Patent Infringement Proceedings in Japan and Germany: Similarities and Differences

Guntram Rahn *

I. HISTORICAL OVERVIEW

1. As is well known, the modern Japanese legal system was influenced by German law.[1] This is particularly true for civil procedural law, which forms the procedural basis of patent infringement proceedings.[2] The first Japanese patent act designated as such, the "Patent Act" (*Tokkyo-hō*) of 1899, was modelled on German law.[3] For its theoretical integration into Japanese civil law, Japanese scholars adopted Josef Kohler's doctrine of intangible property rights.[4] The amendments to patent law introduced by the Japanese Patent Act of 1921 – such as the first-to-file principle, publication of applications, opposition proceedings and appeal proceedings – originated from the German Patent Act, as did the separation of infringement and nullity proceedings.[5] These features characterized Japanese patent law up to the present: "*Doitsu hō ni arazumba, hō ni arazu*" at one time described the climate in Japanese jurisprudence: "If it's not German law, it isn't law."[6]

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* Dr. iur., Attorney-at-law (GER).

1 Cf. RAHN, Rechtsdenken und Rechtsauffassung in Japan [Legal Thought and the Concept of Law in Japan] (Munich 1990) 111 *et seq.*

2 Cf. NAKAMURA, Japan und das deutsche Zivilprozessrecht [Japan and the German Law of Civil Procedure] (Cologne 1996).

3 *Tokkyo-hō* [Patent Act], Act No. 36 of 1 March 1899; cf. RAHN, Der Rechtstransfer zwischen Deutschland und Japan als Voraussetzung des Technologietransfers [The Transfer of Law between Germany and Japan as Prerequisite of Technology Transfer], in: Pauer (ed.), Technologietransfer Deutschland – Japan – von 1850 bis zur Gegenwart [Technology Transfer Germany – Japan – from 1850 to the Present] (Munich 1992) 73 *et seq*, 81.

4 Cf. TOKKYO CHŌ (ed.), *Kōgyō shoyū-ken seido hyakunen-shi* [Centennial History of the Industrial Property System] (1984) Vol. I, 187; TOYOSAKI, *Kōgyō shoyū-ken-hō* [Industrial Property Law], 2nd edition, 1975, 100 *et seq.*

5 TOKKYO CHŌ (ed.), *supra* note 4, 421 *et seq*.

6 SUEHIRO, in: Symposium "*Nihon no hōgaku*" [Japanese Jurisprudence] (1950) 40.

2. After World War II, a German jurist, Alfred Oppler, a former judge at the Prussian Higher Administrative Court who had emigrated to the United States in 1939, was responsible for the circumspect reform of the Japanese court system and law of civil procedure under the American occupation.[7] The judicial administration was transferred from the Ministry of Justice to the Supreme Court, and the character of civil procedure as party proceedings was strengthened by introducing cross-examination when taking testimony.

Although the Japanese legal system retained its continental European mold, since World War II Japan has been aligning itself both politically and economically with the world power United States. In the field of intellectual property administration, this has even gone so far that the official English translation of the title of the head of the Japanese Patent Office (*Tokkyo-Chō Chōkan*) was changed from "Director General" to "Commissioner".

During the time of Japan's economic success at the beginning of the 1980s, however, the growing Japanese self-confidence was reflected in the conviction that Japan had finally caught up with the West economically and technologically, and must now choose its own path as an international leader, also in the field of IP. This determination manifested itself for the first time in the Ministry of International Trade and Industry's (MITI's) resistance to the imposition by the United States of copyright protection for computer programs, though this eventually failed.[8] The so-called "patent wars" between American and Japanese companies followed[9] and, in the 1990s, recession set in. In order to overcome economic decline, the Japanese government resorted to the pro-patent policy of the Reagan administration as an example, but also built on the past success of the patent system in Japan.[10]

In 1997, a consulting committee at the Japanese Patent Office, in a report that attracted widespread attention, designated the "Cycle of Intellectual Creation" (*chiteki sōzō saikuru*), i.e. intellectual creation → patent grant → | patent exploitation → intellectual

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7 See OPPLER, Legal Reform in Occupied Japan – A Participant Looks Back (1976) 84, 92, 131 *et seq.*

8 Cf. RAHN, Sonderschutzgesetz für Computerprogramme in Japan? [A Special Law for Computer Programs in Japan?], GRUR Int. 1984, 217 *et seq.*

9 See NAKAYAMA, On the U.S.-Japanese Dispute on the Patent System, AIPPI Journal, Dec. 1988, 154; OMORI, *Nichibei chiteki zaisan-ken sensō* [The Japanese-American Intellectual Property Rights War], 1992; RAHN, Patentstrategien japanischer Unternehmen [Patent Strategies of Japanese Enterprises], GRUR Int. 1994, 377, 380 *et seq.*

10 See RAHN, Die Bedeutung des gewerblichen Rechtsschutzes für die wirtschaftliche Entwicklung: Die japanischen Erfahrungen [The Role of Industrial Property in Economic Development: The Japanese Experience], in: Oppenländer (ed.), Patentwesen, technischer Fortschritt und Wettbewerb [The Patent System, Technological Progress and Competition] (1984) 77 *et seq.*

creation, as the motor for regenerating the Japanese economy (*Nihon keizai saisei*).[11] The report called for "broad, strong and fast" legal protection. A new Code of Civil Procedure that entered into force in 1998 and reforms of the Patent Act in 1998 and 1999 initiated the legal changes thought necessary to achieve this objective. All in all, the Japanese Patent Act was amended 23 times between 1998 and 2008.

In 2002, Prime Minister *Junichiro Koizumi* proclaimed "*Chizai Rikkoku*", the "establishment of a nation based on intellectual property", as a national goal.[12] An "Intellectual Property Strategy Conference" (*Chiteki Zaisan Senryaku Kaigi*) was set up, which adopted the "Principles of an Intellectual Property Strategy" (*Chiteki Zaisan Senryaku Taikō*) in the same year. This position paper proposed, *inter alia*, a revision of patent infringement proceedings. Also in 2002, an "Intellectual Property Basic Law" (*Chiteki Zaisan Kihon-hō*) was proclaimed, which contains the basic regulations of Japanese IP policy. This led to the establishment of an "Intellectual Property Strategy Headquarters" (*Chiteki Zaisan Senryaku Honbu*) in the Japanese cabinet, presided by the Prime Minister and composed of all ministers and ten experts from industry and academia. Since 2003, the Intellectual Property Strategy Headquarters has annually published a new edition of the "Plan for the Promotion of Intellectual Property" (*Chiteki Zaisan Suishin Keikaku*), which contains concrete measures for implementing the Japanese pro-patent policy.[13]

The Japanese pro-patent policy has brought about substantial changes of the Japanese patent system in the areas of administration, legislation, judicature and jurisprudence. Japanese patent infringement proceedings, which are historically related to German patent dispute proceedings, have, as a result, also gained further independence.

Has the time come when not only Japan can learn from Germany in this field, but also Germany from Japan? What are the similarities and differences today in Japanese and German patent infringement proceedings?

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11 *21 Seiki no chiteki zaisan-ken wo kangaeru kondan-kai hōkoku-sho* [Report of the Working Group "Thoughts on IP Rights in the 21st Century"], *Korekara wa nihon ni mo chiteki sōzō no jidai* [From now on an age of intellectual creation also in Japan] of 7 April 1997; cf. also KISHI, *Kore ga Minshutō "Nihon-ban Yangu repōto"* [This is the Democratic Party's "Japanese version of the Young Report"], Chūō Kōron 7/2000, 102.

12 Nikkei Newspaper of 21 March 2002.

13 A PDF copy of the 2011 edition published in June 2011 can be downloaded from *www.kantei.go.jp/jp/singi/titeki2/kettei/chizaikeikaku2011_gaiyou.pdf*. Four strategies are emphasized for this year: 1. International Standardization Stage-up Strategy, 2. IP Innovation Competition Strategy, 3. Cutting-Edge Digital Network Strategy, 4. Cool Japan Strategy (referring to the international dissemination of Japanese pop culture)

II. COURT ORGANISATION AND JURISDICTION

1. Both in Germany and Japan, the parties of a patent infringement dispute basically have three court instances for presenting their case: the final judgment (*Endurteil, shūkyoku hanketsu*) in the first instance can be appealed to the appeal instance (*Berufungsinstanz, kōso-shin*),[14] and the final judgment of the appeal court can be reviewed upon appeal on points of law by a third-instance court (*Revisionsinstanz*, *jōkoku-shin*).[15]

2. In Germany, the regional courts (*Landgerichte*) have jurisdiction for first-instance patent infringement proceedings. Throughout Germany there are twelve regional courts that have specialized divisions (*Kammern*) to handle patent disputes.[16]

In Japan, by contrast, since 1 April 2004, only two district courts (*chihō saiban-sho*, corresponding to the German *Landgerichte*) retain jurisdiction for disputes concerning technical IP rights:[17] the Tokyo District Court for East Japan (i.e. the high court districts of Tokyo, Nagoya, Sendai and Sapporo) and the Osaka District Court for West Japan (i.e. the high court districts of Osaka, Hiroshima, Fukuoka and Takamatsu).[18] This concentration of jurisdiction is intended to ensure a high degree of technical competence of the courts in patent disputes.[19]

3. At the Regional Court Düsseldorf, where it is said about one-half of all patent disputes in Germany are made pending every year,[20] there are two patent dispute divisions handling legal disputes relating to technical IP rights.[21]

Until 1998, there was only one division (*bu*, corresponding to the German *Kammer*) handling IP rights at the Tokyo District Court. However, at present the Tokyo District Court has four and the Osaka District Court two specialized divisions for IP disputes.

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14 Section 511(1) German Code of Civil Procedure, Section 281(1) Japanese Code of Civil Procedure, see Appendix.

15 Section 542(1) German Code of Civil Procedure, Section 311(1) Japanese Code of Civil Procedure, see Appendix.

16 Sections 143(1), (2) German Patent Act; see Appendix.

17 This term comprises IP disputes relating to technical subject matter, namely legal actions regarding patent rights, utility model rights, semiconductor-layout-user rights and copyrights of computer programs as well as license agreements and requests for issuance of provisional injunctions based on these rights.

18 Section 6 Japanese Code of Civil Procedure; see Appendix.

19 TANAKA, *Jitsumu tokkyo shingai soshō nyūmon* [Introduction to the Practice of Patent Infringement Proceedings], L & T 2007/1, 27, 28.

20 In contrast to Japan, there seems to be little interest in Germany in statistics on patent disputes; in any case, if such interest does exist, there is no publication of corresponding data to satisfy it; see, for example, BUSSE, Patentgesetz (6th edition, Berlin 2003) Section 143, margin no. 116: This edition of 2003 cites statistical data from 1992.

21 According to the assignment plan, these comprise disputes relating to patents and utility models, employee inventions, topography rights, plant variety protection rights, unfair competition disputes relating to these IP rights as well as relevant antitrust disputes.

4. In Germany, the Higher Regional Courts (*Oberlandesgerichte*), which are the second instance courts to the twelve Regional Courts, have special patent panels (*Patentsenate*) and act as appeal courts in patent infringement disputes.

In Japan, on the other hand, the Intellectual Property High Court (*Chiteki Zaisan Kōtō Saiban-sho*), which, under the aspect of court organization is a branch of the Tokyo High Court, was established on 1 April 2005 as an exclusive appeal instance in patent disputes.[22] The IP High Court has four divisions (*bu*) and one grand division (*dai gōgi-bu*). This court is intended to guarantee highly competent and swift rulings in the field of IP law.[23]

5. In Germany, the Federal Court of Justice (*Bundesgerichtshof*) in Karlsruhe is the court for appeals on points of law in patent infringement proceedings. This court has two panels (*Senate*) for disputes regarding IP rights. The First Civil Panel (*I. Zivilsenat*) hears cases regarding copyrights and industrial property rights not assigned to the Tenth Civil Panel (*X. Zivilsenat*). Patent disputes are assigned to the Tenth Civil Panel.

The Supreme Court (*Saikō Saiban-sho*) in Tokyo is the court for appeals on points of law in Japan. There are no specific panels at the Supreme Court, also not for patent disputes, but there is a Grand Bench (*Dai Hōtei*) and three Petty Benches (*Shō Hōtei*). To arrive at a decision, the judges consult court research officials (*saiban-sho chōsa-kan*), who are young judges specialized in the various fields of law and assigned to the Supreme Court for a period of three to four years.

6. Patent invalidation proceedings can be conducted in Germany in two instances. The first instance is the Federal Patent Court (*Bundespatentgericht*) in Munich, which has the status of a higher regional court but is a federal court. Its panels are composed of two legally trained judges and three technically trained judges.[24] The judgments of the Federal Patent Court can be appealed in the second instance to the Federal Court of Justice (Tenth Civil Panel); as an exception, the Federal Court of Justice functions as a second-instance court in this case. Due to the "Act on the Simplification and Modernisation of the Patent Law" (*Gesetz zur Vereinfachung und Modernisierung des Patentrechts*) that entered into force in 2010, the Federal Court of Justice now no longer decides anew on the facts as a rule, but reviews the first-instance judgment for errors. The declared objective of this reform is to reduce by half the duration of proceedings before the Federal Court of Justice, which "presently take more than four years".[25] In contrast, there are practically three instances available for invalidation proceedings in Japan. In the first in-

22 See *Chiteki zaisan kōto saiban-sho setchi-hō* [Act for the Establishment of an IP High Court] of 18 June 2004.

23 Tanaka (footnote 17) 28.

24 Sec. 67(2) German Patent Act; see Appendix.

25 Explanatory Memorandum of the draft amendment, Bundestagsdrucksache 16/11339 (10.12.2008) 14.

stance, the invalidation boards of the Japanese Patent Office (*shimpan-bu*, Trial Boards) decide in quasi-court proceedings (*mukō shimpan*, trial for invalidation), as was the case in Germany before the Federal Patent Court was established. A rescission suit (*torikeshi soshō*) against the administrative decision (*shinketsu*, trial decision) of the Patent Office Trial Board may be filed at the IP High Court, and an appeal on points of law against the IP High Court's judgment to the Supreme Court is admissible.

In 2007, nullity proceedings before the Japanese Patent Office took 12 months on average, 9.1 months at the IP High Court[26] and 24 months at the Supreme Court.

III. COURT PERSONNEL

1. The civil divisions of the regional courts in Germany and the corresponding district courts in Japan are composed of three judges including the presiding judge.[27] In the German higher regional courts and the Japanese IP High Court, decisions are also taken by a panel of three judges.

In contrast to Germany, Japanese judges at the district and high courts are usually transferred every three years by the judicial administration of the Supreme Court to serve at another court and to work in other legal fields (*tenkin seido,* transferral system). Even judges who are specifically trained and experienced in the field of IP law are not exempt from this practice. Two years ago, a popular Japanese TV series titled "Judge" dramatized the story of a young judge who was transferred from a patent dispute division at the Osaka District Court to the only court on Amami Oshima, a small island 400 km south of Kyushu.[28]

2. Although technical facts are generally an issue in patent disputes, there are no technically educated personnel at the German courts. If the German court requires technical advice to decide the case, it must take evidence by obtaining an expert opinion on the disputed issue. Such a taking of evidence can delay the judgment in the infringement proceedings by one year.

In contrast, so-called court research officials (*saiban-sho chōsa-kan*) at the Japanese courts advise the judges on the technical aspects of patent disputes.[29] As a rule, these are examiners of the Japanese Patent Office who are dispatched to the courts for a limited period of time. The court research officials do not have to present formal opinions; they can, but are not required to, participate in the oral proceedings and discussions with the parties.

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26 Supreme Court of Japan (ed.), Intellectual Property High Court, 2008.7, 16.

27 Section 75 German Court Constitution Act; see Appendix.

28 Owing to its great success, the story was also published as a book*:* NAKAZONO*, Jajji – shima no saiban-kan funtōki* [Judge: Record of the Struggles of an Island Judge], 2007.

29 Section 92-8 Japanese Code of Civil Procedure.

If additional technical competence is required, it has been possible since 2004 to consult an "expert commissioner" (*senmon i'in*) who is commissioned by order of the court to provide expert knowledge in the relevant technical field.[30] Expert commissioners prepare an explanation relating to the technical issue in dispute, which they present in writing or orally at the hearing. More than 200 experts in the various fields of science and technology from universities, public and private R&D institutions but also patent attorneys are registered in the list of expert commissioners.[31]

As a consequence, there are hardly any significant delays in Japanese patent infringement proceedings caused by having to obtain an expert opinion on a contested technical issue by formal evidence taking. The roles of the expert commissioner, the expert witness and the court research official may be compared as follows:[32]

	Expert Commissioner	*Expert Witness*	*Court Research Official*
Status	extra-ordinary court staff	not court staff	ordinary court staff
Term	2 years	none	usually no specified term
Remuneration	payment per case	opinion fee	ordinary staff salary
Questioning by parties	not provided for	is questioned regarding opinion	not provided for
Nature of explanation or opinion	easy to understand explanations of matters of expertise as advisor to the court; the explanations do not qualify as evidence	provides formal opinion on issues specified by court; opinion qualifies as evidence basis of the judgment	ordered by court, researches and reports on necessary items

30 Section 92-2 Japanese Code of Civil Procedure.
31 See the detailed presentation on the homepage of the IP High Court: *www.ip.courts.go.jp/documents/expert.html#q3*.
32 Table from: *www.ip.courts.go.jp/documents/expert.html#q3*.

IV. FIRST-INSTANCE PATENT INFRINGEMENT PROCEEDINGS

The procedures of the German regional courts in patent infringement proceedings differ within the framework set by the German Code of Civil Procedure. Here, the practice of the Regional Court Düsseldorf, which hears the largest number of patent infringement cases in Germany, will be referred to when comparing German and Japanese patent dispute proceedings.[33]

1. After the legal action in a patent dispute has been brought at the Regional Court Düsseldorf by filing of the complaint (*Klageschrift*), the presiding judge sets the date for the so-called early first hearing (*Früher erster Termin*).[34] At this hearing, merely the requests for relief by the plaintiff and the defendant's requests are made orally, and the further proceeding is scheduled. The presiding judge sets the date for the main hearing (*Haupttermin*) and the dates of the time limits for the submission of the party briefs in preparation of the hearing, i.e. the response to the complaint of the defendant (*Klageerwiderung*), the counterstatement of the plaintiff (*Replik*) and the rejoinder of the defendant (*Duplik*). As a rule, the main hearing takes place three weeks after expiry of the time limit for filing the rejoinder. At the end of the main hearing, the date for the pronouncement of a decision is set. This decision is usually a judgment, but it can also be an order to take evidence.

In our experience, patent infringement proceedings at the Regional Court Düsseldorf take approximately 14 months from the filing of the complaint to the main hearing.

Since the reform of 2003, the Japanese Code of Civil Procedure – taking German procedure as an example – also provides for planned proceedings (*keikaku shinri*) until the end of the oral hearing and the pronouncement of the judgment.[35]

In Germany, the parties do not set eyes on the court again after the early first hearing until the main hearing. They will have exchanged briefs over a period of 12 months without having a clue as to how the court assesses the various issues of fact and law. This is different in Japan, where round-table meetings in preparation for the oral hearing (*benron jumbi kijitsu*) are held approximately every one-and-a-half months between one or two of the judges, a recording clerk and the parties.[36] These meetings serve to substantively conduct the trial: the facts and legal issues are organized and the topics to be addressed in the parties' further preparatory briefs are discussed. This practice seems

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33 The procedures at the Regional Court Mannheim and the Regional Court Munich, two further courts frequently resorted to in patent infringement disputes, are described in the following two papers.

34 Section 275 German Code of Civil Procedure; see Appendix. The alternative procedure that the court can choose at its discretion and chooses as a rule when the defendant is domiciled abroad is the preparatory proceedings in writing, Section 276 German Code of Civil Procedure; see Appendix.

35 Sections 147-2, 147-3, Japanese Code of Civil Procedure; see Appendix.

36 Section 168 Japanese Code of Civil Procedure; see Appendix.

to implement Section 139 of the German Code of Civil Procedure in a manner unknown in Germany.[37] In Japan it has the effect that the final hearing (*kesshin no kōtō benron*) is reduced to a mere formality since the substantive examination of the case has already occurred in the preparatory proceedings.[38]

Another difference to German infringement proceedings is that Japanese infringement proceedings deal with all consequences of the infringing act important to the patentee in one proceeding – not only with the issue of patent infringement and the legal consequences of injunction and obligation to compensate damages, but also the payment of damages in a specific amount.

Accordingly, the preparation of the final hearing in Japanese patent dispute proceedings consists of two successive stages: first, the discussion of infringement (*shingai-ron*) comprising the specification of the attacked embodiment (*tokutei-ron*) and feature comparison (*taihi*), and second, the discussion of damages (*songai-ron*).

2. Section 278(1) German Code of Civil Procedure stipulates: "The Court shall, at every stage of the proceedings, be intent on an amicable settlement of the legal dispute or of individual issues"; subsection (6) provides that the parties can also conclude a settlement by accepting a written settlement proposal of the court.[39] This provision is not applied in German patent dispute proceedings, contrary to proceedings in Japan: here it is the rule that at the end of the stage of discussion of infringement, if infringement cannot clearly be ruled out, the court will "disclose its impression" (*shinshō kaiji*) of the case and recommend a settlement (*wakai kankoku*). The court may even propose the concrete contents of a settlement and often mediates between the parties during the settlement negotiations.[40] Thus, as part of their procedural strategy, many parties count on the court to take the initiative with regard to a settlement at the proper time. Statistically, almost half of all IP dispute proceedings before the Japanese district courts are concluded by settlement of the case. This is more than by judgment, since quite a few proceedings also end by withdrawal of the action.[41]

If a court settlement is reached, the patent infringement proceedings are concluded thereby. If the parties do not reach an agreement, the discussion of damages begins. At the end of this stage the final hearing takes place, and several weeks thereafter the judgment is pronounced.

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37 Cf. in German civil procedure law: Section 139 Code of Civil Procedure; see Appendix.

38 See TAKABAYASHI, *Hyōjun tokkyo-hō* [Standard Patent Law] (3rd edition, 2008) 240.

39 See Appendix.

40 Cf. NAGASAWA, Settlement Conferences at Japanese Courts, AIPPI Journal Vol. 32 (2007) No. 1, 3.

41 In 2006, according to statistics of the Supreme Court, 603 IP dispute proceedings were concluded at the Japanese district courts, of which 208 were by judgment and 299 by settlement.

According to statistics of the Supreme Court, in 2007 the average duration of proceedings in IP cases at Japanese district courts from filing the lawsuit until its conclusion was 14.4 months,[42] which is approximately as long as average proceedings at the Regional Court Düsseldorf.

3. There is a further significant difference to German patent dispute proceedings. In Japanese patent infringement proceedings, the objection of invalidity of the patent can be raised. The categorical separation of infringement and invalidity proceedings following the German example was abolished in 2000 by a landmark decision of the Supreme Court. The Supreme Court held that the assertion of an obviously invalid patent by the patentee constitutes an abuse of right and is therefore inadmissible pursuant to Section 1(2) Japanese Civil Code, which prohibits abuses of rights.[43] This theoretical justification of the objection of invalidity in patent infringement suits would also be possible under German law and was actually proposed by Schmieder, a judge at the Federal Patent Court, in a paper published in GRUR in 1978.[44]

In 2005, the objection of invalidity was enshrined in the Japanese Patent Act. In compliance with the wish of Japanese industry that patent disputes be settled quickly in one proceeding, the requirement of the case law that invalidity must be "obvious" was dropped. Pursuant to Section 104-3 Japanese Patent Act, a patent right cannot be enforced against the adverse party if "the said patent is recognized as one that should be invalidated by a trial for patent invalidation".[45]

4. Another notable deviation of Japanese patent infringement proceedings from German proceedings as a result of the reforms of patent law in recent years is the calculation of the patentee's loss of profit based on statutory assumptions.[46]

Both the objection of invalidity and the calculation of damages in patent dispute proceedings are presently topics of particular interest both in Japan and German patent dispute proceedings. Hence, they will be discussed separately in papers presented by distinguished experts from both jurisdictions.[47]

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42 Supreme Court of Japan, Intellectual Property High Court, edition 2008.7, 18. For an English translation of Section 1 Japanese Civil Code, see Appendix.

43 Cf. HINKELMANN, Berücksichtigung der Rechtsbeständigkeit von Patenten in Patentverletzungsverfahren, ZJapanR No. 10 (2000) 266 (with a translation of the Supreme Court judgment of 11 April 2000); HEATH, The Enforcement of Patent Rights in Japan, IIC Vol. 31 No. 6 (2000) 749, 763.

44 SCHMIEDER, Zur Kompetenzverteilung zwischen Nichtigkeits- und Verletzungsverfahren nach neuem Recht, GRUR 1978, 561, 562.

45 See Appendix.

46 Section 102 Japanese Patent Act; see Appendix.

47 See the contributions of MIMURA, MEIER-BECK, IIMURA and GRABINSKI in this volume.

V. COMPARATIVE STATISTICS

Both patent dispute divisions of the Regional Court Düsseldorf together received 619 new cases in 2007, of which 567 were patent disputes,[48] 40 were utility-model disputes and 12 were employee invention disputes. In the same year, 576 cases were concluded.[49]

In 2006, all Japanese district courts received a total of 589 new cases in IP matters.[50] Of these, 139 were patent disputes and 16 were utility model disputes. In the same year, 603 IP disputes were concluded.[51]

At the Düsseldorf Regional Court alone, nearly four times as many patent and utility infringement actions were filed in 2007 than at all competent Japanese district courts taken together (in 2006).

VI. FINAL REMARKS

In the course of history, Japan has adapted the cultural assets introduced from abroad to its own culture, and has often improved them in doing so.

In the culinary field, as an example, Chinese noodle soup was developed into the delicious Japanese *Ramen* noodle soup, Indian curry was transformed into the popular Japanese *Kare Raisu,* and American steak was refined to become Kobe beefsteak. And Japanese beer is certainly no less tasty than German beer.

Patent dispute proceedings have also been adapted to Japanese needs. Whether they are preferable to German proceedings is a difficult question, which may be answered differently topic-by-topic and depending on the viewpoint of the observer, whether judges, attorneys or parties. However, in my opinion it is unquestionable that the time has come to seriously study the distinctive features of the Japanese system and, where appropriate, to learn from it.

However, it will probably take some time before a headline appears in a German newspaper that is comparable to the one in the *Nihon Keizai Shimbun* (Japan Economic Newspaper, abbr.: *Nikkei*) of 26 September 2000: “Young Judges Sent to Germany” – to study the field of intellectual property.

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48 Including employee invention disputes, which count as patent disputes in Japan.

49 Statistics courtesy of *Dr. Klaus Grabinski,* Judge at the Federal Court of Justice.

50 The term comprises patent, utility model, design, copyright, computer program rights, unfair competition and trademark disputes.

51 Statistics courtesy of *Mr. Toshiaki Iimura*, Presiding Judge at the Intellectual Property High Court.