

Damages for Infringement

There have only been a few cases of patent trolls or non-practicing entities bringing an infringement lawsuit in Japan. Additionally, at present, entities widely regarded as patent trolls who brought infringement suits against companies in Japan have lost their cases and some have had their patent(s) revoked by the Tokyo or Osaka District Court (i.e., ADC Tech K.K. vs. NTT DoCoMo, Heisei 15 (Wa) 28554, October 1, 2004).

There are several reasons why patent trolls have been unable to establish a foothold in Japan. These include judicial stability, reasonable damages, and administrative proceedings in Japan.

(1) Judicial Stability

In Japan, the rate at which the higher courts overturn a lower court's decision in patent infringement cases is merely 18%. There are only two district courts in Japan which decide patent cases: the Tokyo District Court and the Osaka District Court. These factors increase the stability and consistency among the decisions rendered and makes it impossible for trolls to shop around for more lenient judicial settings.

(2) Reasonable Damages

In Japan, an entity found guilty of infringement must merely pay the actual cost of damages, which is calculated from the products in which the invention was used. In Japan, there is no tripling of damages nor other unpredictable factors (Japanese courts generally do not award punitive damages) which serve to create the astronomically high damages awarded in the United States and the EU.

(3) Administrative Proceedings

The range of grounds (prior public use, etc) which are examined by the Examiner is broader in Japan. The range of grounds by which a challenge can be made in Japan is far wider

than elsewhere. Thus, it is easier to eliminate defective patents, and patent trolls are left with fewer weapons to try to extort monies from companies.

Reanalysis of Damages for Infringement in Japan

In the spring of 2015, it was announced that the JPO, the Ministry of Economy, Trade and Industry (METI), and other government ministries would be investigating whether to substantially increase the financial penalties associated with intellectual property right infringement in Japan.

While major Japanese companies, such as Toshiba, Sony, and Fujitsu have been sued for infringement outside of Japan, the number of patent infringement lawsuits in Japan is only around 100 to 200* per year. Given the time and costs associated with prosecuting potential infringement cases in Japan, and the generally small monetary damages awarded in successfully-prosecuted cases, patent infringement lawsuits remain few. However, the Japanese government has been under domestic and international pressure to enact legislation making Japan less hospitable to parties seeking to infringe on other's IP in general.

At the same time, there is the desire to not allow damages to increase to such an extreme that there is a risk of piquing the interest of the patent trolls. Hence, the various government agencies are most interested in determining what range of damages would deter both the infringers from infringing and the trolls from trolling.

While a general timetable or damage estimates were not provided, there is the possibility that in the future damages associated with intellectual property right infringement will increase in Japan.

*Research Activities in Fiscal Year 2013 of Japanese Institute of Intellectual Property (IIP), Establishment and Operation of a Patent System Conducive to Patent Stability in Infringement

Lawsuits.