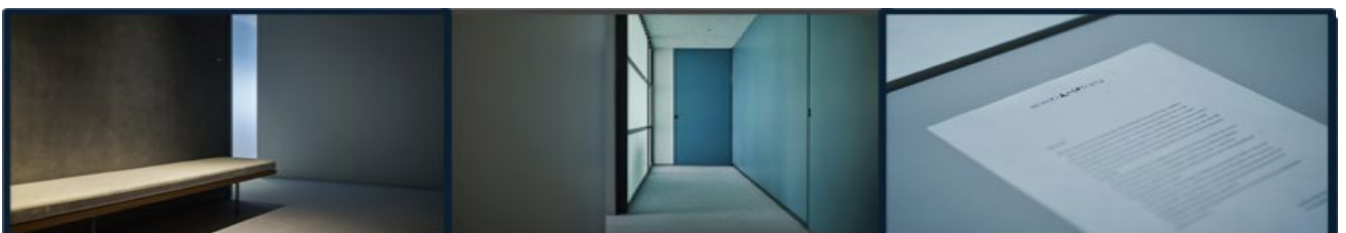


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## Unique Challenges in Litigating Intellectual Property Cases in Japan

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# Unique Challenges in Litigating Intellectual Property Cases in Japan

[Isshiki & Partners](#)

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Japan's intellectual property (IP) litigation landscape presents unique challenges. This article examines the key aspects of litigating IP cases in Japan, including judges' limited exposure to IP law, the critical role of judicial research officials, and the appellate process.

## **1 Unique Aspects of Litigating IP Cases in Japan**

### **1.1 Judges' Limited Exposure to IP Cases**

Most judges in Japan have very limited exposure to intellectual property cases.

IP cases constitute only a small fraction of the total caseload in Japanese courts. Each year, Japanese courts handle approximately 3.5 million cases, including 1.5 million civil cases, 1 million criminal cases, and another 1 million family law cases. In contrast, the number of IP-related civil cases is significantly lower, with only about 750 cases filed annually. Among these, approximately 600 are infringement lawsuits, while around 150 are appeals against decisions issued by the Japan Patent Office (JPO). The breakdown of IP cases is roughly as follows: 30% involve patents, 10% designs, 20% trademarks, 20% copyrights, and 20% unfair competition.

Given these figures, many judges in Japan never handle an IP case throughout their entire judicial careers. This is primarily due to the judicial rotation system, which mandates that judges transfer among different courts approximately every three years. This policy, administered by the Supreme Court, is designed to cultivate judges as generalists rather than specialists in any particular area of law.

Consequently, even within courts that have dedicated IP divisions—namely, the district courts in Tokyo and Osaka—many judges are encountering IP litigation for the first time upon their assignment. It is also not uncommon for judges newly assigned to the IP High Court to have had little or no prior experience with IP litigation.

### **1.2 Role of Judicial Research Officials**

Given the limited experience of most judges in IP cases, judicial research officials play a crucial role in IP litigation. These officials are former examiners from the JPO who are dispatched to assist judges in technical matters related to IP disputes. While their primary role is to compensate for judges' lack of technical expertise, in practice, judicial research officials also provide guidance on patent law and the patent system and contribute significantly to the drafting of court decisions.

However, judicial research officials are only assigned to cases involving patents and other IP disputes requiring technical expertise, such as utility models, technically complex trade secrets, and software-related copyright disputes.

In contrast, cases involving trademarks, designs, general copyright issues, and unfair competition do not benefit from the involvement of judicial research officials. In these cases, judges must independently analyze legal and factual issues, draft their own rulings, and navigate complex IP principles without technical assistance.

This disparity in judicial support creates a notable divide among different types of IP cases. In patent disputes, judicial research officials serve as a bridge between the JPO and the courts, ensuring a degree of technical and legal continuity. Conversely, in trademark, design, copyright, and unfair competition cases, judges must rely entirely on their own legal reasoning and understanding of the issues, often leading to greater inconsistencies in rulings. As a result, litigants accustomed to JPO proceedings may encounter unexpected judicial decisions.

Therefore, in cases where judicial research officials are not assigned, litigants must tailor their litigation strategy to the generalist nature of the judges. Unlike patent cases, where judicial research officials provide technical and legal insights, judges handling trademark, design, copyright, and unfair competition disputes must interpret complex legal and factual issues independently. To minimize the risk of misinterpretation and improve judicial comprehension, litigants should present arguments in a clear, well-structured, and accessible manner, emphasizing key legal principles and factual foundations.

## **2 Appeals in Intellectual Property Cases**

### **2.1 Jurisdiction of the IP High Court**

The Intellectual Property High Court (IP High Court) is a specialized division of the Tokyo High Court, handling IP-related appeals.

While Japan's eight High Courts oversee general civil, criminal, and administrative appeals, the IP High Court has exclusive jurisdiction over appeals challenging Japan Patent Office (JPO) trial and appeal decisions, such as patent application rejections and trademark invalidation rulings. Additionally, appeals from District Courts involving the infringement of patents, utility model rights, integrated circuit layout designs, and software copyright are automatically assigned to the IP High Court. Other IP cases, such as those involving trademarks, designs, and unfair competition, are generally appealed to regional High Courts unless they originate from a District Court under the Tokyo High Court's jurisdiction, in which case the IP High Court hears the appeals.

### **2.2 The High Court's Role in Fact-Finding**

Japan's High Courts have the authority to make independent factual determinations on appeal. Unlike in the United States, where appellate courts primarily review legal issues and defer to the trial court's factual findings, the IP High Court in Japan can reassess evidence, reexamine witness testimony, and make independent determinations on validity and infringement matters. As a result, appeals in Japan often involve a full reconsideration of both facts and law. This broader scope of review means that appellate proceedings can significantly alter the outcome of a case.

### 2.3 Limited Supreme Court Review

All appeals of IP cases, whether from the IP High Court or other High Courts, are directed to the Supreme Court. However, the Supreme Court does not automatically grant review and focuses exclusively on legal issues rather than factual matters. It only hears cases that raise significant legal questions, such as conflicts in precedent, novel legal interpretations, or issues of broad public interest.

Japanese courts adhere to precedent to maintain legal stability and consistency in judicial rulings. A change in Supreme Court precedent occurs only through legislation or by a decision from the Supreme Court sitting *en banc*—meaning all 15 justices participate rather than a smaller panel. Such *en banc* decisions are exceedingly rare, constituting only about 1% of Supreme Court rulings.

To support legal research and opinion drafting, the Supreme Court employs Research Judges, who are former judges from the High Court and District Court. These Research Judges serve five-year terms, with a select few specializing in intellectual property cases. They analyze complex legal issues and provide recommendations to the justices.

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(May 2025)

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