



# IP News Bulletin

## for Japan & China



**March 2022**

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**- News about Sonoda & Kobayashi -**

**1. Sonoda & Kobayashi invites you for its webinar on Chinese patent litigation on April 6<sup>th</sup>**

Sonoda & Kobayashi will soon be organizing a webinar on Chinese patent litigation.

On the 6<sup>th</sup> of April, Ms. Yanhui Wang, partner at Sonoda & Kobayashi IP Group (Beijing), will provide you with advice and tips on how succeed in patent litigation in China.

If you are curious to learn more, please fee free to sign up through the following [link](#).



**SONODA & KOBAYASHI**  
INTELLECTUAL PROPERTY LAW

**LIVE WEBINAR:**  
Advice and Tips for  
Patent Litigation in China  
April 6 at 10PM JST/ 3pm CET/ 9AM EST

**Yanhui Wang**  
Chinese Patent Attorney  
and Attorney at law

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**- JPO and CNIPA News -**

**1. JPO provides more details regarding prohibition of multiple dependent claims depending on multiple dependent claims**

On February 25, 2022, a ministerial ordinance was promulgated to partially revise the Patent Law Enforcement Regulations and the Utility Model Law Enforcement Regulations, and will come into effect on April 1, 2022.

This ordinance confirms that beginning April 1<sup>st</sup>, 2022, the JPO will forbid multiple dependent claims which depend on other multiple dependent claim (hereafter, multi-multi claims). In addition, the JPO provides more details regarding this change. Specifically, the prohibition will apply to applications filed after April 1, 2022. For divisional applications (and converted

applications), the priority date will be used instead of the actual filing date. For example, suppose you file a divisional application after April 1, 2022 from a parent application filed prior to April 1, 2022. In this case, multi-multi claims are permitted as long as it is a legal divisional application that meets the divisional requirements. On the other hand, if the division requirements are not met, retroactive effect will not be obtained and the filing date will be the actual filing date, limiting multi-multi claims. In addition, the prohibition will not apply to PCT applications filed prior to April 1, 2022 but which enter into the Japanese National Phase after April 1, 2022.

Finally, with respect to examination of applications which contain such prohibited claims, the JPO states that the reason for rejection for description requirements (regarding Violation of the Ministerial Ordinance Requirement) will be issued on such prohibited claims and no further examination on the merits of the claim will be done (i.e., the Examiner will not consider novelty, inventive step, etc. for such prohibited claims). Furthermore, if an amendment to overcome the above-noted forbidden claim is made, but the claim is found to contain another reason for rejection, a final office action will be issued. Please note that there will be stricter restrictions on amendments which can be made at the final office action stage at the non-final office action stage.

Specific information on this topic can be found [here](#). (in Japanese)

## **2. Following the expansion of design eligible for protection under the Design Law, JPO released case studies of newly eligible registered designs**

As we first reported [here](#) (click for more details), the Design Law has been amended to expand protection to new categories of designs. Recently, the JPO homepage announced a collection of new design patents which fall under the expanded protection for newly eligible designs.

Specifically, the case studies involve newly protected [images](#), [buildings](#), and [interior designs](#) (all pages in Japanese). Such examples (all accompanied with figures/images) may assist applicants who may wish to take advantage of the expanded scope of design protection.

Specific information on this topic can be found [here](#). (in Japanese)

## **3. JPO website introduces 3<sup>rd</sup> party IP intelligence services in Japan**

As our firm has received numerous requests for such information, please be advised that the JPO provides a list of 3<sup>rd</sup> party IP intelligence services in Japan. As these services are provided by third parties, the JPO cautions that they do not actively recommend or guarantee the quality of these services. The list was last updated on December 17, 2021.

The services include:

- TechRadar Scope (VALUENEX KK): When inputting text or a patent number that describes technical content, patents similar to the input content will be collected and visualized. This search/analysis applies to content from patent applications in Japan and in the United States.
- ULTA PATENT (Wisdomain KK): Search for domestic and foreign patents, and automatically display information on major players and patents in that particular technical area.
- Patentfield (Patenfield KK): Patentfield is a comprehensive patent search/analysis platform which utilizes AI. It allows:

- (A) Searching by specifying terms and conditions as used by the JPO's official database (J-Plat Pat);
- (B) Mapping of up to 500,000 patents on more than 120 types of axes;
- (C) Entering technical texts and publication numbers to search for related patents.

Specific information on this topic (including a description of more third party services) can be found [here](#). (in Japanese)

#### **4. CNIPA releases IP statistical data from January to February 2022**

CNIPA has released the statistical data on intellectual property prosecution in China from January to February 2022. The most important take-aways from the statistical data on patents, trademarks, geographical indications and integrated circuit layout designs are summarized below.

##### **Patent, utility model, and design statistics**

From January to February 2022, the number of newly granted patents in China was 84,819 (domestic applicants 71,725 and foreign applicants 13,094).

By the end of February 2022, the number of active patents in China stood at 3,657,470 (domestic rights holders 2,832,410 and foreign rights holders 825,060).

Furthermore, from January to February 2022, there were 3,194 PCT patent applications filed, including 2,872 cases from domestic applicants and 322 from foreign applicants.

As for utility models, from January to February 2022, the number of newly granted applications was 532,732 (domestic applicants 531,287 and foreign applicants 1,445).

By the end of February 2022, the total number of utility models active in China was 9,643,082 (domestic rights holders 9,589,817 and foreign rights holders 53,265).

Finally, concerning designs, from January to February 2022, the number of designs granted was 87,185 (domestic applicants 85,419 and foreign applicants 1,766). By the end of February 2022, the number of active design rights in China totaled 262,945 (domestic rights holders 2,495,477 and foreign rights holders 126,468).

##### **Trademark statistics**

From January to February 2022, the number of trademark applications granted in China was 1,620,510 (domestic applicants 1,581,688 and foreign applicants 38,822). By the end of February 2022, China had 38,731,689 cases of valid registered trademarks (domestic rights holders 36,786,447 and foreign rights holders 1,945,242). In the same period, there were 35,238 cases of trademark opposition applications in China, and 25,169 cases of oppositions were reviewed.

##### **Geographical indications and integrated circuit layout designs**

From January to February 2022, CNIPA accepted 2 applications for geographical indication products, and approved 3 geographical indication products.

Furthermore, CNIPA approved 739 market entities that use special geographical indications, and also granted the registration of 183 geographical indication trademarks.

As for the registration of integrated circuit layout designs, 2,324 applicants were received, and 1668 certificates were issued.

Looking at the data from the same period in 2021 for patent statistics, we find that the number of granted patents decreased by 9209 (a year-on-year decrease of 9.79%).

However, the number of utility models granted increased by 163,329 (a year-on-year increase of

44.21%), while the number of designs authorized again decreased by 9630 (a year-on-year decrease of 9.95%).

For trademarks, the number of trademark registrations increased by a total of 19.3% compared to January to February 2021.

For more information, please click [here](#). (in Chinese)

## - Latest IP News in Japan -

### 1. Nearly 40% more IPR infringing articles seized at Japan's border in 2021

Japanese ministry of Finance, March 4<sup>th</sup>, 2022

On the 4<sup>th</sup> of March Japan's Ministry of Finance published a report with the 2021 statistics on import seizures of goods infringing on intellectual property. In the short summary on their website, they highlight several key figures.

These figures are the number of cases in which IP infringing goods were seized at the border, as well as the total number of actual articles that were blocked from entering the country by Japan's customs officers.

We see that the number of cases fell by about 6.7% in 2021, in comparison to 2020. That said, the total number of cases still exceeded 28,000 for the second year in a row.

However, looking at the total number of seized goods that infringe on IP, a grand total of 819,411 goods were seized in 2021. This is a significant 39.1% increase in comparison to 2020.

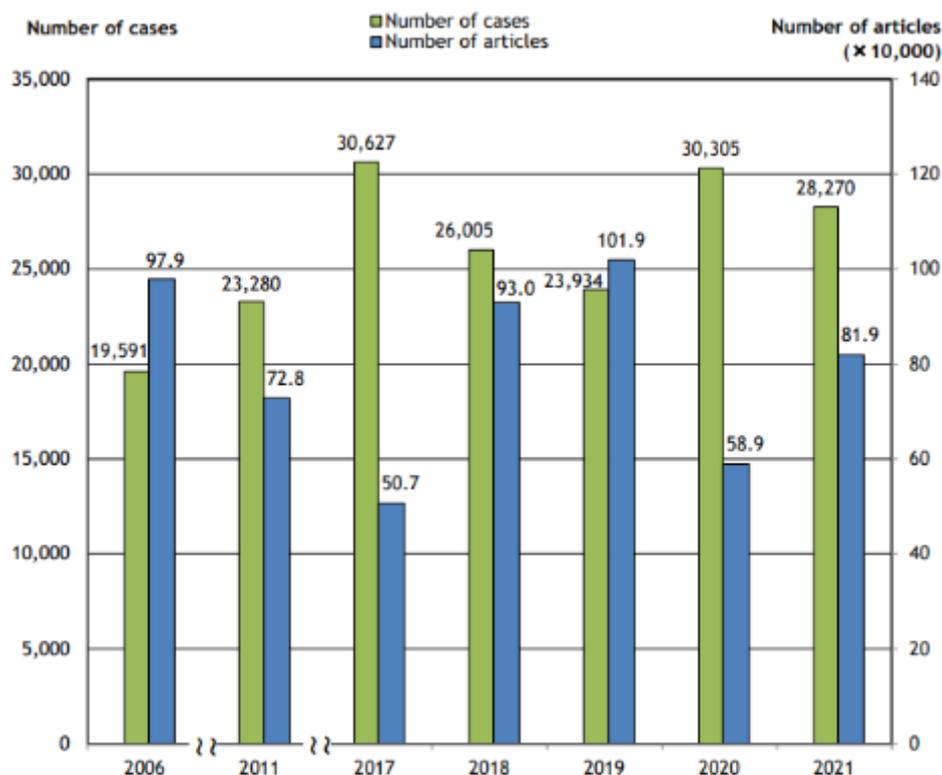


Figure 1: Number of Import Seizures of IPR Infringing Goods in Japan

Source: 2021 Seizure Statistics of IPR Border Enforcement, Japan Customs;

<https://www.customs.go.jp/mizuguiwa/chiteki/pages/statistics/statistics2021.pdf>

The Ministry of Justice mentions several other key statistics with regards to the seizure of goods that infringe upon IPR.

In terms of the countries from which the seized goods originate, China remains on top of the list. About 77.4% of all IPR-related seizures in 2021 came from China. Number two on this list is Vietnam, accounting for 10.7% of all seizures. The Philippines completes the top 3 of source countries and regions with 3.9% of total seizures of IPR violating goods.

Important miscellaneous facts mentioned in the Ministry's short report: the marked increase in blocked imports of electrical products: 62% more articles were seized than in 2020.

For pharmaceutical articles, there was an even larger increase: 579.2% more articles were seized compared to 2020.

For more information, please click [here](#) (in Japanese) or [here](#) (in English).

## **2. Japanese drugmaker Ono Pharma sues AstraZeneca for patent infringement**

*Fierce Pharma, March 1st, 2022*

On the 1<sup>st</sup> of March, Fierce Pharma reported on a new lawsuit filed by Japanese drugmaker Ono Pharma at the Tokyo district court against the British-Swedish pharmaceutical company AstraZeneca. Specifically, Ono Pharma claims that AstraZeneca's lung cancer drug Imfinzi infringes on its patents related to the PD-L1 protein.

In the past Ono Pharma used a similar strategy to receive payout from competitors, and this time it is demanding even more royalties from AstraZeneca.

In total it is seeking 32 billion JPY (or about 278 million USD) in damages from the alleged infringement. This is about 2.6% of a total of 10.7 billion USD that AstraZeneca made from Imfinzi sales up to the end of 2021.

Ono Pharma said that it won't ask for a sales injunction of the drug, as cancer patients depend on it. However, this will depend on whether AstraZeneca is willing to pay "an appropriate consideration including royalties even outside the proceedings."

Whether Ono Pharma will be successful and, if so, how long future royalty payments would continue, remains to be seen. It is estimated that even if Ono Pharma receives a 1.7% royalty of Imfinzi sales in 2023 and 2024, this would boost its estimated profits by 4% to 5% in both years. "We recognize intellectual property as an extremely important management asset," Ono Pharma said in a press release. "Therefore, we have decided to take appropriate measures against acts that infringe our intellectual property rights, leading to the filing of such a lawsuit at this time."

AstraZeneca's spokesperson wrote to Fierce Pharma, stating that "AstraZeneca does not comment on pending litigation"

For more information, please click [here](#).

## **3. Japan one of the leading countries in artificial photosynthesis patents**

*Nikkei Sangyo Shimbun, March 24<sup>th</sup>, 2022*

On the 24<sup>th</sup> of March, the Nikkei Sangyou Shimbun reported on the status of the technological field of artificial photosynthesis. It highlighted many recent technological developments, and the leading role that Japanese companies have in this area.

The field of artificial photosynthesis tries to imitate plants by producing chemical raw materials out of water and CO<sub>2</sub>, using energy from sunlight. The field has emerged as a promising technology for achieving carbon neutrality.

The article mentions several examples of Japanese firms and companies achieving promising results in their scientific experiments. In 2021 for example, a large scale, state sponsored project in which firms like Mitsubishi Chemical, Fujifilm and ARPCHEM<sup>[1]</sup> participated, published the results of an experiment where 100m<sup>2</sup> of photocatalyst panels were installed outdoors. Furthermore, Toyota Central R&D Labs has pioneered a prototype device for artificial photosynthesis in 2021, in which it achieved the highest efficiency of solar energy to date at 10.5%. Now, it wants to complete technical verification and start considering practical application around the year 2030.

In terms of patent rights, the article cites research that looked at 944 patents related to artificial photosynthesis since 2010. Of this total, 559 were filed in China, 186 in South-Korea, 144 in the US, and 141 in Japan. While the number of patents in China is certainly higher, many were filed domestically by Chinese universities and are more academic in nature.

Many of the patents filed in Japan appear to be more related to practical application. The ranking of organisations that filed many patents on artificial photosynthesis supports this.

Number one on this list is the US' Corteva Agrisciences (17 patents), followed by Japan's Fujifilm (14 patents), ARPCHEM (13), and Toyota Central R&D Labs (12).

Taking into account when these institutions last published new research, it can be said that Japan's top 3 institutions are leading in the world.

Key to the future of the technology is how cheaply it can produce hydrogen, as well as the further development of photocatalysts and electrode materials.

The article concludes with a statement on combining the individual expertise of Japan's companies in order to grow a strong business.

For more information, please click [here](#). (in Japanese)

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<sup>[1]</sup> Japan Technological Research Association of Artificial Photosynthetic Chemical Process

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## - Latest IP News in China -

### 1. Analysis of litigation involving Japanese companies in China

#### *China IP News*

On January 18<sup>th</sup>, 2022, IPHOUSE released an "Analysis Report on Intellectual Property Litigation of Japanese Companies in China (2018-2020)". According to this report, from 2018 to 2020, there were 1,853 intellectual property lawsuits involving Japanese companies in China, including 1,315 intellectual property administrative lawsuits.

Below, we will summarize the IP litigation data on large-scale Japanese companies (companies of Fortune Global 500 and listed companies)

#### **(1) Companies of Fortune Global 500**

In the past three years, there were 185 litigation cases involving Japanese companies of Fortune Global 500 in China, accounting for 9.98% of the cases involving Japanese companies. These companies are active in 12 industries.

The one industry most involved with IP litigation in China is that of Vehicles and Vehicle parts: a total of 92 cases.

Secondly, there are 55 cases involving companies in the electronic and electrical equipment sector.

Thirdly, there are 16 cases in total in the field of chemistry. Other industries include information technology services, food and grocery stores, pharmaceuticals, trade, industrial machinery, oil refining and metal products.

Among the above litigation cases in China, most of the Japanese companies involved sued as the plaintiff of the original trial, accounting for 59.46% of cases. Also, the companies participated in the litigation as the third party of the original trial, accounting for 38.38%. Consequently, the share of companies which were sued as the defendant of the original trial, accounts for 2.16%. In addition, among the above litigation cases in China, 149 cases are judgment cases. From the judgment results of these cases, it can be seen that there are 109 cases won by Japanese companies of Fortune Global 500, accounting for 73.15%.

## **(2) Listed companies**

In the past three years, among the litigation cases of Japanese companies in China, the Japanese listed companies accounted for a total of 634 cases, accounting for 34.21% of the cases involving Japanese companies.

According to the industries of the above-mentioned Japanese listed companies, it can be seen that among the litigation cases of Japanese listed companies in China in the last three years, the Japanese listed companies involved 28 industry fields, among which the field of electronic equipment involved the largest number of cases. This was followed by chemistry, for a total of 89 cases, and then thirdly, there are 70 cases in the field of transportation equipment.

Among the above-mentioned litigation cases, the vast majority of the companies involved sued as the plaintiff of the original trial, accounting for 75.08% of cases. The share of companies participating in the litigations as the third party of the original trial accounted for 22.24%. Lastly, the companies who were sued as the defendant of the original trial accounted for 2.05%.

Furthermore, there were cases in which the Japanese companies sued simultaneously as the plaintiff of the original trial and as the third party, accounting for 0.63%.

In addition, 471 of the above-mentioned litigation cases of Japanese listed companies in China were judgment cases, of which 325 cases were won by Japanese listed companies, accounting for 68.42%.

For more information, please click [here](#). (in Chinese)

## **2. Annual Report for 2021 released by China's IP Tribunal of the Supreme People's Court**

*China IP News*

On February 28, 2022, the Intellectual Property Tribunal of the Supreme People's Court of China released its Annual Report (2021). Here we outline some key points of the annual report for your reference.

### **(1) Basic Statistics of Cases**

In 2021, the Tribunal accepted 5238 (newly received 4335) intellectual property and antitrust cases and closed 3460 cases. Compared to the same period in 2020, newly accepted cases increased by 1158 (36.4% increase) with closed cases increased by 673 (24.1%).

## **(2) Statistics of the average number of cases concluded by judges and the average trial period of cases**

In 2021, each judge closed an average of 83.5 cases with a year-on-year increase of 1.2%. The average trial period until closure is 134 days, the average trial period until closure of substantive civil appeals is 129.4 days, and the average trial period until closure of administrative appeal cases is 143.6 days.

## **(3) Classified Statistics of Cases**

Among the 2569 newly received substantive civil appeals, the distribution among different IP right as follows:

<b>TYPE OF CASE HANDLED</b>	<b>NUMBER OF CASES HANDLED</b>
<b>PATENT INFRINGEMENT</b>	576
<b>UTILITY MODEL INFRINGEMENT</b>	806
<b>RIGHT TO APPLY FOR PATENT AND OWNERSHIP OF IT</b>	213
<b>NEW PLANT VARIETIES</b>	68
<b>LAYOUT DESIGN OF INTEGRATED CIRCUITS</b>	2
<b>TRADE SECRETS</b>	79
<b>COMPUTER SOFTWARE</b>	593
<b>CONTRACTS FOR TECHNICAL IP RIGHTS</b>	153
<b>ANTITRUST</b>	25
<b>OTHER</b>	54

Among them, a significant increase was seen concerning infringement upon invention patent rights, disputes over computer software, disputes over the right to apply for a patent and the ownership of a patent, disputes over trade secrets and disputes over new varieties of plants, while there was a decline regarding the cases of jurisdictional objections.

Among the 1290 newly received administrative appeal cases, 457 were disputes over the review of the rejection of invention patent applications, 36 were disputes over the review of the rejection of utility model patent applications, 3 were disputes over the review of the rejection of design patent applications.

Furthermore, there were 283 disputes over the invalidation of invention patents, 234 over the invalidation of utility model patents, 102 over the rejection of design patent applications, one was a dispute over the review of the rejection of an application for new varieties of plants, 2 were disputes over administrative monopoly, and finally 172 were other administrative cases involving administrative punishment and administrative adjudication.

Compared with the previous year, all kinds of administrative disputes have increased significantly, with the largest increase in the number of disputes involving the review of the rejection of invention patent applications and the invalidation of invention patents.

## **(4) Foreign-related cases, Hong Kong, Macao and Taiwan-related cases**

In 2021, the court newly received 437 cases involving foreign-related cases, Hong Kong, Macao and Taiwan-related cases, accounting for 10.1% of the total number of cases received, with a year-on-year increase of 16.2%. 280 foreign-related, Hong Kong, Macao and Taiwan-related cases were concluded, accounting for 8.1% of the total number of closed cases, which was the same as the previous year.

## **(5) Overall Characteristics of Cases**

As for the overall characteristics of cases, firstly, the number of substantive civil appeals and substantive administrative appeals continued to grow.

Secondly, the frontier fields of technology involved are expanding day by day.

Thirdly, the international characteristics of litigation are more prominent.

Lastly, the regional origin of the cases are more differentiated.

In addition, the characteristics of patent civil cases, patent administrative cases, the right of new varieties of plants, trade secrets cases, computer software cases and monopoly cases are also introduced in detail.

For more information, please click [here](#). (in Chinese)

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## - IP Law Updates in Japan : Insights from Sonoda & Kobayashi -

### The pitfalls of literal patent translation: What does “two times greater” mean in English and Japanese?

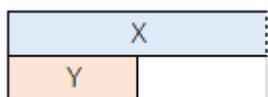
Sonoda & Kobayashi’s translation teams translates roughly 1 million words of English specifications for filing in Japan each month. Translation is generally considered to be a discrete task of converting a document written in one language into another document written in another language. However, at Sonoda & Kobayashi we believe that the best translation is only achievable through discussions between the parties concerned, so we often exchange information and opinions internally as well as with our clients.

The following is a topic presented in one such internal session.

Translator A was tackling a set of patent claims and came across the recitation

“..., wherein X is at least two times greater than Y.”

From the descriptions in the specification, the invention-defining feature corresponding thereto was apparently as follows:



Meanwhile, a literal rendering of the English recitation resulted in the Japanese translation: “XはYの少なくとも 2倍大きい,” which is equivalent to “X is greater than Y by at least twice thereof.”

Translator A realized that this was inappropriate, since this could mean the below relationship



This not only deviates from the actual meaning but also excludes the aspect of



hence narrowing the scope[1] as claimed.

Upon discussion, the team discussed reached the following conclusion.

The recitation “X is at least two times greater than Y” should be rendered as “XはYの少なくとも 2倍である,” which is equivalent to “X is at least twice Y.”

Interestingly, this issue does not occur when the difference between X and Y is specifically indicated, e.g., “X is greater than Y by Z.”

This is because terms such as “double,” “twice,” and “...times” already imply a comparison, whereas a number by itself (as in Z above) does not.

Perhaps in the original English text, too, “at least two times greater than” should have been rendered simply as “at least twice the size of” or “at least two times of” to avoid mistranslation and/or misinterpretation, which can lead to an undesirable narrowing of the scope.

Being a universal language, English writing styles can greatly differ depending on the nationality of the applicant and the mother tongue of the writer. Therefore, fine tuning of a translation is always essential. We strive for linguistically correct, clear, and concise translations that do not unnecessarily narrow the scope desired by our clients.

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[1] Please note that, depending on the situation, a description that has such a different interpretation may not be granted a patent as an unclear description in the first place.

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## About

SONODA & KOBAYASHI is a law firm offering dependable legal services for intellectual property. Our multinational team of about 90 experts in technology, law, languages and international communication has served companies worldwide and gained a reputation for thoroughness and reliability.

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