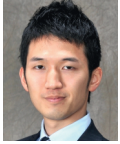


JAPAN



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Apple v Samsung cases so far

Apple and Samsung are fighting litigation with each other all over the world, and Japan is no exception. Here we run through the outcomes and implications of the three cases.

The first case

In the first case Apple sued Samsung for damages based on an indirect infringement alleging that the method used by Samsung's products fell under the technical scope of JP 4204977, a patent regarding a method for "synchronising music and video data in devices to servers".

The Tokyo District Court held that Samsung's products did not infringe and dismissed Apple's claim. On the same day, Apple's petition for preliminary injunction against importation and sales based on the patent was dismissed. This judgment was sustained by the IP High Court. Apple did not appeal to the Supreme Court and the judgment became final and binding.

The district court judgment attracted a lot of attention because it was the first Apple v Samsung lawsuit in Japan. However, the case was relatively simple and the decision was a moderate one. Furthermore, the technology was not essential in smartphones, and according to Samsung was only at issue in Japan.

The first FRAND case

In the second case Samsung filed a petition for preliminary injunction against Apple products based on JP 4642898 ('898 patent), a patent regarding the technical method and apparatus for effectively transmitting and receiving packet data of cellular phones. Then, Apple filed a declaratory judgment action against Samsung asserting Samsung does not have a right to seek damages based on a standard essential patent (SEP) with a FRAND declaration.

The Tokyo District Court held that the iPhone 3GS and iPad Wi-Fi+3G did

not fall under the technical scope of the '898 patent, whereas the iPhone 4 and iPad 2 Wi-Fi+3G did. However, the Court held that Samsung did not have a right to seek damages against Apple because Samsung's allegation for damages was deemed as an abuse of right (Civil Code article 1(3)). On the same day, the Court also dismissed Samsung's petition for a preliminary injunction for the same reason.

This was the first SEP decision with a patentee's FRAND declaration in a Japanese court. The judgment also attracted a lot of attention because it accepted Apple's defence of abuse of right. Decisions regarding SEP and FRAND have been made all over the world, including the Orange-Book case in Germany, at the European Commission and at the ITC in the US. The Tokyo District Court judgment had some characteristics of those in confirming the absence of a right to seek "damage" based on SEP with a FRAND declaration. This judgment was appealed and the IP High Court's decision is expected.

The first enforcement

In the third and last case Apple sued Samsung for damages alleging that Samsung's products infringed JP 4743919 ('919 patent), the "bounce back" patent, which plays an important function in the user interface of smartphones.

The Tokyo District Court rendered an interlocutory judgment holding that Samsung's products infringed the patent and it was valid. This judgment attracted attention because it was the first granting enforcement of a patent in Apple v Samsung suits. The case went into a damage phase where the Tokyo District Court will judge the existence and amount of damages. The damage calculation will attract attention in the near future.

This bounce back patent has been at issue in other countries. For example, in the US a jury in the Northern District of California, San Jose Division, rendered a verdict finding that Samsung's products such as the Galaxy phone infringed the US "bounce back" patent.

These Japanese judgments in Apple v Samsung and upcoming judgments of the IP High court and the Supreme Court will be important for FRAND and patents more generally.