

“Anti-Counterfeiting Measures”

Chapter 2. Anti-Counterfeiting Measures in Japan

Using the Courts

(Sakura)

Let's look at how litigation can be used. The litigation measures against counterfeiting and infringement are criminal prosecution and civil action. These are mainly used to obtain injunctions to stop infringing acts or to claim damages.

(Narrator)

To start a civil action, the first step is to submit a petition to the court. In Japan's three-tiered court system, civil actions are normally heard by the district courts that make up the first tier. Because of the special characteristics of IP infringement cases, these may also be brought before the Tokyo and Osaka District Courts in addition to the original court having jurisdiction.

(Narrator)

In addition to holders of patents, trademarks and other IP rights, infringement suits may also be brought by exclusive license holders and exclusive use holders. However, non-exclusive license holders and non-exclusive use holders only have the right to use but not to demand an injunction, and so they cannot claim compensatory damages.

(Narrator)

The Unfair Competition Prevention Law is a law governing certain specified offenses and does not refer explicitly to categories of right holders such as patent or trademark right holders. Any person who has suffered or is in danger of suffering damages to business profits through unfair competition has the right to bring an action under this law.

(Narrator)

The right holder bringing the case is already suffering damages from the counterfeit goods, so it is first necessary to act quickly to stop the infringing acts. In Japan this is done by means of a provisional injunction. In a separate procedure from the main court action, a provisional injunction may be obtained to stop the infringing acts until the main case is decided. In speedy cases, the court may issue this order within two to three months. However, in order to obtain a provisional injunction order, it is necessary for the plaintiff to put up collateral, and damages will not be awarded until the case is decided.