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## SYLLABUS

### Recent Developments in Japanese Patent Litigation

#### - How to Enforce Your Rights and Protect Yourself in Japanese Court -

#### I. Japanese Companies began to Sue Asian Companies in Japan

1. You need to know how to protect yourself in Japan.
  - Japan v. Taiwan: Sharp v. 東元電気, Nichia v. E&E Japan, Sanyo v. Princeton Technology
  - Japan v. Korea: Toshiba v. Samsung, Fujitsu v. Samsung, Panasonic v. LG, Toshiba v. Hynix
2. You need to know how to enforce yourself in Japan.
  - Different legal system (ie. No seizure for infringement goods)

#### II. Recent Changes of Japanese Patent Litigation

1. Major Changes
  - Fast Procedure
  - Larger Damages
  - Doctrine of Equivalents
  - Patent Invalidity in Infringement Court
  - IP High Court
2. Background of Changes
  - Collapse of Bubble Economy and Lower International Competitiveness
  - Pro-Patent Policy by Prime Minister Koizumi
  - Increase in Number of IP Cases
3. Fast Procedure
  - Notorious for Slow Procedure; Comparison from 10 Years Ago
  - 1 Year in Tokyo District Court (cf. Rocket Docket)
  - Guideline of Tokyo District Court
  - Increase of IP Judges
  - US Attorneys' Strategy to Choose Japan as the Jurisdiction to Obtain Decision First

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4. Larger Damages
  - Notorious for Low Damages
  - Patent Law Amendment in 1998
  - 84 Billion Yen Damage in Aruze v. Sammy (2002)
5. Doctrine of Equivalents
  - Notorious for Narrow Claim Interpretation and No DOE
  - Ball-Spline Supreme Court Decision (1998)
  - Lower Court's Decisions after Ball-Spline
  - Difference between Tokyo District Court and Osaka District Court
6. Patent Invalidity in Infringement Court
  - Only JPO can Invalidate Patents; Inherited from Germany
  - Kilby Supreme Court Decision (2000)
  - Infringement Court can Invalidate Patents if "Apparently Invalid"
  - Importance of Invalidity in Infringement Court
  - Patent Law Amendment in 2004; Deletion of "Apparently Invalid"
7. IP High Court
  - From April 2005
  - District Court; Tokyo & Osaka only
  - High Court; IP High Court in Tokyo only
  - En Banc Decision by 5 Judges

III. Recent Hot Topics

1. Inventor's Compensation
  - Hitachi, Ajinomoto, Nichia Cases
  - Foreign Patent Rights
  - Patent Law Amendment in 2004
  - What you should consider when you establish a subsidiary in Japan or have joint venture with Japanese companies
2. Foreign Patent Infringement Suit in Japan
  - Card Reader Case and Asian Countries' Strategy
  - Coral Case and Japanese Companies' Strategy
3. P2P Technology and Copyright
  - Winny Case in Japan; Inventor was Arrested
  - US Grokster Case & Dutch KaZaA Case
  - Asian Countries' Strategy after Winny in IT Industry

IV. Basics of Japanese Patent Litigation

1. Seizure of Infringement Goods

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- No Need to Hire Detectives
2. Warning Letter
    - No Legal Requirement
    - Concern for Declaratory Judgment
    - Unfair Competition
  3. Counsel
    - Bengoshi; Japanese Litigation is Required by the Law to be Represented by Bengoshi, so does Patent Litigation
    - Benrishi can Assist
    - New Law gave Benrishi who passed a specific exam to be a Co-Litigator to handle if with Bengoshi
  4. Cost of Litigation
    - Stamp Fee
    - Attorney Fee; Born by Defeated Party?
  5. Jurisdiction
    - District Court; Tokyo and Osaka, which one to Choose?
    - High Court; IP High Court in Tokyo
  6. Preliminary Injunction
  7. Examination
  8. Bifurcation
  9. Defense