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Legal Systems and Practice of Intellectual Property Protection in Japan and China: A Comparative Analysis

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Abstract This article focuses on the legal systems and practice of intellectual property protection in Japan and China, including the relating civil litigation and administrative litigation procedures. The challenge of balancing the relationship between an invalidation trial and an invalid defense during the process of civil patent infringement litigation is a common issue to be solved in both Japan and China. In addition, it is quite usual that the IP products are being imported and exported across the borders due to the expansion of international trade. Accordingly, one of the most symbolic and difficult issues is how to balance the development of international trade and IP protection in each country. In other words, there is a practical issue regarding whether a parallel import of patented products is acceptable to a country or not. The key to determining this issue depends on the judgment of international exhaustion.

Keywords Intellectual property, legal system, trial for invalidation, international exhaustion

I. Introduction

The legal system of intellectual property (hereafter IP) protection "emerged as a product of the development of human civilization and commodity economies" and, in various countries, "it has increasingly become an effective legal tool for protecting the interests of the owner of intellectual products, promoting the development of science, technology and the social economy, and allowing international competition." Today, the issue of intellectual property protection is "a universal concern in international political, economic, scientific, technological and cultural exchanges. International bilateral and multilateral negotiations on this topic have raised worldwide intellectual property protection to a new level (www.lawinfochina.com)".

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In Japan, the government's decision to stress the state's IP strategy was announced by the Prime Minister in 2002. It was made clear that Japan will "make it a national objective to protect and leverage the results of R&D and creative activity as IP". It is a national objective to make Japan an 'IP Rich Country'. At the same time, in China, in the forty years since China began to reform and open its economy, China's IP rights landscape has become a complex, multifaceted and contentious environment. Chinese perspectives are influencing global discourse on IP rights, on the one hand, and domestic policies related to intellectual property, standards and innovation that directly affect international trade, on the other.

As the two major powers in the field of technology transfer and technology trade, the status quo of the legal system of intellectual property protection in Japan and China is of great concern to the world at large. In addition, it is quite usual that IP products are being imported and exported across the borders due to a steady expansion of international trade. Accordingly, one of the most symbolic and difficult issues is how to balance the development of international trade and IP protection in each country, in other words, whether the parallel import of patented products is acceptable or not.

This article is intended to be of service to one seeking an overview of the legal systems of IP protection in Japan and China, and then offer a discussion on the parallel import issue with a comparison of the two countries.

The first part of this article focuses on the introduction of the intellectual property judicial systems of the two countries, including the related civil litigation and administrative litigation procedures. In addition, it will provide an analysis on patent applications and registration status according to the statistics issued by the governments of the both countries in recent years. The second part of this article analyzes the trends of cases and the ongoing judicial reform in China. Finally, the third part of this article discusses the parallel import issue as a legal practice in Japan and China.

1. Judicial Systems of Intellectual Property in Japan and China

1.1 Intellectual Property Strategies in Japan and China

Intellectual Property is generally a legal property right in an intangible idea, although the idea may be expressed, demonstrated or utilized in a tangible form. IP rights are a significant source of income and asset appreciation for modern businesses. Their degree of importance is soaring as manufacturers and other commercial interests are increasingly aware of the importance of IP to their businesses especially in an international setting.

In Japan, the government's decision to focus on the state's IP strategy was announced by the Prime Minister in 2002. It was made clear that "Japan will

make it a national objective to protect and leverage the results of R&D and creative activity as IP" and accordingly to make Japan an 'IP Rich Country'. After that, the Intellectual Property Basic Act was enacted (last amended in 2003) in December 4, 2002. Ever since the promulgation of the Act, with the establishment of a National Intellectual Property strategy headquarters and an IP strategic program formulated annually, Japan has been aiming to become an IP-based nation.

At the same time, in China, in the forty years since the reforms and the opening up of the economy began, the country's IP rights landscape has become a complex, multifaceted and contentious environment. Chinese perspectives are influencing global discourse on IP rights, on the one hand, and domestic policies related to intellectual property, standards and innovation that directly affect international trade, on the other. China has issued the Outline of the National IP Strategy in 2008 and published the Opinion of the State Council on Accelerating the Building of a Strong IP National Under New Conditions in 2015.

The top five countries and their number of IP applications through the Patent Cooperation Treaty (PCT) in 2016 were as follow: (1) U.S: 56,595 (2) Japan: 45,239 (3) China: 43,168 (4) Germany: 18,315 (5) Korea: 15,560. These statistics clearly display that both Japanese and Chinese enterprises are at the forefront of innovation and IP protection awareness in the world.

1.2 Intellectual Property High Court in Japan

According to the records on the Intellectual Property High Court, before the year of 2005, Japan has only eight common high courts, shown in figure 1 – (i) the Fukuoka High Court, (ii) the Hiroshima High Court, (iii) the Takamatsu High Court, (iv) the Osaka High Court, (v) the Nagoya High Court, (vi) the Tokyo High Court, (vii) the Sendai High Court, and (viii) the Sapporo High Court.

As described on the official website of the Intellectual Property High Court, "With the economic recession continuing since the collapse of the so-called bubble economy, awareness has been widely shared that Japan should take nationwide measures to create, protect, and exploit intellectual property so as to revitalize the economy. Since the late 1990s, intellectual property started drawing more attention, and the Court received various advice from the perspective of strengthening protection of intellectual property rights (www.ip.courts.go.jp)."

Under such circumstances, "in June 2001, the Justice System Reform Council published various recommendations, the Council expressed its view that 'Strengthening of Comprehensive Response to Cases Related to Intellectual Property Rights' is one of the most important subjects in the area of civil justice reform, and recommended measures to reinforce the system for resolving IP cases with more expertise (www.ip.courts.go.jp)."

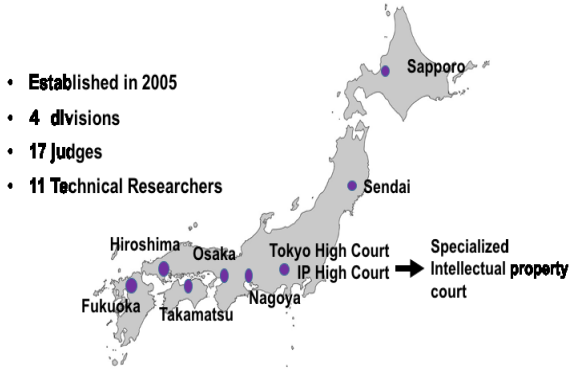

Figure 1 Intellectual property high court in Japan

Furthermore, "the Strategic Council on Intellectual Property was established in March 2002, and in July, the Strategic Council adopted the 'Intellectual Property Policy Outline', which recommended the creation of an entity that is equivalent to 'patent court' under the concept of 'an intellectual property-based nation.' Subsequently, the Basic Law on Intellectual Property, which articulates the basic policy concerning intellectual property, came into force in March 2003, and the Intellectual Property Policy Headquarters was established in the Cabinet. The Headquarters adopted the Strategic Program for the Creation, Protection and Exploitation of Intellectual Property in July 2003, in which it recommended the establishment of the IP High Court to reinforce the dispute resolution function and to proclaim the national policy that intellectual property was one of the top priorities."

"Taking these recommendations and suggestions into account, the Working Group on Intellectual Property Lawsuits held by the Office for Promotion of Justice System Reform and the Task Force on Strengthening of the Foundation for Right Protection established under the Intellectual Property Policy Headquarters discussed the issue of creating the IP High Court. Based on the discussion, the Secretariat of the Office for promotion of Justice System Reform worked on a bill, and in June 2004, the Law for Establishing the IP High Court was enacted."

The purpose of the Law for Establishing the IP High Court is to "ensure more effective and speedy trial proceedings in IP cases, based on the understanding that the role of the judiciary has become more important in the proper protection of intellectual property along with the active use of intellectual property in the Japanese economy and society, thereby enhancing the judicial services specializing in handling IP cases (www.ip.courts.go.jp)."

In accordance with this law, "the IP High Court was established on April 1, 2005, as a special branch within the Tokyo High Court."

The IP High Court "hears suits against appeal/trial decisions made by the Japan Patent Office (JPO), as the court of first instance and civil cases related to intellectual property as the court of second instance" as follows:

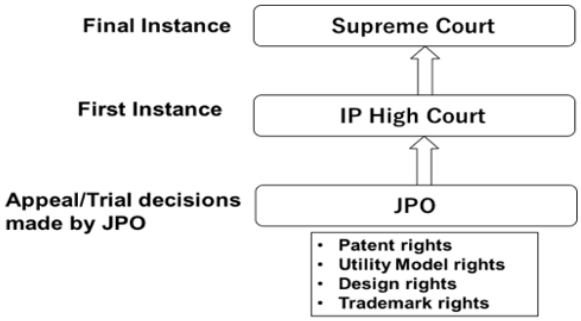

Figure 2 Suits against appeal/trial decisions made by JPO

(1) Suits against appeal/trial decisions made by JPO

"Suits against appeal/trial decisions made by JPO come under the exclusive jurisdiction of the Tokyo High Court and are heard by the IP High Court as a special branch of the Tokyo High Court."

(2) Appeals from district courts in civil cases

"Appeals from district courts in civil cases relating to patent rights, utility model rights, rights of layout-designs of integrated circuits and rights of the authors of a program work come under the exclusive jurisdiction of the Tokyo High Court and are heard by the IP High Court." In consequence, "all such appeals are exclusively heard by the IP High Court."

"Appeals from district courts in civil cases relating to design rights, trademark rights, copyrights (excluding rights of the authors of a program work), rights of publication, neighboring rights, breeder's rights and those relating to infringements of business interests by acts of unfair competition come under the jurisdiction of the relevant high court among the eight high courts in Japan depending on where the court of first instance is located. Therefore, the IP High Court, as a special branch of the Tokyo High Court hears such appeals when they come under the jurisdiction of the Tokyo High Court"(www.ip.courts.go.jp)

(3) Other cases

The IP High Court "also hears other civil cases and administrative cases under the jurisdiction of the Tokyo High Court that require expertise on intellectual property to conduct proceedings and make judgments on the main issues (www.ip.courts.go.jp)."

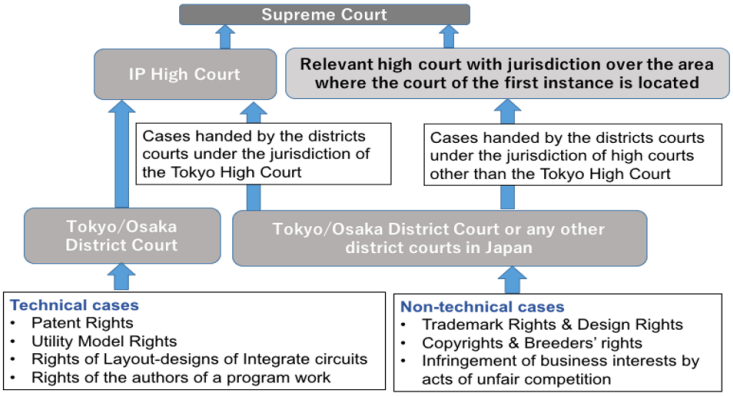

Figure 3 Jurisdiction of intellectual property infringement litigation in Japan

1.3 Civil Trial System and Intellectual Property Court in China

According to the Chinese current constitution, and the Law on the Organization of People's Courts, China's civil court system is a four-level court system, which consists of district court, intermediate court, high court and the Supreme Court. The IP Court is categorized as a special court.

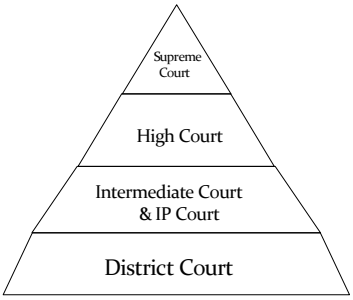

Figure 4 Civil trial system in China

The Supreme People's Court is located in Beijing and "supervises the administration of justice by all subordinate people's courts". It is the court of last resort for China mainland. High courts are "at the level of the provinces, autonomous regions, and special municipalities". The Intermediate court is "at the level of prefectures, autonomous prefectures and municipalities". The District court is "at the level of autonomous counties, towns and municipal districts".

In 1993, the courts in Beijing set up the first intellectual property trial chambers in China, which marked the specialization of intellectual property trials in China. By August 2014, the Supreme Court of China, 31 high courts,

more than 400 intermediate courts and over 100 designated district courts founded the intellectual property trial chamber together with nearly 3,000 intellectual property specialist judges. In 2014, China's courts accepted and heard 95,522 intellectual property civil cases of first instance and 9,918 intellectual property administrative cases of first instance. With this background, the Standing Committee of the National People's Congress discussed and passed the Resolution on Establishing Intellectual Property Courts on August 31st, 2014, enabling the formal launch of China's setting-up procedure for intellectual property courts. There are now three Specialized IP Courts in China, located in Beijing, Shanghai and Guangzhou. The establishment of the specialized IP Courts in late 2014 is a major milestone in China's recent efforts in improving IP protection.

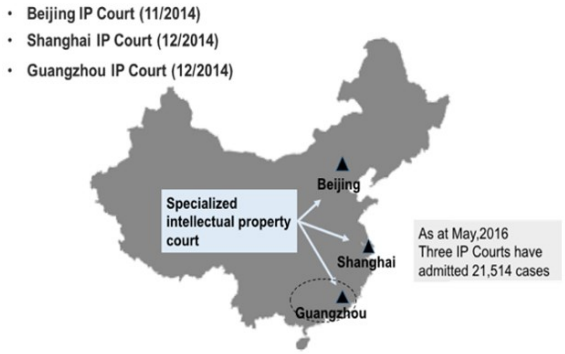

Figure 5 Intellectual property court in China

The reason for choosing the above three cities are as follows: Beijing is China's political and cultural center. There are a large number of cases, especially administrative cases, related to the granting and confirmation of patent and trademark within the exclusive jurisdiction of Beijing. Shanghai is the economic and financial center of China as well as the city with the largest population and a large number of foreign enterprises. Guangzhou has a considerable number of intellectual property cases and a rich experience in handling patent cases. Meanwhile, the three cities are among the earliest to conduct intellectual property trials in China, which has laid a sound foundation for adjudication.

The administrative level of a specialized intellectual property court is equivalent to that of an intermediate court, making the specialized intellectual property court both a court of first instance and of appeal. Specifically, the specialized intellectual property court stands as the court of first instance for technology cases such as patent disputes and the court of appeal for non-

technology cases such as copyright, trademark and unfair competition disputes.

The specialized IP Courts of China have the jurisdiction of first instance over the civil and administrative cases involving a patent, new plant variety, and integrated circuit layout design taking place in the cities where they are located. First instance administrative cases involving the granting or invalidating of IP rights in patent, trademark, new plant variety, and integrated circuit layout design, shall be under the jurisdiction of the Beijing IP Court.

The Beijing IP Court has also the exclusive jurisdiction for suits against appeal/trial decisions made by the State Intellectual Property Office of China (SIPO).

In China, the Patent Law provides for patents, utility models and designs, which are equivalent to patents, utility models and designs in Japan. SIPO has jurisdiction over applications and thereof. The Patent Reexamination Board under the SIPO is in charge of reexaminations and requests for declaring a patent right invalid through the appeal/trial decisions. The Patent Reexamination Board was established by the SIPO and consists of technical and legal experts appointed by the Patent Administration Department of the State Council of the People's Republic of China. The chief of the Patent Reexamination Board is a senior member of the Patent Reexamination Board and is also in charge of the Patent Administration Department of the State Council.

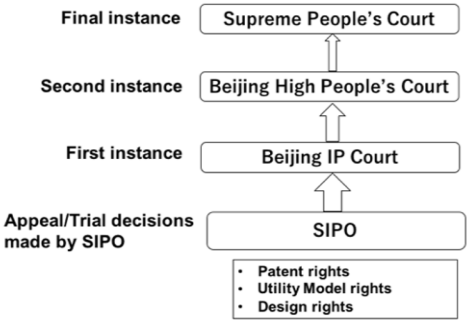

Figure 6 Suits against appeal/trial decisions made by SIPO

Any party concerned who is dissatisfied with the result of appeal/trial decisions made by the Patent Reexamination Board of SIPO may initiate a suit before the Beijing IP court as the first instance within three months from the date of receipt of a notification of the decision.

While the specialized IP Courts is a great improvement to the Chinese judicial system, a number of unresolved issues remain. In particular, there are only three specialized IP Courts and their jurisdiction coverage is limited to a small portion of China. It is expected that more IP Courts should be established to extend their jurisdictions to a larger territory. In addition, as the IP High Court of Japan, a

specialized IP Court of Appeal at the state level is missing from the current Chinese IP ecosystem. The three specialized IP Courts in Beijing, Shanghai and Guangzhou operate at the intermediate court level, subject to appeal review by provincial courts in the three municipalities. Building a specialized IP Court of Appeal can carry on the specialty and uniformity of the IP Courts in appeal proceedings, and may be the basis for a platform to improve the efficiency of patent validity review.

1.4 Enforcement System of Chinese Intellectual Property Law

1.4.1 Administration System

(1) Patent administration system

China's State Intellectual Property Office (SIPO) is "directly affiliated to the State Council with main responsibilities" including coordinating the intellectual property affairs and national administration office of patent affairs as well as the enforcement office of patent law. Provincial administration offices and the Ministry's administration offices are in charge of making a patent working plan, dealing with patent disputes, patent license and technology import and export as well as guiding the patent affairs of Chinese enterprises.

(2) Trademark administration system

The Trademark Office under the State Administration of Industry and Commerce (SAIC) is the national administration office for trademark registration and administration of trademark affairs. The Trademark Review and Adjudication Board under SAIC is a parallel body with the Trademark Office dealing with disputes concerning registered trademarks. There is also a Local Administration of Industry and Commerce, with provincial, prefecture as well as over 3,000 administrative divisions at the county level, which are in charge of administration of trademark use, trademark printing and administrative treatment of trademark infringement.

(3) Copyright administration system

The Copyright Administration Department is in charge of the national administration of copyright affairs, administrative treatment of important infringement cases, approval of collective organization of copyright management and so on. Provincial administration offices are in charge of administrative treatment of the disputes of copyright contract and copyright infringement.

1.4.2 Juridical System

A patentee, trademark owner and copyright owner can request IP relevant administrative organizations at different level to deal with IP infringement or can initiate a suit for infringement in a people's court as below: (1) The Third Civil Tribunal of the Peoples' Supreme Court; (2) The Third Civil tribunal or IP tribunal of the high people's court; (3) Beijing/Shanghai/Guangzhou Intellectual Property Court; (4) The Third Civil Tribunal or IP tribunal of the Intermediate people's court; (5) The Third Civil tribunal or IP tribunal of the district people's court designated by the Supreme People's Court.

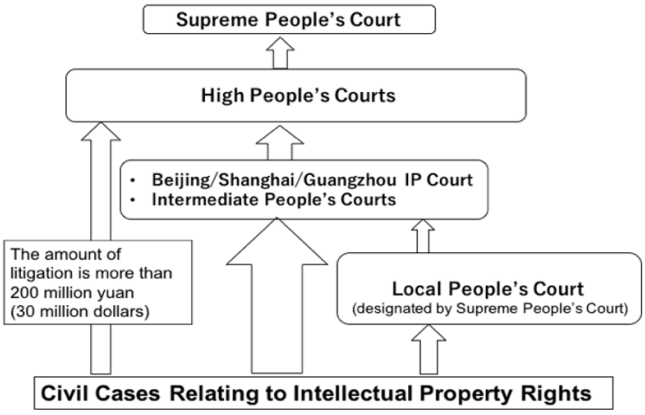

Figure 7 Jurisdiction of IP infringement litigation in China

1.4.3 Social Service System

There are large numbers of patent, trademark and copyright service agencies in China. Patent Agencies help parties to deal with domestic and foreign-related patent affairs. Whereas trademark agencies help parties to deal with domestic and foreign-related trademark affairs, Copyright agencies help parties to deal with copyright trade and dispute.

1.5 A Common Issue in Civil Patent Infringement Litigations

A common issue in civil patent infringement litigations in Japan and China is that there is a double-track issue between an invalidation trial at an IP office and an invalidity defense at the courts for infringement. In civil patent infringement litigation, if the defendant protests that the patent right of the patentee is invalid the court will forbid the exercise of the patent right when they think the patent right of patentee should be invalid.

In Japan, as the Article 104-3 of Japanese Patent Law (2004 Amendment, invalidity defense) states, "Where, in litigation concerning the infringement of a patent right or an exclusive license, the said patent is recognized as one that

should be invalidated by a trial for patent invalidation, the rights of the patentee or exclusive licensee may not be exercised against the adverse party." The scope and criteria of judgment for an invalidation trial at the JPO and invalidity defense at courts for infringement are identical, which results in a true double-track system. In China, as the Article 62 of Chinese Patent Law (2008 Amendment) states, "In a patent infringement dispute, if the alleged infringer has evidence that the technology or design to be implemented is a prior art or an existing design, it does not constitute a patent infringement." The same double-track system exists in SIPO and People's (IP) Courts.

The most important advantage of the double-track system is its important role in enhancing the efficiency of patent infringement cases. But as a result, there may be a contradiction between the decisions of JPO and that of SIPO, and judgment in litigation on patent infringement by IP Courts. It may be unfair for the parties involved as defendants to have two opportunities to defend while patentees have to win both in trial and litigation. So, the balancing of power between the IP administrative agencies as JPO/SIPO and the IP judicial authorities is an important issue in the intellectual property protection theory and practice in both Japan and China. To maintain a balance, the law should be revised not only by considering the efficiency of the trial, but also by paying attention to the substantive equality and justice of the parties.

2. Trends in Cases and the Ongoing Judicial Reform in China

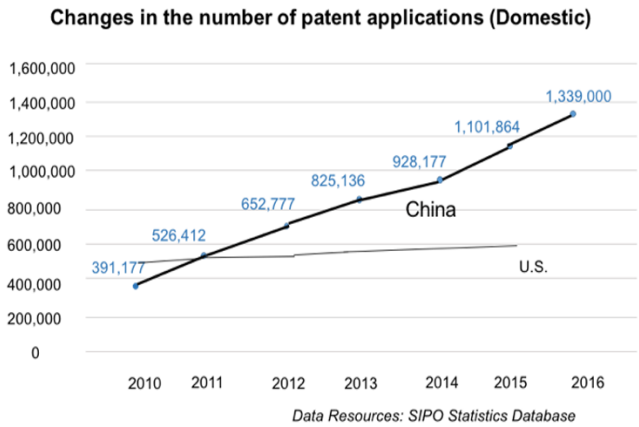

Figure 8 Changes in domestic patent applications in China

2.1 Trend in Cases in China

As presented in the Figure 8, with the increasing number of domestic patent applications, China has witnessed an increasing number of cases in recent years. Among these, civil cases increased most substantially, by 14.51%, from 2014 to

2015. The caseloads have remained high in Beijing, Shanghai, Jiangsu, Zhejiang and Guangdong accounting for 70% of the total.

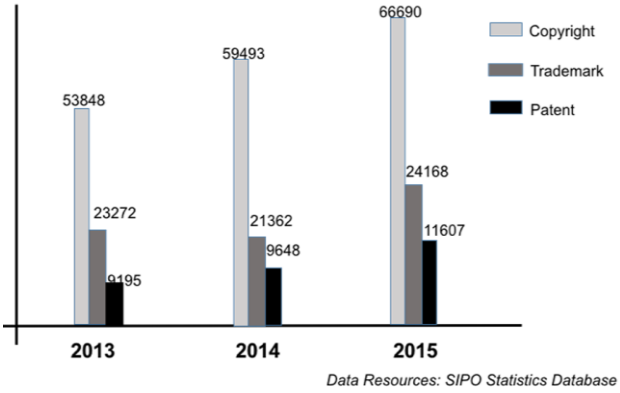

Figure 9 Changes in new field IP cases of first instance in China

At the same time, the difficulty in adjudication is increasing. Patent administrative and infringement cases have been continually increasing and the online IP infringement disputes have mushroomed, which present new challenges. Adjudication quality and efficiency has steadily improved in recent years. The number of concluded IP cases of first instance has notably increased by 11.68% in 2015 and it always attached importance to mediation in civil IP disputes. China has taken serious actions against manufacturing and sale of counterfeit goods, brand hijacking, trade secret infringement as well as increased the quantum of damages and imposed more severe punishment on unethical behavior in legal proceedings, which provided better protection for IP rights in China.

2.2 The Ogoing Judicial Reform in China

In order to improve the quality and consistency of adjudications in IP cases as mentioned above, China has established IP tribunals at all four levels of the People's Courts and specialized IP Courts, comprising in general judges trained in IP laws. Added to these, China is carrying out more profound judicial reforms.

(1) Breakthroughs in the pilot for 'three-in-one' reform

The "three-in-one" adjudication system means the unification of civil, administrative and criminal IP cases under a single IP tribunal. Recently, pilots were carried out in six high courts, 95 intermediate courts and 104 district courts in China. Before the reform, different judicial divisions heard civil, administrative and criminal IP cases even though they were related. The three-

in-one system has not only manifested the advantages of optimized judicial resource allocation, standardized adjudication rules and improved adjudication quality, but also minimizes inconsistencies caused by different tribunals hearing related matters.

(2) Improved distribution of jurisdiction for IP cases

At this point, China has begun to try to concentrate on the jurisdiction for patent and technology-related civil cases and adopt flexible and need-based jurisdiction for special categories of civil cases involving well-known marks, monopoly and look into trans-regional jurisdiction for first instance IP cases.

(3) Refine the technical fact-finding mechanism

In Japan's IP High Court, there is a technical advisory mechanism involved. Technical advisors are involved in the decision-making of the court and they also assist judges by "providing technical explanation in cases where their expertise is required to clarify issues of the case or to facilitate progress of the proceedings." Technical advisors are "appointed by the Supreme Court as part-time officials and they are experts in various scientific fields such as university professors and researchers from public research institutes." Following Japan's advanced judicial system, technical fact-finding systems such as forensic examination, expert assessor, expert consultation and technical investigation officers are being established in China.

(4) Pressing ahead with multi-channel dispute resolution mechanism

China is strengthening coordination and cooperation between the IP administrative authorities, people's mediation organizations, arbitration organizations, industry associations and professional mediation organizations.

3. A Practical Issue on International Trade and IP Protection

3.1 A Typical Hypothetical Case Related to Parallel Import

Patentee X is a machinery maker that has invented a machine, obtaining the patent both in China and Japan. Patentee X manufactures and sells the patented product in China. Parallel importer B exports the X-product to Japan as business, after purchasing it in China. In Japan, Retailer C purchases it from B and distributes it in Japan.

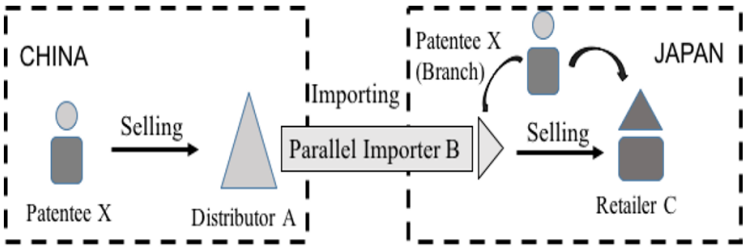

Figure 10 A typical hypothetical case related to parallel import

Patentee X also sells the product in Japan, made by the Japanese patent. In the situation where B bought the X-product in China and C sells it in Japan at a cheaper price than patentee X does in Japan, patentee X claims it to be an infringement of their Japanese patent and requests the injunction.

This is a typical situation of a parallel import of a patented product. The X-product manufactured and sold in China was not the pirated product, but the authentic one, distributed by them as the patent holder. Once they have sold them, the patent right of the authentic product shall be exhausted in China, and anyone, who buys them, can resell to others and use them in their business dealings freely. It is national exhaustion. On the other hand, when the patented product is sold in Japan, crossing over the border of China, the question is whether the Japanese Patent of the patentee X is also exhausted in Japan or not, which is called the international exhaustion doctrine.

3.2 The International Exhaustion Doctrine in Japan

In the Japanese Patent Act, there is no provision of national or international exhaustion, however, there is no doubt that national exhaustion is recognized in general and that there are such cases heard in the Supreme Court. As for the Copyright Act of Japan, there has been a provision of both national and international exhaustion related to the right of transfer of ownership except for cinema, since 1999.

In a famous BBS Case in 1997, the Supreme Court denied the international exhaustion by saying that patent right should be generated and registered per country. The court said that the right holder could prohibit parallel import by taking some measures, at the time of putting it on the market, such as indicating the penalties for infringement in the exported country. However, if there is no such description, parallel import shall be permissible.

In short, the court denied that the international exhaustion of the right holder, and the product's patent right does not exhaust per country of distribution, which means the patentee can prohibit sale in other countries upon exporting. As a result, the patentee can monopolize the exploitation of each country by indicating the prohibition of parallel importation on the patented product. Since

that time, the Supreme Court Case has been adopted in all similar cases, and there has been no other such case for the last 20 years.

Concerning the right of transfer of ownership in the copyright act, there is the provision of international exhaustion. Additionally, there is another provision denying international exhaustion, made in 2004. It relates to music CDs of Japanese pop-music, sold in Asian countries. Due to currency or market fluctuation, sometimes they are cheaper than those directly sold in Japan. Then if you re-import such a CD into Japan and sell it at a cheaper price, it becomes an illegal act, by denying the international exhaustion.

3.3 The International Exhaustion Doctrine in China

In China, the 3rd revision of the Patent Act in 2008 acknowledged the international exhaustion of patent right as follows:

"The following shall not be deemed to be patent right infringement: After a patented product or a product directly obtained by using the patented method is sold by the patentee or sold by any unit or individual with the permission of the patentee, any other person uses, offers to sell, sells or imports that product (Chinese Court)".

There are two reasons for acknowledging the international exhaustion in China. Firstly, "a patentee can profit from his patent through manufacturing or licensing the manufacturing of the patented product and it would not be fair to allow the patentee to profit twice from the same product". Secondly, "granting a patentee the right to profit repeatedly from the same patented product would also hinder the utilization and absorption of the patent". In addition to these two reasons, there might have existed more detailed discussions on this implementation, however, it has apparently two different effects. On one side, international exhaustion for a patented product is a demerit for China, which has patents in many different countries for their business development. On the other side, it is a merit for China to allow the import from countries where the cheapest patented product is distributed, apart from the intention of Chinese patentee.

III. Conclusion

The main aim of the paper was to compare the legal systems and practice of intellectual property protection in Japan and China. To do that, the relating civil litigation and administrative litigation procedures of both countries were examined. Because both Japan and China are civil law system countries, and both countries share similar legal culture backgrounds, we can see that there are many similarities in civil and administrative trials. For example, different from courts in other countries, Japanese courts have a system of technical coordinate

officials to help judges in patent cases, while many Chinese courts also issued the relevant regulations on the duties of technical research officials with respect to patent infringement judgment. And, as described in Chapter 1, both countries have similar intellectual property civil and administrative judicial bodies, both of them have a well-established statutory law system and have established specialized IP Court for the protection of intellectual property. Furthermore, the same Double-Track issue of IP civil infringement litigations discussed in Chapter 1 exists in both countries.

On the other hand, in the specific judicial procedures and the setting up of trial institutions, there are quite a few differences between the two countries due to historical, political and social reasons. For example, Japan has only established one specialized IP Court, but it is the second instance court, which has the final adjudication right of IP trials. It can be of help to unify the national IP trial standards. On the contrary, China has established three specialized IP Courts, and since all of them are courts of first instance, they do not have the right of final adjudication. Therefore, there are still some regional differences in IP trial standards in China. However, with the continuing growth of the Chinese economy, it is believed that in the near future, China will also establish a specialized IP court of appeal similar to Japan's IP High Court to solve the problem derived from the fact that trial standards are not uniform.

In addition, as discussed in Chapter 3, the two countries also hold different attitude on whether to recognize the international exhaustion of patent rights. Actually, this is an issue of how to balance the interests of patentees and those of domestic consumers. According to the state development of the domestic economic, China believes that priority should be given to protecting the interests of the domestic consumers, that is, recognizing the international exhaustion. On the other hand, Japan made the opposite choice based on the concept of giving priority to the protection of the patentee.

The economic basis determines the superstructure, and the superstructure is the reflection of the economic basis. The differences and similarities between China and Japan in the field of the legal system and practice of intellectual property protection reflect the differences and similarities in the economic conditions of the two countries.

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