Preface

1. On September 19, 2007 a symposium on "Patent Litigation in Germany and Japan" was held at Keidanren Hall in Tokyo. This symposium was co-organized by the Japan Intellectual Property Association (JIPA), the Japan Patent Attorneys Association (JPAA) and the Japanese Group of AIPPI (AIPPI Japan). Papers were presented by Dr. Klaus Grabinski (at the time presiding judge at the Regional Court Düsseldorf), Dr. Guntram Rahn (attorney-at-law, Munich) and Ryoichi Mimura (at the time judge at the Intellectual Property High Court, Tokyo). The topics of the presentations were "Patent Infringement Proceedings in the Federal Republic of Germany", "The Approach of Enterprises to Patent Disputes in Germany" and "The Function of the Intellectual Property High Court in Patent Litigation". Attorney-at-law Eiji Katayama moderated the subsequent panel discussion; further panelists were Kazuo Kamisugi (consultant of JIPA, former president of JIPA, adviser to Wako Pure Chemical Industries, Inc.) and patent attorney Yuzuru Okabe.[1] With more than 400 participants, the symposium was an extraordinary success in the view of the co-organizers, who had for the first time jointly organized such a symposium. Observers noted that in recent times in Japan, it had not been possible to attract such a large number of participants to an event of this kind.[2] At the end of this symposium in Tokyo, the idea was born to continue the discussion and exchange of information between Japanese and German patent professionals in a second symposium in Munich.

This follow-up symposium on "Patent Infringement Litigation in Japan and Germany" was held at the European Patent Office in Munich on September 23, 2009. After an introductory overview of patent litigation proceedings in Japan and Germany that highlighted the similarities and differences of the two systems, specific topics of common interest in Japanese and German patent infringement proceedings were each presented by Japanese and German judges respectively. In addition, a Japanese attorney-at-law, a speaker from Japanese industry and a Japanese patent attorney presented views on the system and practice of Japanese patent litigation. A panel discussion with questions from the audience concluded the symposium. Thus this symposium offered the rare opportunity of a practice-oriented comparison of patent dispute proceedings in Japan and Germany, two leading industrial countries whose legal systems are generally similar but distinct in detail.

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1 The papers, PowerPoint presentations and panel discussion of the symposium are published on the website of AIPPI Japan (*www.aippi.or.jp/japan/ news-4200.html*).

2 A report on the symposium (in Japanese) can be found on the website of JIPA (*www.jipa.or.jp/content/jyohou_hasin/sympo/kokusai-sympo.htm*).

The symposium in Munich was hosted by the German Japanese Association of Jurists (Deutsch-Japanische Juristenvereinigung e.V. – DJJV). The DJJV is a non-profit organization with at present approximately 700 members in Germany and abroad. The following Japanese associations provided their support as co-organizers:

- the Japan Intellectual Property Association (JIPA), an association of representatives of Japanese industries in the field of industrial property protection, with approximately 1200 member companies;
- the Japanese Group of AIPPI (AIPPI Japan), the Japanese national group of the International Association for the Protection of Intellectual Property, composed of approximately 1120 members; and
- the Japan Patent Attorneys Association (JPAA), comprising approximately 8000 members.

As in Japan, the symposium attracted great interest with more than 250 participants, further applicants having to be refused due to the limited seating capacity. The papers presented at this symposium and excerpts from the panel discussion are published in this volume.

2. In the Tokyo and Munich symposiums, due to time constraints, the practice of the Düsseldorf courts was presented as "the German" court procedure in patent infringement cases. Since half of all patent litigation in Germany is said to be brought through the Regional Court of Düsseldorf, equating German and Düsseldorf proceedings seems acceptable when time does not allow more elaboration. However, it cannot be ignored that in recent years other courts in Germany have begun to actively compete with Düsseldorf as forums for patent infringement cases by devising their own distinct procedures in the framework of the Code of Civil Procedure, and they have gained popularity. For this reason, papers on "Patent Infringement Proceedings before the Regional Court Mannheim and the Higher Regional Court Karlsruhe" and "The New Munich Patent Litigation Procedure: First Feedback after One Year" have been added to this volume to reflect the variety of patent litigation court practice – and choices for the litigator – in Germany.

3. Papers on law cannot do without citations of legal provisions. For the benefit of the reader, all legal provisions of Japanese and German law cited in the various papers of this volume are reproduced in English translation in an Appendix. The English translation of the current German Patent Act referred to was prepared by the firm of Hoffmann Eitle, Patent Attorneys and Attorneys-at-Law. For translations of the Japanese legal provisions, the exemplary website *www.japaneselawtranslation.go.jp/* has been consulted. It is unfortunate that in this age of international communication, no comparable website for English translations of German statutes exists. The translations as reproduced in the

Appendix have been modified whenever a more literal adaption of the original text into English seemed appropriate.

4. Translations of Japanese and German legal terms into English are not standardized. For example, the patent law enacted by the legislature (*Tokkyo-hō* in Japanese, *Patentgesetz* in German) is sometimes translated as "Patent Law" and sometimes as "Patent Act"; its legal provisions are termed "articles" or "sections", etc. Such translations are often used according to individual preferences and therefore may differ from author to author. To improve comprehension, in this volume one and the same English translation is used throughout for one legal concept. For example, *Tokkyo-hō* and *Patentgesetz* are translated uniformly as "Patent Act". If a number of English translations are available for a specific legal term in one language, the most literal translation has been chosen if it correctly conveys the meaning. For example, the technical support staff at Japanese infringement courts are called *saiban-sho chōsa-kan*, literally "Court Research Officials", which is also translated as "Judicial Court Officials"; however, in this volume the literal translation is used. References to court decisions follow the method of citation in the original language, with which the reader wishing to refer to the original text will be familiar.

5. Finally, the editor would like to thank the IP law firm Hoffmann Eitle for its generous funding of the Munich symposium based on the understanding that this was not a marketing opportunity but a project to bring together Japanese and German professionals to promote mutual understanding in the field of patent enforcement, and to reciprocate the hospitality that German patent professionals have enjoyed many times at similar events in Japan. The editor is also grateful to the Foundation for the Advancement of Japanese German Relations in Science and Culture (Stiftung zur Förderung japanisch-deutscher Wissenschafts- und Kulturbeziehungen – JaDe-Stiftung), which, together with Hoffmann Eitle, contributed to the printing costs of this publication. Last but not least, thanks go to my colleague Dr. Anja Petersen-Padberg for her substantial help in the organization of the symposium and the publication of this conference volume.

Guntram Rahn

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