses the license fees acquired from the first few target licensees to fund the disputes (lawsuits) against the other target licensees. This strategy also aims to use the fact that the first few target licensees have consented to the licensing as material for raising the effectiveness and the value of the patent right, and to carry out the licensing negotiations and lawsuits with the other target licensees more advantageously.

(iii) Infringement searches

In order to acquire license fees by patent enforcement, it is necessary to persuade the opposing party by proving that one's own patent right is being infringed by that party.

Therefore, the search on the infringement status is the most important and fundamental element in enforcing a patent right. Thus, some patent-licensing companies have legal experts, such as lawyers and patent attorneys, and/or engineers who are well-versed in the technology as in-house staff to conduct searches on the infringement status. However, since infringement searches require time and money, it has been pointed out that some patent-licensing companies enforce patent rights without conducting sufficient searches.

(iv) Amount of license fee

Generally, a person who enforces a patent right for the purpose of acquiring a license fee tries to acquire as high a license fee as possible. This tendency is more noticeable in the case of patent-licensing companies, which depend on license fees for revenue. However, the amount of license fee demanded by patent-licensing companies differs depending on the strategy they take. For example, when they target multiple companies as licensees and approach them one by one, in approaching the first target, the priority will be placed on concluding the licensing agreement, rather than on acquiring a license fee. Thus, the demanded amount of license fee is sometimes relatively low so as to reach settlement at an early stage. There is also an aim to obtain high license fees by acquiring low license fees from multiple companies. On the other hand, when targeting one or two companies as licensees, patent-licensing companies may demand a high license fee against large, highly profitable companies. In either case, patent-licensing companies sometimes demand a moderate amount that the target licensee is able to pay but would be more reasonable than starting a lawsuit, by giving consideration to the financial strength of the target company and the litigation costs, for the purpose of early and easy acquisition of the license fee.

(v) Other licensing terms

Some patent-licensing companies demand that a provision on actively making public the conclusion of the licensing

agreement be included in the licensing terms. This may be due to the fact that a licensing agreement has been concluded is information that a patent-licensing company wants to actively make public, as it represents a business achievement of the patent-licensing company. Another assumed reason is that the fact of having concluded a licensing agreement will be an advantageous factor in subsequent licensing negotiations.

(v) Filing of a patent infringement lawsuit

A patent infringement lawsuit is filed when no agreement has been reached in licensing negotiations or when applying pressure on the opposing party in order to acquire a license fee at an early stage. In a patent infringement lawsuit, it is common to demand not only damages but also an injunction. For patent-licensing companies, the main purpose of filing such lawsuit is to acquire money to cover damages, but they sometimes demand an injunction in order to persuade the opposing party to pay a license fee and achieve early settlement. Patent-licensing companies tend to hire lawyers based on a contingency fee basis. Therefore, compared to the general cases where companies hire lawyers by the hour and have to pay a large amount in costs because of it, patent-licensing companies do not bear this large amount in costs.

2 Patent troll problem

While use of patent rights is expected to further expand in the future with the emergence of IP business operators who promote use of patents, the problem of abusive patent enforcement (patent troll problem) has also surfaced. Although no clear definition exists at present, a patent troll is considered to be a “person who acquires a patent but does not manufacture anything using that patent and who, after another company manufactures a product and places it on the market, files a lawsuit to suspend such production or intimidates the company to that effect in order to gain a large amount of settlement money,” and this is presenting a big problem. Generally, disputes related to

patent rights often arise between businesses in the same industry, in which case efforts are made to settle the disputes through cross licensing. However, as patent trolls do not carry out R&D or production themselves, disputes cannot be settled through cross licensing. This is the major reason that patent trolls are posing a threat to companies. Another reason is that, while patent trolls adopt various business models, some of them demand high amounts of licensees using all kinds of means, such as demanding an injunction, based on patent rights of which validity is doubtful, without even sufficiently proving the infringement status.

(1) United States

As the eBay case and other lawsuits related to patent trolls were filed in succession, the patent troll problem drew a lot of attention in the United States. At the same time, problems in the current U.S. patent system were highlighted, including poorer quality patents and the standards for calculating damages. At present, the U.S. Congress is deliberating a bill to amend the U.S. Patent Act, which covers matters concerning the patent troll problem. In particular, companies in the IT field, where the patent troll problem is more conspicuous, are strongly calling for revision of the current patent system, stating that abuses of patent rights are hindering the economy and innovations.

(2) South Korea and Japan

The patent troll problem is not as conspicuous in South Korea and Japan as in the United States. However, the patent troll problem has begun to draw attention since many Korean and Japanese companies have been facing patent infringement lawsuits in the United States. In Japan, for example, an Expert Research Committee on the Strengthening of Competitiveness through Intellectual Property was established in the Intellectual Property Strategy Headquarters of the Cabinet Secretariat, and the committee has taken up the patent troll problem mainly seen in the United States as a subject of

study related to the information and communications field. A report compiled by a project team for said field points out that patent trolls' acts to acquire high amounts of license fees and settlement money is posing a problem.

3 Differences between patent enforcement by patent-licensing companies and that by general companies

It became clear that the purpose and mode of patent enforcement by patent-licensing companies differ from those of patent enforcement by general companies in a number of respects. The presence of such differences is one of the reasons that various discussions have been held on the patent troll problem. Indeed, many people believe that there is a lack of balance between the advantages gained by enforcing patent rights and the disadvantages suffered from being enforced patent rights.

V Points to Note upon Patent Enforcement

This chapter summarizes the points to note upon patent enforcement in Japan, in light of past court judgments, "Rules on Software Intellectual Property Rights" and "Guidelines for the Use of Intellectual Property under the Antimonopoly Act." The following modes of patent enforcement are listed as points to note:

- (a) Demand for a license fee (an amount equivalent to royalty) against multiple persons involved in the same product;
- (b) Demand for a license fee for the entire product based on a patent right relating only to a part of the product;
- (c) Claim of lost profit damages by a person not working the patented invention;
- (d) Demand for a high license fee that exceeds the objective value of the patent right and demand for an injunction;
- (e) Demand for a license fee so high that it is in effect a refusal to license;
- (f) Demand for acceptance of licenses for

patents other than the essential patent, in line with the licensing of the essential patent;

- (g) Motion for a provisional injunction by a person not working the patented invention; and
- (h) Motion for a provisional injunction lacking a factual or legal basis with regard to the right or legal relations.

VI Summary

Business models related to use of patent rights, which bring about plenty of benefits in terms of marketing and effective use of intellectual property, are expected to further develop in the future. On the other hand, drawing attention as the so-called patent troll problem are acts of not manufacturing or selling products themselves but solely enforcing patents acquired from others and gaining license fees by sometimes using such means as demanding an injunction against product manufacture or sales. Under such circumstances, in the United States, the Supreme Court judgment in the eBay case held that the question of whether or not an injunction should be issued should be determined based on principles of equity, indicating a certain response to the patent troll problem. However, it was revealed that the factors behind the patent troll problem not only included the threat of an injunction, but also the problem of cost. In other words, due to the high litigation costs in the United States, such as the lawyers' fees, companies are reluctantly paying the license fees without arguing in lawsuits. This is considered to be a huge problem since it means allowing patent enforcement that is irrelevant to the validity of the patent right or the infringement status.

Some people regard any patent enforcement by a person not engaged in patent manufacture or sales to be patent trolling. However, the problem of patent trolling is in the mode and results of the patent enforcement rather than in the entity enforcing the patent. Thus, it is considered to be appropriate to regard the fundamental

problem to be “patent enforcement aimed at acquiring money that exceeds the value of the invention by applying pressure in terms of an injunction or costs through filing an infringement lawsuit, such as a lawsuit seeking an injunction, without relying on an appropriate determination of value of the original invention.” The following can be

derived by regarding such mode of patent enforcement to be a problem and reviewing how it relates to issues that can be expected to occur in the patent system and operation thereof.

<Mode of enforcement>	<Issues in the patent system and operation thereof>
By applying pressure in terms of an injunction or costs through filing an infringement lawsuit, such as a lawsuit seeking an injunction	<ul style="list-style-type: none"> - Semi-automatic issuance of an injunction - High litigation costs (lawyers’ fees) - High amount of damages - Low foreseeability of the litigation outcome
Without relying on an appropriate determination of value of the original invention	<ul style="list-style-type: none"> - High amounts of license fees/damages - Poorer patent quality
Patent enforcement aimed at acquiring money that exceeds the value of the invention	<ul style="list-style-type: none"> - Conflict with the purpose of the patent system - Hindrance to innovations

The fact that the above-mentioned issues in the patent system and operation thereof are deeply related to the present U.S. patent system suggests that patent trolling is presenting a big problem in the United States. Some of these issues are currently discussed in the bill to amend the U.S. Patent Act, so attention should be paid to the future developments. On the other hand, these issues have not surfaced in Japan as conspicuously as in the United States. However, in Japan, for instance, the right to demand an injunction is a right to which a patentee is naturally entitled; thus, if an infringement is found, an injunction is issued, in principle. As the legal system thus differs between Japan and the United States, the determination standards indicated by the Supreme Court judgment in the eBay case cannot be directly imported to Japan, but there is at least a need to examine whether or not provisions on abuse of rights should be applied. In addition, the amount equivalent to royalty and the standards for calculating the extent of contribution in the case where a patented invention relates only to a part of an entire product are currently not quite clear; so these elements should be made

clearer. There is also a question of whether a demand for an injunction against the entire product should be upheld in the case of enforcement based on a patent that relates only to a part of the entire product. In order to promote industrial development and innovations, which are the objectives of patent law, it is essential to precisely protect patentees and their inventions and stimulate incentives for technological development. To this end, there is a need to strengthen protection of patent rights. However, if any mode of patent enforcement were allowed, it could hinder industrial development in reverse. In order for Japan to promote innovations and strengthen its international competitiveness in the future, it would need to develop infrastructure that facilitates marketing and use of patents, such as achieving sound expansion of the patent-licensing market.

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