

6 Establishment and Operation of a Patent System Conducive to Patent Stability in Infringement Lawsuits (*)

The Cabinet decision "Basic Principles Concerning the IP Policy" was adopted on October 7, 2013. In this document, the government declared its determination to examine whether the IP dispute settlement system is working properly as a whole and to take measures to further enhance the system in terms of its patent dispute settlement function in order to strengthen Japanese industrial competitiveness. In order to create one of the world's most sophisticated IP systems, it is necessary to improve the system from the perspective of broadening the spectrum of users (special support for Small-and-Medium-sized Businesses (SMBs) and venture companies), promoting innovation (strategic support to turn technologies and R&D capabilities into assets), and supporting global business activities (grant of stable rights that are effective in and outside Japan).

On the other hand, Japan's numbers are lower than Western countries' in terms of patent infringement lawsuits and the patentee's win rate in infringement lawsuits. It has been pointed out that one of the reasons for this difference is that, since the rendering of the Supreme Court judgment for the Kilby case, the defense of invalidity has been permitted to be raised in an infringement lawsuit under Article 104-3 of the Patent Act (enforced on and from April 1, 2005), which has increased the burdens on the patentee in an infringement lawsuit. Consequently, this has prevented patentees from fully exercising their rights. This situation might be discouraging companies from filing patent applications and hindering the promotion of innovation.

In this research, we identified specific needs of Japanese users with regard to the establishment and operation of a patent system conducive to patent stability in infringement lawsuits, etc. and also analyzed similar systems in other countries. Based on the findings, we discussed how to improve the patent stability evaluation system for patent infringement lawsuits in Japan.

I Introduction

1 Background of this research

The JPO has been struggling to achieve its most important goal of "11-month first office action pendency" over the past 10 years. During this period, we have seen significant changes in the economic and social situations, which must always be reflected in the national IP policy. As a result of these changes, it has become increasingly important to enhance the IP strategy in order to strengthen Japanese companies' competitiveness and to raise the standard of living of Japanese people. "Japan Revitalization Strategy -- Japan is Back," adopted by the Cabinet on June 14, 2013, states that the IP strategy should be fundamentally enhanced in order to promote scientific and technological innovation. On June 7, 2013, the Cabinet adopted the "Basic Principles Concerning the IP Policy," which states that the main objective is to "examine whether the IP dispute settlement system is working properly as a whole and to take measures to further enhance the system in terms of its patent dispute settlement function."

In view of the facts that the number of

IP-related lawsuits is extremely small in Japan (187 cases in Japan, 5,189 cases in the U.S., 9,680 cases in China in 2012) and that the patentee's win rate (on the basis of the number of judgments) in patent infringement lawsuits is relatively low in Japan in comparison with the U.S., and France (the provision concerning the presumption of validity and the triple damages system are explained as examples of IP-related litigation systems in other countries) (Chapter I-2 (5) of the IP Policy Vision), it may be said that the dispute settlement function of the Japanese patent system has hindered smooth exercise of rights. In particular, thanks to the Supreme Court judgment for the Kilby case (April 11, 2000) and Article 104-3 of the Patent Act (enforced on and from April 1, 2005, the provision concerning patent invalidity defense), the defense for preventing the exercise of rights has been stipulated by law. As a result, in a patent infringement lawsuit, the court is allowed to determine the validity of the patent. There is a concern that the resulting increase in the burden of defense on the part of the patentee in an infringement lawsuit might have discouraged inventors from filing patent applications and, consequently, hindered the promotion of

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innovation in Japan.

On the other hand, in the U.S., where the defense for preventing the exercise of rights has been stipulated by law, many IP-related lawsuits are filed. This is attributable, in part, to the establishment of a legal provision concerning the presumption of patent validity (Section 282 of the 35 U.S. Code) based on the idea that, in a patent infringement lawsuit, the court should hand down a judgment of patent invalidity only with great care. If this provision is applied to a case, the presumption of validity may be overturned only by clear and convincing evidence. The introduction of a similar provision to Japan could resolve the aforementioned concern. Meanwhile, further discussions would be necessary from various perspectives in order to examine whether the introduction of such a provision could facilitate exercise of rights and promote innovation in Japan and how to integrate it into the Japanese patent system and legal framework.

2 Roles of patent rights in promoting innovation

It has been reported that innovation is likely to occur when venture activities increase and that, while there are two types of innovation, namely, innovation that creates a new market and a new industry and innovation to satisfy the increasingly sophisticated market and customer needs, the innovation achieved by the existing companies is likely to fall under the latter type, which satisfies the sophisticated market, etc., whereas the innovation achieved by entrepreneurs (venture companies) is much more likely to fall under the first type, which creates a new market and a new industry. In light of these reported facts and the fact that the creation of new industries is essential for the future development of Japan, not only large companies but also entrepreneurs and SMBs such as venture companies are indispensable for the promotion of innovation.

Furthermore, the results of the research conducted in Western countries have revealed that SMBs that detect infringement would not be able to fully exercise their rights. This suggests that the situation in Japan is even more serious because the exercise of rights is further prevented by the high loss rate in infringement lawsuits in Japan.

The Japanese IP environment, which may be characterized by low patent stability despite strict patent examination practices, has made it difficult for SMBs to create portfolios and increased the

risk of their involvement in IP-related lawsuits due to the instability of the portfolios that they managed to create.

In sum, the situation in Japan may be considered to be extremely unfriendly to SMBs such as venture companies trying to conduct continuous business in a new market or a new industry although it is important to let them play important roles as promoters of innovation.

3 Example cases where innovation was protected by patent rights (pharmaceuticals)

Mevalotin (registered trademark) is commonly used as a drug to treat hyperlipidemia. This drug is one of the main drugs produced by Daiichi-Sankyo Co., Ltd., whose sales of this drug reached 128.8 billion yen (domestic sales) in FY1999 and 110.7 billion yen in FY2002. However, since the expiration of the patent in Japan in 2002, 23 companies have entered the domestic market since 2003. The patent also expired in Germany and the U.K. in FY2004 and in the U.S. and France in 2006. Moreover, a generic drug maker developed a technology to circumvent the process patent. Since the expiration of the patent, the sales of the drug have dropped to about 50% of the peak sales. This indicates that patent protection of innovation is extremely important for the recovery of R&D investments.

For example, Takeda Pharmaceutical Co., Ltd. had 36 patent applications laid open and invested 453.0 billion yen in R&D activities, while Astellas Pharma Inc. had 26 patent applications laid open and invested 159.1 billion yen in R&D activities. This shows that the number of applications is relatively small compared to the amount of R&D costs.

As shown by the aforementioned example case of Mevalotin, however, in the pharmaceutical industry in particular, each patent contributes greatly to the successful recovery of R&D investments through the sale of pharmaceutical products. The instability of such a small number of patents owned by these companies would prevent innovation from receiving proper protection and would hinder the promotion of innovation. Therefore, in this industry, patent stability is naturally considered to be extremely important.

The importance of patent stability is also felt by small and midsize venture companies, which have to protect their innovations and business activities by a relatively small number of patent

rights (the number of domestic patents is 18 per small and midsize company, 208 per large company).

4 Method of this research

(1) Discussions at the committee

We established a committee consisting of a total of five persons, Mr. Naruo Takakura, Professor of the Law School of Meiji University, serving as the chairperson, and also persons with relevant knowledge and experience, persons with practical experience, and experts from industrial circles. The committee held a meeting three times in order to discuss the issues related to the system conducive to patent stability by having committee members examine and analyze related issues and give advice from the perspective of experts.

(2) Domestic interview survey

A domestic interview survey was conducted mainly on companies that experienced patent infringement lawsuits in Japan and the U.S. in recent years, namely, 13 large companies, 4 SMBs, 2 law firms, and 2 persons with experience in judicial practices. In the survey, we collected information about the current use of patent rights and the issues related to the current systems concerning patent stability and patent infringement lawsuits and asked opinions about the introduction of new systems.

(3) Overseas questionnaire survey

We conducted an overseas questionnaire survey on 11 organizations such as IP Offices, courts and law firms in the U.S., Germany, the U.K., South Korea, etc. concerning the operation of the system for patent stabilization and related issues in each country. We also conducted an overseas questionnaire survey to collect information about the issues, etc. related to the Japanese system for patent stability.

(4) Domestic and overseas literature study

By using books, academic papers, research papers, Council's reports, database information, online information, etc., we examined, organized and analyzed literature useful for this research.

II Issues related to the current law concerning validity evaluation

Under the current system, a patent right is established and registered after examination by

the JPO. Any person who questions the validity of a patent right may file a request with the JPO for an invalidation trial under Article 123 of the Patent Act. In the case where the JPO makes a decision of invalidity in an invalidation trial, if the decision becomes final and binding, the decision would become effective against third parties. If that person is not satisfied with the JPO decision of the invalidation trial, he or she may file a lawsuit to seek rescission of the JPO decision.

On the other hand, since the rendering of the so-called Kilby judgment in 2000, under Article 104-3 of the Patent Act, which was newly established in the 2004 legal revision, any court hearing a patent infringement lawsuit has been allowed to determine the validity of the patent in the course of infringement proceedings. In an infringement lawsuit, if the court rules that "the patent shall be invalidated by a patent invalidation trial," the patentee, etc. will be prohibited from exercising his/her patent right against the opponent of the lawsuit (however, this ruling would not be effective against third parties.).

Meanwhile, an infringement lawsuit and an invalidation trial may be conducted simultaneously. In order to prevent inconsistency between an infringement lawsuit and an invalidation trial in terms of evaluation of patent validity, measures have been taken to improve the design and operation of the system. However, in the case where the validity of a patent is determined under two different systems (so-called double track), namely, an infringement lawsuit and an invalidation trial, the patentee is required to win the confirmation of validity under two different settings. Consequently, the patentee must bear a heavy burden. Furthermore, in an infringement lawsuit, chances are high that the patent will be found invalid. Either rightly or wrongly, the exercise of patent rights is restricted as a result. Even in some court cases before 2000, some courts hearing patent infringement lawsuits imposed restrictions on the exercise of patent rights in practice by interpreting that the scope of patent is limited to the embodiments in some cases such as the case where a publicly known technology may be considered to be included in the invention described in the patent claims based on a literal interpretation of the claims. As mentioned above, the court hearing a patent infringement case has been allowed to determine patent validity since the rendering of the Kilby judgment, where the court found that the court hearing a patent infringement case is authorized to determine the validity of the disputed patent,

and the subsequent establishment of Article 104-3 of the Patent Act.

On September 30, 2005, the Intellectual Property High Court (2005 (Ne) 10040, the appeal case to seek an injunction against patent infringement) found the icon patent of Matsushita Electric Industrial Co., Ltd. invalid and revoked the judgment in prior instance handed down by the Tokyo District Court, which issued an injunction against the Japanese word processor software "Ichitaro" and the graphic software "Hanako" manufactured and sold by JustSystems. The Intellectual Property High Court also dismissed a claim for an injunction filed by Matsushita.

Regarding patent infringement lawsuits in Japan, it has been pointed out that "the number of infringement lawsuits has decreased rather than increased since around this time."

Furthermore, as an opinion from an overseas user, it has been reported that an executive of the American Intellectual Property Law Association (AIPLA) pointed out that "It would be meaningless to file patent applications in Japan where the defense of invalidity can be easily raised, preventing patentees from fully exercising their rights."

Also, as other opinions from overseas users, it has been reported that, in the overseas questionnaire survey conducted in this research, some respondents said that the patentee's high loss rate in patent infringement lawsuits is one of the reasons why they refrain from filing applications in Japan (U.S. companies, offices in Germany and South Korea).

III Comparison between countries with regard to the validity evaluation system for patent infringement lawsuits

1 System in the U.S.

Patent validity can be evaluated through any of the five procedures under the current law. The USPTO offers four procedures that differ from each other in terms of the examination standards and the person authorized to conduct a validity evaluation, namely, (i) reexamination, (ii) the system of Post-Grant Review (PGR), (iii) the system of filing oppositions against Business Method Patents (CBM), and (iv) Inter Partes Review (IPR). In addition, the federal district courts are also authorized to evaluate patent validity in the case where the validity of a patent

is disputed (usually in a patent infringement lawsuit). In order to fulfill the validity criteria, it is necessary to satisfy Section 282 of 35 U.S. Code by "clear and convincing evidence (at least 80:20)," whereas the USPTO, to which such rule of validity presumption is not applied, has adopted the practice of requiring the "preponderance of the evidence (at least 51:49)." In order to prevent hindsight from affecting the evaluation of an inventive step, courts require the indication of teaching, motivation or suggestion in references in order to combine those references. These requirements were clarified in the KSR judgment. When it comes to infringement lawsuits in the U.S., high trial costs and instability thereof are some of the reasons why the parties to a lawsuit choose to settle the dispute.

2 System in Germany

Any person may file an opposition with the patent office within three months after the grant of a patent (in the case of a German patent) or within nine months (in the case of a Europatent). After these opposition periods (as long as no other opposition procedures are pending), any person may dispute the validity of a German patent or the German part of a Europatent by filing a lawsuit with the Federal Patent Court for invalidation of the patent. If the Federal Patent Court finds a patent valid, the decision would be binding only to the parties to the case. Therefore, any third party may still file a lawsuit to seek a patent invalidity judgment. If a patent is found invalid, whether in whole or in part, the decision would be effective against third parties. The decision made by the Federal Patent Court may be brought before the Federal Supreme Court. In Germany, the rapid infringement proceedings and the slow patent validity proceedings cause a time lag between the two types of proceedings, which has created a system that is advantageous to patentees. This system has encouraged the patentees of relatively weak patent rights to file lawsuits against infringers. On the other hand, if a patent is subject to patent validity proceedings, the court in charge of the patent infringement lawsuit may suspend the infringement proceedings under Article 148 of the Code of Civil Procedure. In Germany, courts always encourage settlement between the parties concerned. In the case of a simple dispute over whether the alleged infringement actually occurred or not, a court would simply determine whether the alleged infringement actually occurred or not. However, a

court would encourage settlement if either party has an advantage over the other.

IV Lawsuits and patent stability in Japan

1 Lawsuits

(1) Current situation

In Japan, the number of patent infringement lawsuits has stayed at around 200 in recent years. This is relatively small in comparison with the numbers in the U.S. and China, due probably to such factors as the high risk for patentees to lose lawsuits, the tendency of Japanese people to avoid lawsuits, high court costs, low damages, and difficulty obtaining a useful patent. The patentee's loss rate in lawsuits has been around 80% since 2000. As far as patent infringement lawsuits are concerned, the rate has been on the rise since the rendering of the Kilby judgment and stayed around 70 to 80% since 2004. In slightly less than 50% of those cases, a request for an invalidation trial was filed. This indicates that the burdens on patentees have been increasing. In the case of a patent infringement lawsuit, if the defense of invalidity is raised, the court would evaluate the validity of the patent in 60 to 70% of the cases and find the patent right invalid in 70 to 80% of those cases.

On the other hand, the number of cases where a request for an invalidation trial was filed with the JPO has been on the decline and reached slightly less than 200 in 2012. The patent invalidation rate has also been declining, reaching about 35% in 2012. The rate of upholding the JPO decision in a lawsuit to seek rescission of the JPO decision with regard to patent validity has stayed at around 70% since 2008, regardless of whether the JPO decision in question recognizes patent validity or patent invalidity.

In the case of patent infringement lawsuits in Japan, 64% of the plaintiffs were SMBs (44 out of 65 patent infringement lawsuits (first instance) in which the court rendered a judgment in 2010 or 2011). As far as the lawsuits that SMBs filed against SMBs are concerned, the plaintiff's win rate is 25%. However, as far as the lawsuits filed by SMBs against large companies are concerned, the plaintiff's win rate is about 10%. This low rate suggests that SMBs are having difficulty in protecting their business by patents.

(2) Decrease in the number of lawsuits

In Japan, the number of patent infringement

lawsuits had stayed around 200 to 250 until 2005 and, since then, the number has been on the decline although the number showed a slight increase in 2011. This decline was probably attributable to the establishment of Article 104-3 of the Patent Act, the difficulty in winning lawsuits, the remaining impression of the situation around 2004 where the inventive step criteria imposed by the IP High Court were difficult to meet, the shrinking Japanese market, the increase in the number of companies that conduct prior art searches to avoid infringement, the conclusion of license agreements with competitors in Japan, the filing of lawsuits in the U.S. because of the low possibility of winning lawsuits in Japan, and the smallness of the amount of damages and royalties. Regarding the reasons for patentees' defeats during the period from 2006 to 2009, about 50% of the defeats can be attributed to the recognition of patent invalidity. In recent years, however, only 27% of the defeats can be attributed to the recognition of patent invalidity.

(3) Amount of damages

The amount of damages approved by the court is five million yen or less in about 20% of all of the cases. The amount is 10 million yen or less in about 35% of all of the cases. Ten million yen is considered to be the attorney's fees that would arise in a patent infringement case (in an example case where a claim for the payment of 100 million yen is filed).

(4) Settlement after the filing of an infringement lawsuit

About 50% of the patent infringement lawsuits are resolved through settlement (34 out of 74 cases filed with district courts in 2012).

On average, in about 61% of the IP-related cases settled at the 29th Civil Division of the Tokyo District Court, settlement was made in such a way that may be regarded as in favor of the right holders. It has been reported that the actual plaintiff's win rate is about 50% including the upholding judgments that have led to the plaintiffs' winning of the cases. This data is about IP-related cases in general, not limited to patent-related cases. Since the plaintiff's win rate is higher than the rate calculated only for patent-related cases, the rate of settlements in favor of the plaintiffs is expected to be slightly lower than this rate. Furthermore, in an interview survey conducted on those engaged in IP-related judicial practices, the respondents said that

slightly less than 50% of the settlements are considered to be in favor of patentees.

Moreover, it has been reported that about 90% of the cases are solved through settlement in the U.S., for example. In the overseas interview survey, the respondents said that, in many of those cases, the suspected infringers are considered to have paid a large amount of monetary compensation to the patentees.

2 Patent stability

This research has revealed that patent rights are effectively used not only by large companies but also by SMBs (13 out of 13 large companies, 4 out of 4 SMBs). However, the interview survey conducted on companies has revealed that many of them are concerned about insufficient patent stability (7 out of 12 large companies, 4 out of 4 SMBs). Since low patent stability would result in insufficient patent protection for business, companies, especially SMBs and venture companies, which have to protect their business by a small number of patents, emphasized the importance of patent stability ((the number of patents owned by companies) 18 patents in the case of SMBs and 209 in the case of large companies).

3 Double-track validity evaluation system

(1) Predictability of evaluation results

In the domestic interview survey, many respondents said that, in comparison with JPO invalidation trials, the results of the validity evaluation in patent infringement lawsuits are less predictable.

(2) Inconsistency between JPO decisions in invalidation trials and court judgments in infringement lawsuits

Currently, there is a provision to prevent any inconsistency between the JPO and courts in terms of validity evaluation results. However, such inconsistency has actually occurred in some cases. In the domestic interview survey, some respondents said that a certain degree of inconsistency has been anticipated since the establishment of the two-track evaluation system.

In the research conducted by the Japan Intellectual Property Association (JIPA) on the issue of invalidity defense raised in infringement lawsuits, an analysis was conducted on the judgments handed down for the cases where such inconsistency occurred despite the use of the

same evidence. JIPA found that the JPO has a tendency to focus on "structure," whereas courts have a tendency to focus on "problem, function and effect." It has been reported that it is desirable to use such logic that can win a court judgment of invalidity in a judicial trial as well as a JPO decision of invalidity in a JPO invalidation trial and that the defense of patent invalidity raised in a trial is important because any person who wins an infringement lawsuit would not be ultimately obliged to seek an injunction etc. even if the JPO has already recognized the validity of the patent in a JPO invalidation trial.

(3) Use of the JPO examination guidelines by courts

Some member of the committee established for this research pointed out that it is necessary for courts to respect the JPO examination guidelines, which reflect the opinions of companies, experts, etc. and to take them into consideration when examining the defense of invalidity unless those guidelines are illegal. In the interview survey, some companies submitted a similar opinion, saying that courts and the JPO should, at least, use the same validity evaluation criteria.

V Discussions on the proposed system conducive to patent stability and the issues that need to be solved before introduction of the system

1 Introduction of the U.S.-type "provision on the presumption of validity"

Under the current Japanese Patent Act, it is interpreted that any patent registered after the application examination procedure may be presumed to be valid on the grounds that the examiner who examined the patent was unable to find any reasons for refusal, which are almost the same as the reasons for invalidation, and that the validity is publicly certified by the patent registration. Some committee members said that it would be useful to establish a provision on the presumption of patent validity, like the one established in the U.S., and to explicitly specify to that effect in order to give some guidance to judges and to show the users of the patent system Japan's policy of respecting the validity of registered patents. However, some other committee members said that such legislation

would be unnecessary because patent validity may be presumed based on the aforementioned interpretation.

Regarding the effect of introducing the provision on presumption of validity into the Japanese Patent Act, some committee members said that, like in the U.S., an invalidation judgment made by the court hearing an infringement lawsuit should require a higher level of the standard of proof than the level required in the case of a JPO decision of invalidity in a patent invalidation trial. On the other hand, some other committee members said that the level of the standard of proof should not be easily changed because the litigation system in Japan is different from the one in the U.S.

2 Revision of Article 104-3 of the Patent Act (Proposal of adding the "clear" requirement and other proposals)

At the committee established for this research, some committee members supported the addition of the "clear" requirement to Article 104-3 of the Patent Act, by saying that it would impose excessive procedural burdens on patentees if any matter that has already been examined by JPO examiners, such as the fulfillment of the requirement for amended, has to be re-examined as a result of the defense of patent invalidity. Some committee members opposed such additional requirement, by saying that the legislative history of this Article shows that the introduction of the "clear" requirement adopted by the Supreme Court judgment for the Kilby case was refused in the 2004 revision, and that such requirement shall not be added by conducting another revision, that the "clear" requirement would not make much difference in terms of the enforcement of the provision in practice, that it may be interpreted that the current provision seems to clearly stipulate that the same criteria shall be used by a court hearing an infringement lawsuit when determining whether any reasons for invalidation exist or not and also by the JPO when making a JPO decision in a patent invalidation trial, and that it is not appropriate to repeatedly modify the provision within a short period of time, and that, based on the patent invalidity theory, it is impossible to support the idea of imposing the "clear" requirement on a person raising the defense of patent invalidity. On the presumption that the "clear" requirement is introduced, there would be two possible consequences: (i) the reasons for

invalidation should be examined only if they are related to the issue of novelty and should not be examined if they are related to the issue of a subtle, highly specialized inventive step and (ii) the reasons related to the issue of inventive step should not be excluded, while the defense of patent invalidity should be prohibited if the existence of an inventive step is not clear to the judge. In the case of any reasons for invalidation other than the reasons related to the issue of novelty or the issue of inventive step, there would be two possible consequences: (i) restrictions should be imposed on the types of reasons for invalidation that may be asserted and (ii) restrictions should be imposed based on the determination of the judge.

VI Conclusion

The results of the interview survey and the questionnaire survey have revealed that, in response to the question about the importance of patents and the necessity for patent stability, both large companies and SMBs responded that while devising their business strategies, they consider it important to protect their business operations by patent rights and to promote innovation by use of patent rights (Domestic interview survey: 13 out of 13 large companies, 4 out of 4 SMBs). Many companies consider that patent rights have lost sufficient stability since the enforcement of Article 104-3 of the Patent Act (7 out of 13 large companies, 4 out of 4 SMBs). Furthermore, many companies (8 out of 13 large companies, 3 out of 4 SMBs) expressed their willingness to introduce new measures to enhance patent stability.

Also, with regard to the specific measures to enhance patent stability from the perspective of operational practices, respondents in the interview survey and questionnaire survey as well as committee members in this research submitted the following opinions: (i) the JPO examination guidelines, which were created based on the accumulated court precedents and the opinions of industrial circles, experts, etc., should be respected in trials as much as possible, (ii) the JPO decision for each case should be respected in relevant judicial trials as much as possible because such a decision has been made by JPO technical experts, (iii) it would be desirable if both the JPO and courts adopt the same level of judgment criteria to a certain extent.

Regarding the introduction of legal measures to improve patent stability, there are three

possibilities: (i) the establishment of a provision on presumption of validity applicable to patent infringement lawsuits (as is the case with Section 282 of the 35 U.S. Code, the newly established provision would permit the invalidity defense only if the existence of the reasons for invalidation can be proved by clear and convincing evidence.), (ii) the addition of the "clear" requirement to Article 104-3 of the Patent Act (to permit restrictions on the exercise of rights only if the reasons for patent invalidation clearly exist), and (iii) the introduction of legal measures such as restrictions on the reasons for invalidation. Some of the respondents in the interview survey said that it would be desirable to hold discussions on the effects, reasonableness, related issues, etc. of the introduction of these legal measures from the perspective of enhancing patent stability.

We had discussions on these measures and found that, in sum, the introduction of any of these measures would be effective to a certain degree (the effect of enhancing patent stability) although it would cause various issues. The effects include some direct effects such as an increase in the accuracy of validity evaluation as a result of encouraging judges to conduct evaluations more carefully and also include some indirect effects such as the promotion of innovation by use of patent rights as a result of showing Japan's pro-patent policy to people in and outside Japan (in particular, showing the importance of IP strategies to Japanese companies).

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