

Hantei Proceedings

I. Introduction to the Hantei System

The Hantei system is designed to permit any party to request that the Japan Patent Office (JPO) provide an official opinion (advisory opinion) regarding, for example, in the case of a patent, whether an "item in question" falls under the technical scope of a patented invention. The Hantei System is not limited to the provision of an official opinion regarding an "item in question" in a patent, and also includes, using the JPO parlance, a "method in question", a "description in question", a "design in question", a "trademark in question", etc.

Hantei results are not legally binding on defendants or third parties. However, Hantei is viewed as an official opinion of the JPO, and accordingly, Hantei is generally considered to be an expert opinion.

The Hantei system is designed to judge cases in a neutral manner and provide results of the investigation rapidly (in some cases, within three (3) months from the date on which the request for Hantei was filed). *Hantei* trial examinations are generally conducted solely on the basis of submitted documents. However, oral proceedings may also be conducted ex officio or if one of the parties makes such a demand. The procedures are the same as the procedures for a trial examination and the cost for filing a request for Hantei is 40,000 yen (US\$370) (Based on 108¥ = 1USD. Rate as of January 2020).

Any party (including a neutral third party or strawman) may request the Hantei. The party demanding the Hantei must explain the necessity for demanding and obtaining a Hantei opinion. The request for Hantei may be filed at any time from the date the IP right was established to twenty (20) years after the lapse of registration. This applies to patents, trademarks, designs, and utility models.

II. Hantei opinion results

1. Confirmation of IPR infringement.

2. Resolution of conflict by agreement of the parties involved in accordance with Hantei results. This is often helpful in the case of petty disputes.

3. In future legal proceedings, the Hantei opinion may be viewed as

a) Documentary evidence proving infringement,

b) Documentary evidence proving the item in question is an

equivalent, and/or

c) Documentary evidence indicating that a reasonable cause of action for injunction or for claiming damages does or does not exist. (Documentary evidence would include, but is not limited to licensing agreements, patent numbers on items, warning letters, a demand made to an arbitration institution, etc).

(For more details regarding the Hantei system, including useful advice when making a request for a Hantei opinion, please refer to the information on the JPO website:
http://www.jpo.go.jp/tetuzuki_e/t_tokkyo_e/hantei.htm)