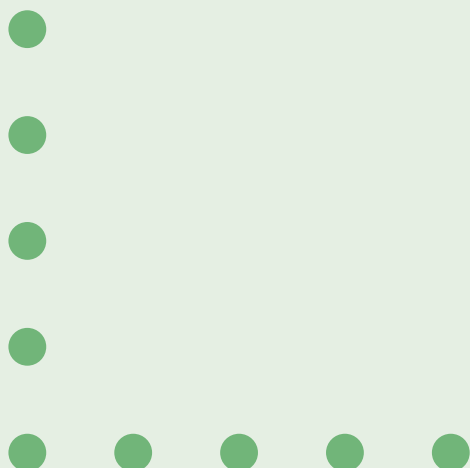


Part 1

Trends of Industrial Property Rights



Chapter 1

Circumstances of Application and Registration and Current Status of Examination and Appeals/Trials at Home and Abroad



1. Patent

(1) Changes in the number of Patent Applications and Requests for Examination, and Current Status of Patent Examination in Japan

1) Patent Application shifting toward Acquisition of Beneficial and High-quality Patent Right and Increasing PCT Applications

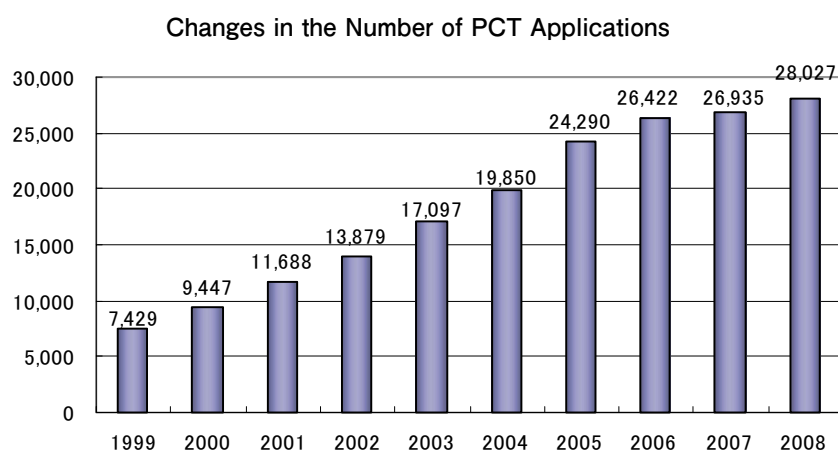
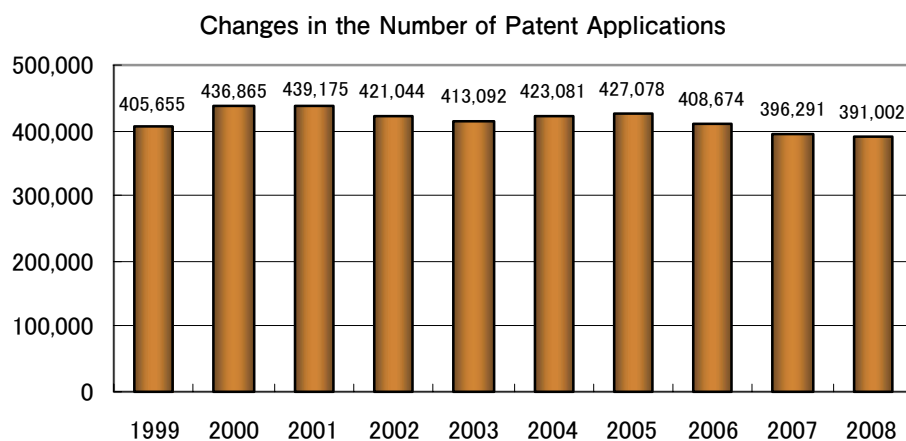
Although the annual number of patent applications filed in Japan had remained high at more than 400,000, it has gradually decreased since 2006 and the number of patent applications in 2008 was 391,002 (decrease by 1.3% from the previous year). One factor behind the decrease is that more Japanese companies are changing their intellectual property strategy from acquiring and filing a large volume of patents, mainly for the purpose of defense, to acquiring high-quality patents essential for carrying on their core business. Another factor behind the decrease is that more and more applicants recognizes the idea that the superiority of businesses can be ensured by keeping a developed technology secret as know-how without filing for a patent depending on properties of the technology.

It is not clear how the recent economic recession affected the number of patent applications in 2008. Therefore, it is necessary to keep eyes on the trends of patent applications in order to discern its effect in the future.

Meanwhile, due to progress in the globalization of business activities, the number of international applications under the Patent Cooperation Treaty (hereinafter referred to as the “PCT applications”) in 2008 (increase by 4% from the previous year) was 28,027¹, continuing to indicate the tendency to rise though the growth is becoming slower. As a result, Japan has been second in the world for six years in a row in terms of the number of PCT applications filed².

¹ Number of international applications filed in the JPO as the receiving office.

² Refer to Part1, Chapter1, 1 (2).



2) Emergence and End of “Bump in Requests”

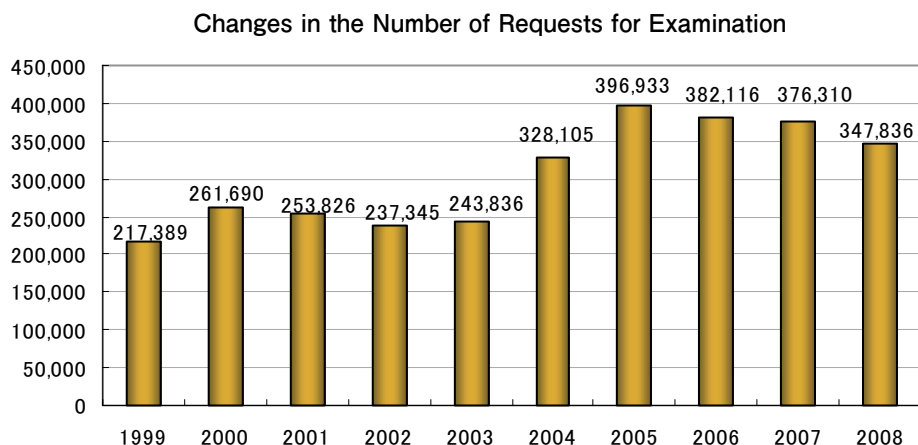
The period of requests for examination³ has been changed from seven years to three years for the applications filed in and after October 2001. The requests for examination for applications subject to a three-year request period had been intensively made since 2004, because many of requests of such applications were put off until the final year of the request period to see if the acquisition of patent right is necessary. These requests for examinations coincided with requests for examination for applications subject to a seven-year request period, giving rise to a temporary surge in the number of requests for examination (so called “bump in requests”). Moreover, while the final rate of requests for examination⁴ for applications with a seven-year request period has remained between 50% and 60%, the final rate for the applications filed between 2002 and 2005, after the period of requests for examination had been reduced to three years, rose to more than 65%. As a result, the number of requests for examination in Japan surged to 328,105 in 2004 (a 35% increase over the 2003 level), and further to 396,933 in 2005 (a 21% increase over the 2004 level).

However, the number of requests for examination has fallen into the downward turn since 2006 when the “bump in requests” has passed its peak, and it decreased significantly to 347,836 (a 7.6% decrease over the 2007 level) because the “bump in requests” ended when all applications

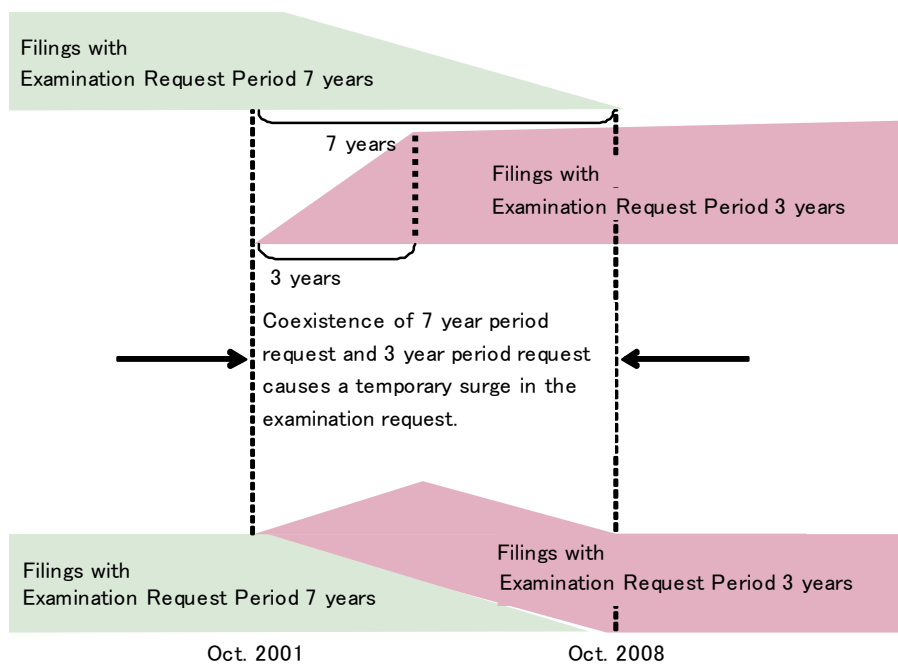
³ In the EPO, it is ascribed that the request for examination should be performed within the period in which 6 months expire after the date of announcement of the publication of the European search report published after 18 months have passed from the date of filing. On the other hand, the USPTO has no examination request system and all applications are the object of examination.

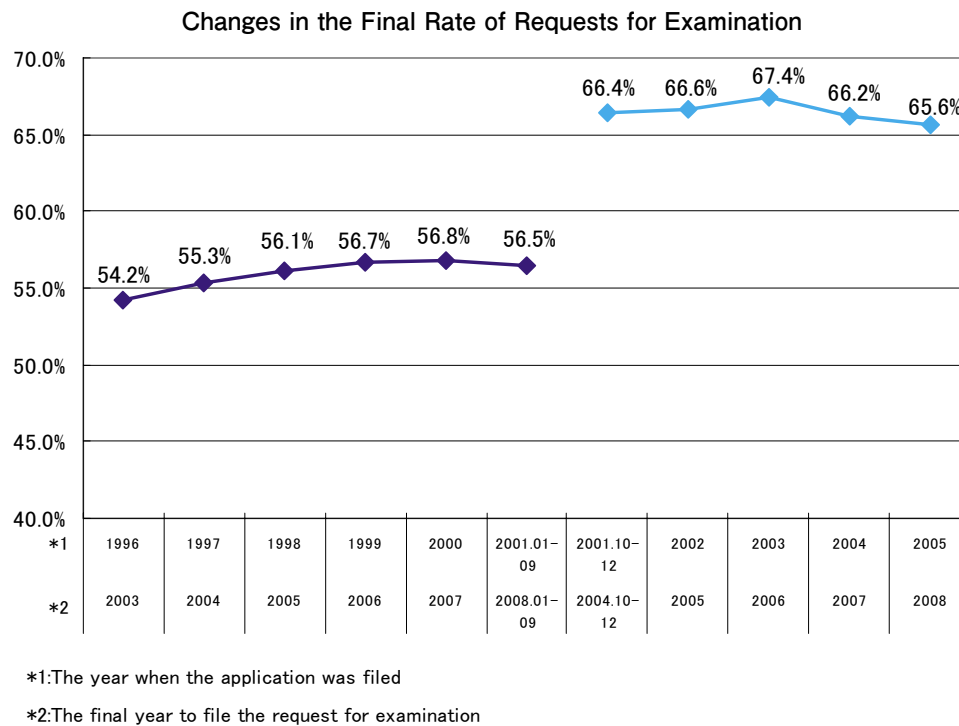
⁴ The rate of the applications for which the request for examination has been performed before the time limit for making the requests for examination in the patent applications filed within the predetermined period.

with a seven-year request period reached the time limit for making the requests for examination at the end of September 2008.



Rapid Increase in the Number of Requests for Examination Due to the Coexistence of New and Old Examination Request Systems (bumps in request)





Note: An international application designating Japan is counted with the application year of an international application as the application year.

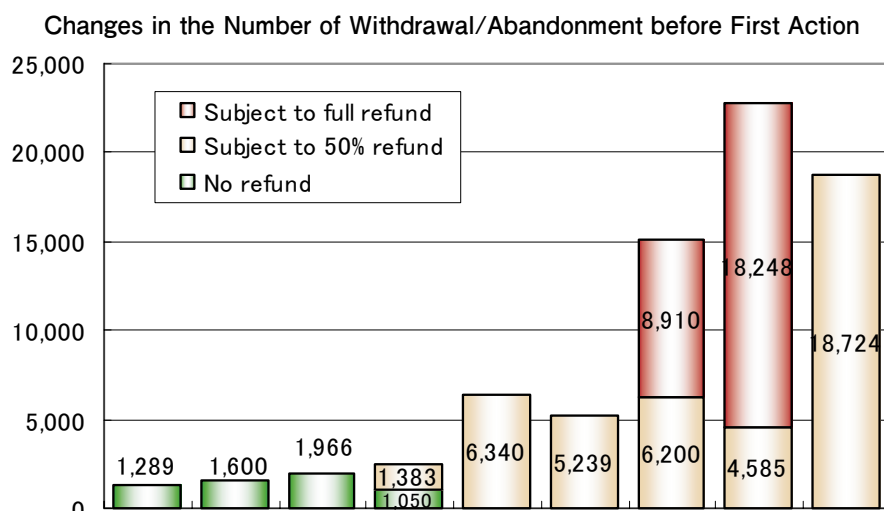
3) Surge in the Number of Withdrawals/Abandonments before the First Action after Having Requested Examination⁵

In April 2004, a new system of refunding the examination request fee went into effect. Under the new system, if an applicant withdraws or abandons the application (in and after October 2003) before the first action after having requested an examination, and requests a refund of the examination request fee within six months from the withdrawal or abandonment, a part (50%) of the fee is refunded to the applicant. In addition, a system of refunding the full amount of the examination request fee, which stays in effect for one year from August 9, 2006 to August 8, 2007, was introduced. In this implementation period, there were about 27,000 withdrawals/abandonments of applications.

Even after the implementation period of the full-refund system, the number of withdrawals/abandonments of applications before the first action has been much larger than before the implementation of the system. The introduction of the full-refund system is considered to have led the applicants to reconsider the need for patent registration even after requesting an examination.

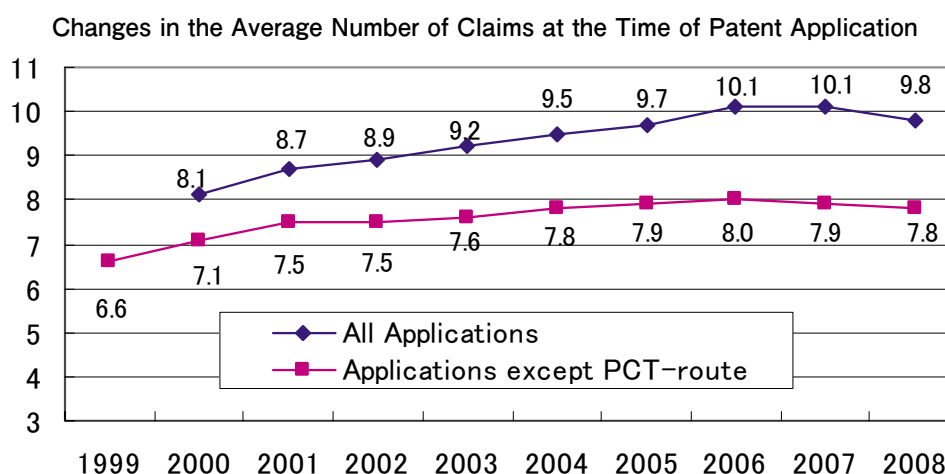
Moreover, the number of withdrawals/abandonments of applications has increased at the end of 2008. It is pointed out that one reason for this is the effect of the recent economic recession, so that it is necessary to keep eyes on the trends in the future.

⁵ Before the delivery of the documents for the patent examination such as Notification of Reasons for Refusal etc. to the applicant.



4) National Patent Applications Becoming More Complex and Sophisticated in Content

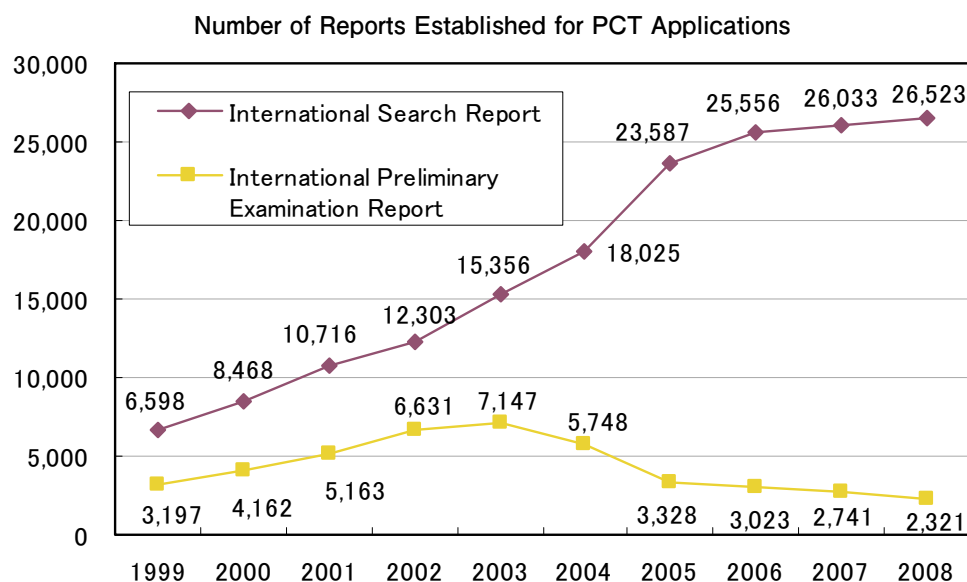
The content of patent applications becomes more complex and sophisticated along with the innovative progress, especially in the fields of such cutting-edge technologies as biotechnology and nanotechnology, and along with the tendency to heighten the added value of the products to differentiate them from other competing products in the fields of matured technologies. Additionally, against the backdrop of global expansion of R&D investment and the globalization of world economies, the rate of applications from overseas and applications on which priority under the Paris Convention is based had been increasing in the JPO. These applications generally have a large “number of inventions (claims) per one application,” so that the average number of claims in patent applications in the JPO had continued to increase in the past few years. In 2008, the average number of claims still large, though it slightly decreased due to decrease in the number of applications from overseas, especially applications through PCT route which tend to have many claims.



5) Increase in the Number of International Search Reports⁶ of PCT Applications

In line with the increase in the number of PCT applications, as shown in (1) 1) above, the number of international search reports increased from 26,033 in 2007 to 26,523 in 2008, increasing by 2% over the previous year. Moreover, due to the adoption of the Enhanced International

Search System, a written opinion⁷ (similar to the one that used to be prepared at the international preliminary examination phase) has to be established at the same time as the international search report for PCT applications filed on and after January 1, 2004. Meanwhile, since the adoption of the Enhanced International Search System in 2004, the number of international preliminary reports⁸ has been decreasing along with a decrease in the number of requests for an international preliminary examination report.



6) Increase in the Number of First Actions⁹ and Decrease in the Number of Patent Backlogs

As mentioned above, the patent examination burden has increased every year due to (1) the complex and sophisticated content of applications, (2) the increase in the number of international search reports to be established within the time limit set by the treaty, and (3) the increase in the examination workload per PCT application with the introduction of the Enhanced International Search System. In order to conduct prompt and proper patent examinations under these circumstances, the JPO is strengthening its examination workforce and improving the efficiency of its examination work by steadily implementing various measures, including hiring about 500 fixed-term examiners in five years from FY2004 to FY2008 and increasing the outsourcing of prior art searches. And, the annual number of first actions in the JPO has steadily increased over the past several years (an increase from 234,109 in 2004 to 342,654 in 2008).

As a result, since May 2008, the number of first actions has exceeded the number of requests for examination, and the number of the applications awaiting the first action (backlogs) has been decreasing on a monthly basis. This tendency is especially remarkable since October 2008, because the number of requests for examination has drastically decreased after the end of the

⁶ When an international PCT application is filed and the Japan Patent Office (JPO) is selected as the international searching authority, an examiner searches relevant prior art and establishes an international search report.

⁷ When a request for international preliminary examination is made for a PCT application after the establishment of the international search report, if the invention is found not to meet the prescribed requirements (novelty, inventive step, and industrial applicability) before establishing the international preliminary examination report, the applicant is notified of the examiner's opinion through this written opinion.

⁸ The examiner establishes an international preliminary examination report to indicate his/her final decision in the international preliminary examination.

⁹ First action is an examination performed at first following the request for the examination by the applicant.

“bump in requests.” First action pendency is also expected to be gradually decreased in the future.

The JPO has made various efforts¹⁰ to achieve expeditious and efficient patent examinations. As a result, in 2008, the number of subsequent examinations¹¹ also increased 7% over the previous year. In line with an increasing number of examinations, the number of decisions to grant a patent came to almost 160,000 in 2008. On the other hand, the rate of decisions to grant a patent which had been lower than 50% for several years rose slightly to 50.2%.

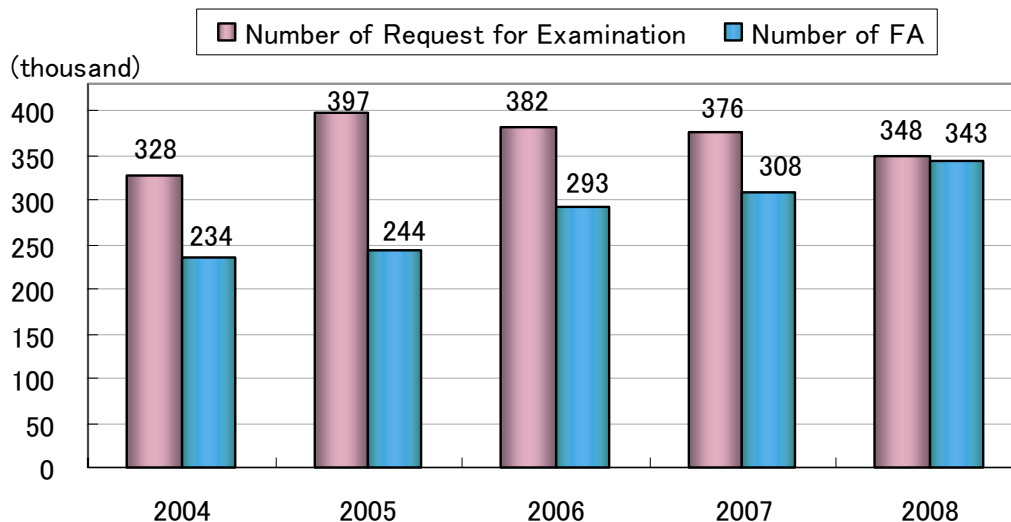
Changes in Patent Examination Performance

Record	2004	2005	2006	2007	2008	Year-on-year
Number of First Actions	234,109	243,548	292,756	307,665	342,654	111%
Number of Subsequent Examination	173,830	179,760	226,815	264,776	283,638	107%
Number of International Search Reports of PCT	18,025	23,587	25,556	26,033	26,523	102%
Number of International Preliminary Examination Reports of PCT	5,748	3,328	3,023	2,741	2,321	85%
Number of Reconsiderations by Examiner before Appeal Proceedings	19,888	19,491	22,289	27,432	28,478	104%
Number of Reports of Expert Opinion on Registrability of the Utility Model	1,014	1,261	1,052	1,116	880	79%
Total	452,614	470,975	571,491	629,763	684,494	109%

Notes:

1. The “year-on-year” column is a comparison between 2008 and 2007.
2. The “number of reconsiderations by examiner before appeal proceedings” is the total number of decisions to grant a patent in the procedure, reconsideration reports made to the JPO Commissioner, and notifications of reasons for refusal made in the procedure (see Part1, Chapter1, 5.(1)a for “reconsiderations by examiner before appeal proceedings”).

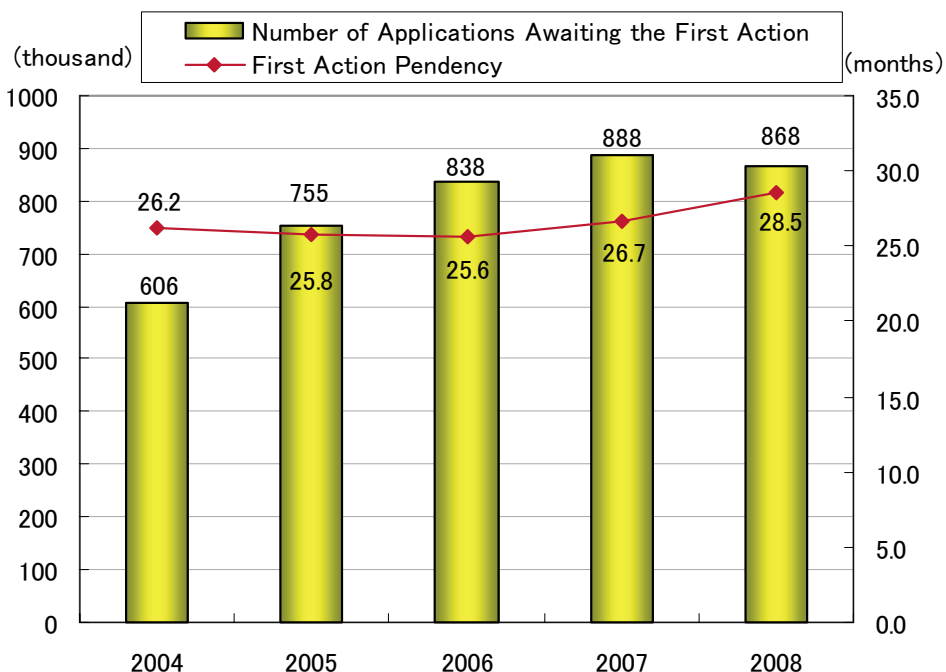
Number of Requests for Examination and Number of First Actions



¹¹ See Part 2, Chapter 2.

¹² Examinations conducted in response to a written opinion or a written amendment submitted by the applicant following the first action.

Number of Applications Awaiting the First Action and First Action Pendency

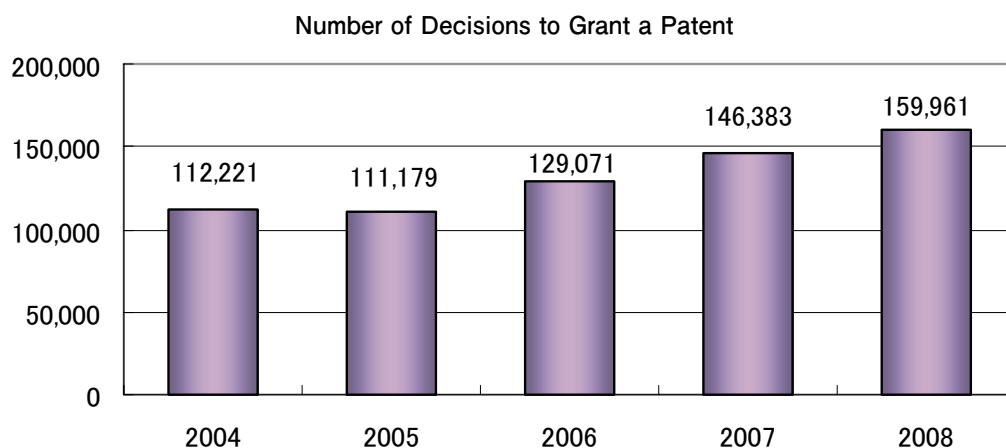


Changes in Final Decision Performance

Performance	2004	2005	2006	2007	2008	Year-on-year
Number of Decisions to Grant a Patent	112,221	111,179	129,071	146,383	159,961	109%
Number of Decisions of Refusal	110,630	109,149	129,400	147,678	154,163	104%
(Of which number of decisions of refusal without a dissenting response from the applicant)	62,013	61,328	68,879	78,246	85,443	109%
Withdrawals/Abandonment After the First Action	3,930	6,266	7,915	5,567	4,779	86%
Rate of Decisions to Grant a Patent	49.5%	49.1%	48.5%	48.9%	50.2%	-
Rate of Decisions of Refusal	50.5%	50.9%	51.5%	51.1%	49.8%	-

Notes:

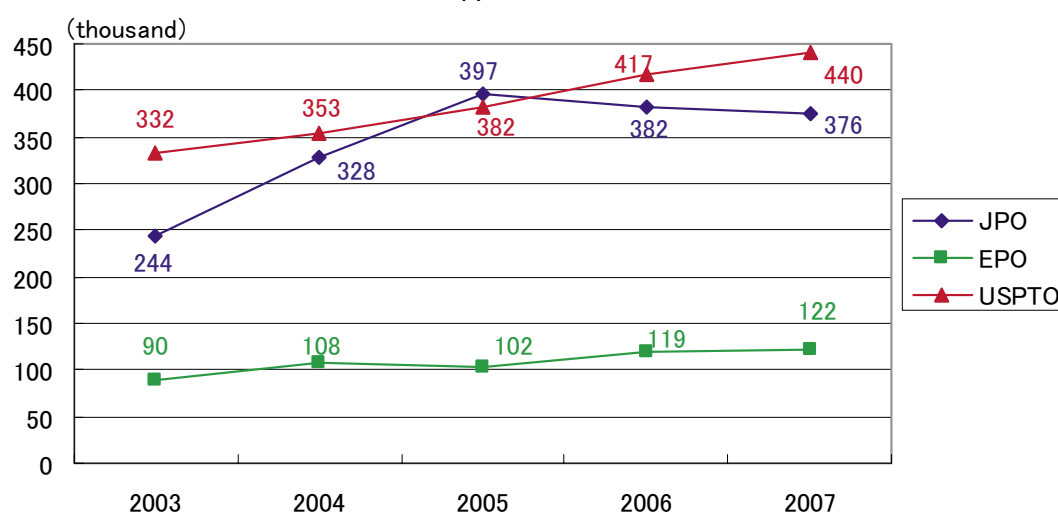
1. "Number of decisions of refusals without a dissenting response of the applicant" is the number of decisions of refusal without a dissenting response of the applicant from the notice of reason for refusal issued by the examiner.
2. "Withdrawals/abandonment after the first action" is withdrawals/abandonment of applications after the first action.
3. "Rate of decisions to grant a patent" is the number of decisions to grant a patent divided by the number of decisions to grant a patent plus the number of decisions of refusal plus the number of withdrawals/abandonment after the first action.
4. "Rate of decisions of refusal" is the number of decisions of refusal plus the number of withdrawals/abandonment after the first action, divided by the number of decisions to grant a patent plus the number of decisions of refusal plus the number of withdrawals/abandonment after the first action.



Not only Japan, but also Europe and United States face the issue of prolonged examination pendency. In recent years, the number of requests for examination in Europe and the number of patent applications in the United States has increased. This trend has caused an increase in the patent examination workload and a prolongation of both the first action pendency and the final decision pendency. In response to this situation, the European Patent Office (EPO) and the United States Patent and Trademark Office (USPTO) have drastically increased examiners, to be more precise, the EPO has increased 1,500 examiners and the USPTO has increased 2,800 examiners during ten years from 1998 to 2007. Specifically, the USPTO has the plan¹² of employing more than 9,000 new examiners during eight years from 2005 to 2012, and under this plan the USPTO has already employed 1,211 examiners in FY2008 (from October 2007 to September 2008) (an increase of 579 from the FY2007 at the end of September 2008).

Similarly, the JPO had employed fixed-term examiners since 2004, and during ten years from 2000 to 2009, it has increased 604 examiners including fixed-term examiners.

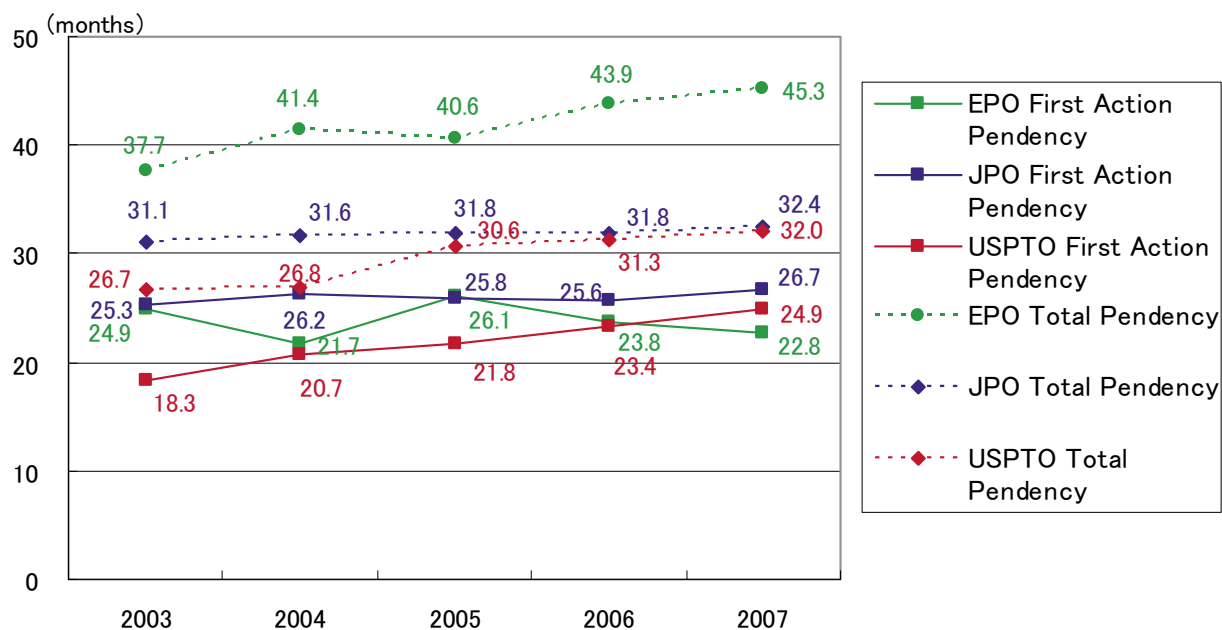
Situation of Trilateral Offices (Number of Requests for Patent Examination Filed with the JPO and EPO and Number of Patent Applications Filed with the USPTO)



Sources:
EPO Annual Report
USPTO Annual Report

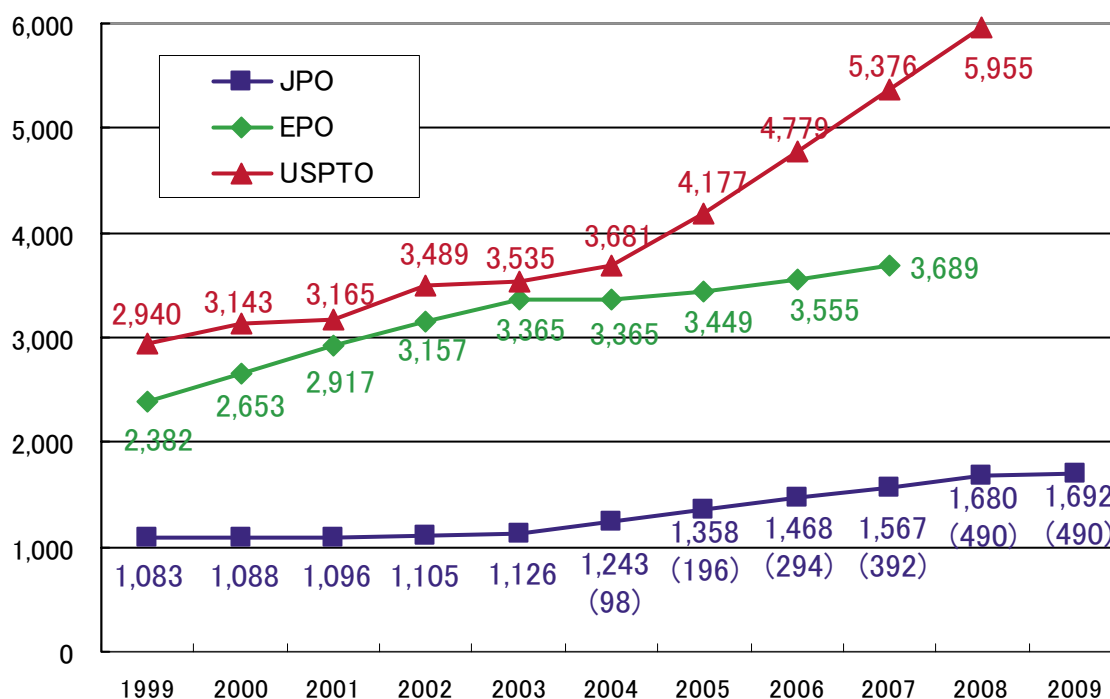
¹² USPTO Strategy Plan URL: <http://www.uspto.gov/web/offices/com/strat2007/>

Examination Pendency and Final Decision Term at Trilateral Offices



Source: Trilateral Statistical Report

Changes in the Number of Examiners in Trilateral Offices



Note: The numbers in the brackets of the JPO from 2004 to 2009 are those of fixed-term examiners
 Source: Trilateral Statistical Report, USPTO Performance and Accountability Report

2. Utility Model

(1) Increase of the Merits of the Utility Model System through Amendment of the System

The number of utility model applications had decreased since the utility model system was shifted to non-substantive examination system in 1994. The number declined below 10,000 in 2000, and had continued to fall gradually. In such a situation, the meaning of the utility model and how it should be were discussed including the possibility of abolishment at the Utility Model System Working Group in the Patent System Subcommittee, Intellectual Property Policy Committee, Industrial Structure Council, JPO. The Working Group concluded that the new utility model system should be maintained to meet the demand to protect technology that requires early exploitation, and that efforts should be made to increase the merit of the system. In response, the utility model system was amended at the ordinary session of the Diet in 2004 as part of the Act to Expedite Patent Examination, and the amended utility model system entered into force in April 2005.

<Outline of the Amended Utility Model System>

- Extension of the term of utility model right (Article 15 of the Utility Model Act)

The term was extended from “six years from the filing” to “ten years from the filing.”

- Reduction in the annual fee for utility model right (Article 31 of the Utility Model Act)
- Expansion of the allowable scope of correction (Article 14-2 of the Utility Model Act)

Before the amendment only deletions of claims were allowed. However, it is now possible to make corrections once for the following purposes:

- (i) restriction of the scope of claims;
- (ii) correction of errors; and
- (iii) clarification of an ambiguous statement.

- Allowance of filing a patent application based on a utility model registration (Article 46-2 of the Patent Act)

Even after a utility model right has been registered, it is now possible to file a patent application based on the utility model registration within three years from the filing of the utility model application.

With the enforcement of the amended utility model system, the number of utility model applications came to 11,386 in 2005, increasing by about 40% from the 2004 level. Although the number of utility model applications has been decreasing since 2006, nearly 10,000 applications are still filed per year. It can be said that this simple system has some merits for the applicants if the validity of the right is not necessarily challenged until infringement of the right becomes issue, or if the counterfeiting of the technology can be blocked by registering the right.

Number of Applications Filed under the New Utility Model System

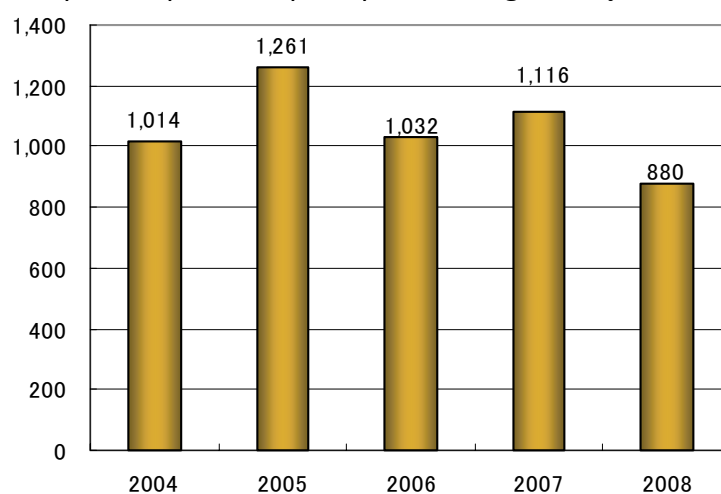
	2002	2003	2004	2005	2006	2007	2008
New Utility Model Applications	8,587	8,155	7,983	11,386	10,965	10,315	9,452

(2) Status of Technical Reports of Expert Opinion on Registrability of the Utility Model

Under the new utility model system, which adopts the non-substantive examination principle, the owner of a utility model right first needs to give a warning by presenting a technical report of expert opinion on registrability of the utility model when enforcing the right (Article 29-2 of the Utility Model Act). The technical report is created by a JPO examiner who evaluates the novelty and inventive step of the filed device based on the relevant prior art documents and notifies the requester. It is provided upon request, as a material for determining the validity of the right (Articles 12 and 13 of the Utility Model Act).

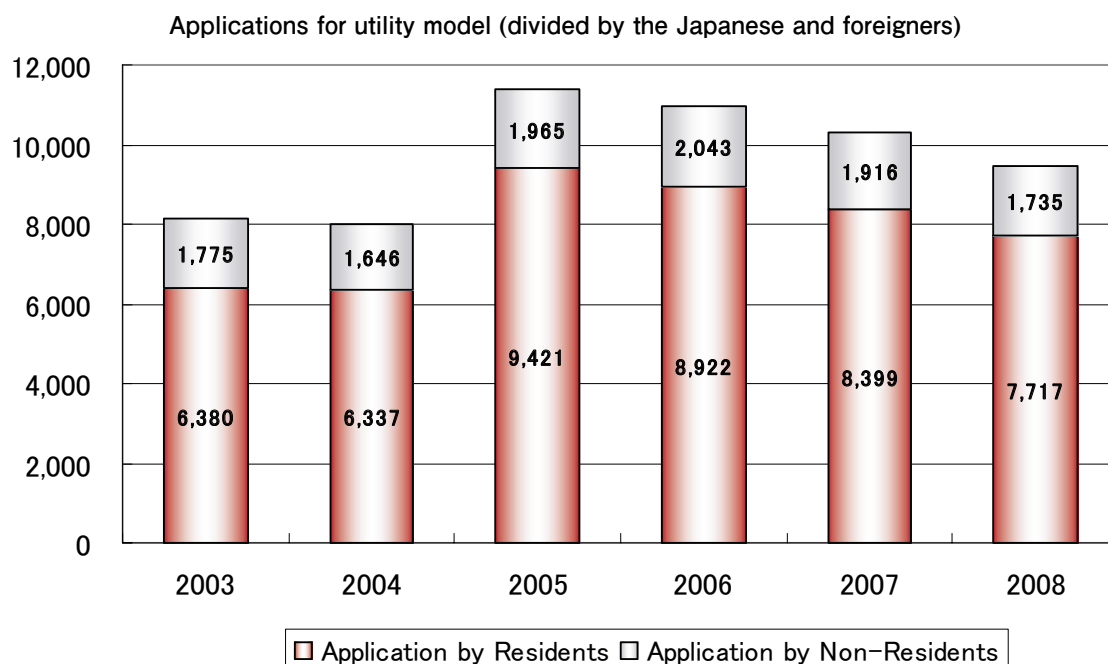
The number of the prepared report of expert opinion on registrability of the utility model has hovered around about 1,100 per year, but dropped to 880 in 2008 (decrease by 21% over 2007).

Number of Prepared Reports of Expert Opinion on Registrability of the Utility Model



(3) Changes in the ratio of the number of foreign applications to total applications in Japan

The ratio of the number of foreign applications to total applications has hovered around 20% of the total applications.

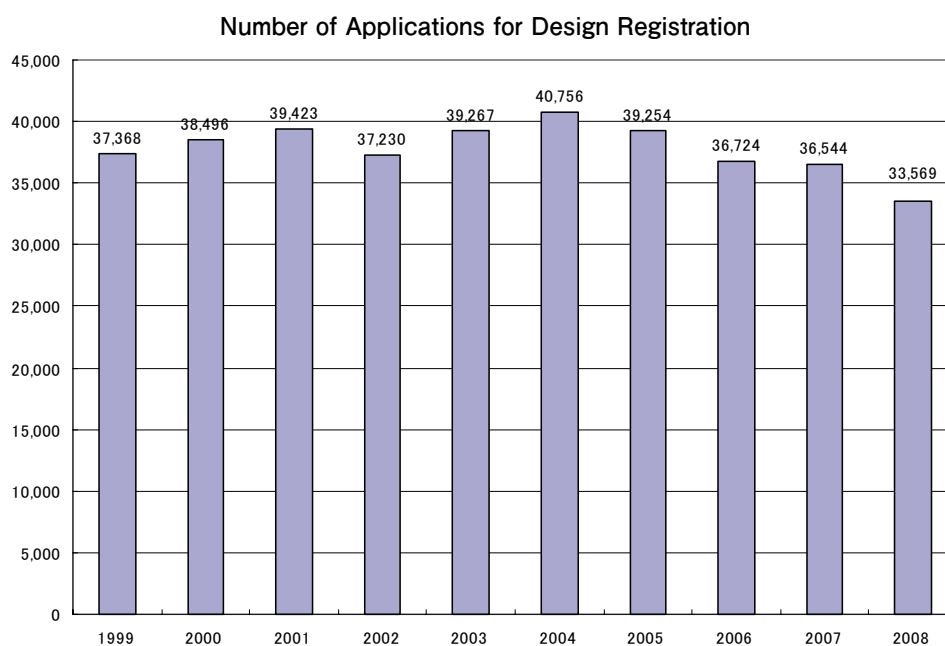


3. Design

(1) Status of Design Application and Examination in JPO

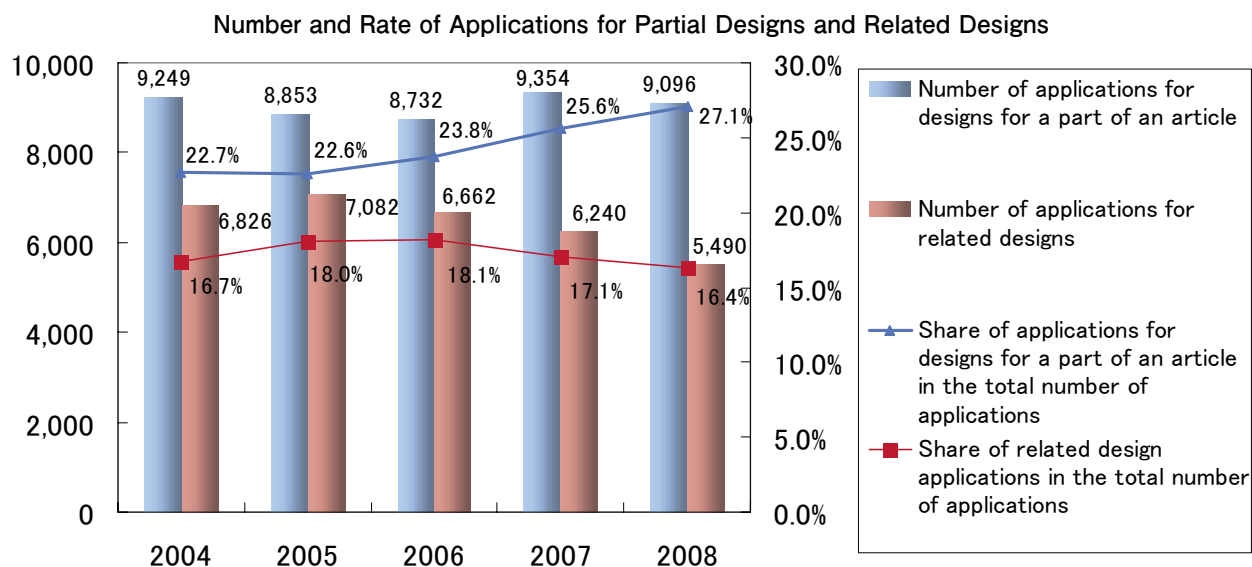
Trends in Applications for Design Registration

Though in the past ten years, the number of applications has remained at around 40,000 (provisional), the number of applications has been declining since 2005, and in 2008 it decreased significantly by 8.1% compared to 2007 level. As a cause thereof, it can be considered that the number of new products developed is decreasing due to the economic recession, and the domestic applications are more carefully selected etc., so that it is necessary to continue to keep eyes on the trends of applications.



Since the introduction of the partial design system¹³ in 1999, the ratio of applications for partial design has been increasing each year, reaching about 27% of all the applications in 2008.

The usage ratio of the related design system¹⁴, introduced in the same year, has remained at a little less than 20% of the total number of applications for design registration for the last five years, but on the downward turn.



(2) Status of Design Examination and Accelerated Examination for Responding to Anti-counterfeit Measures

In 2008, the number of first actions on design applications (hereinafter referred to as “the number of FA”) fell from 35,548 in 2007 to 35,087, however, almost all applications are examined without pending. While the average first action pendency for applications for design registration (hereinafter referred to as “FA period”) in 2008 was at almost the same level as that of the previous year (7.4 months), the average second action pendency, which is the period from the filing date until the dispatch of the decision following the first action (hereinafter referred to as “SA period”), was shortened 0.5 months to the average of 11.7 months in 2008 from the 2007 level. Meanwhile, the average number of design registrations has remained at around 30,000 for the last five years.

In 2008, the “accelerated examination for responding to the anti-counterfeit measures^{15a}” program, introduced in April 2005, received 14 requests in 2008. The average time from the request until the dispatch of a notice of first action result was 0.7 months (about three weeks).

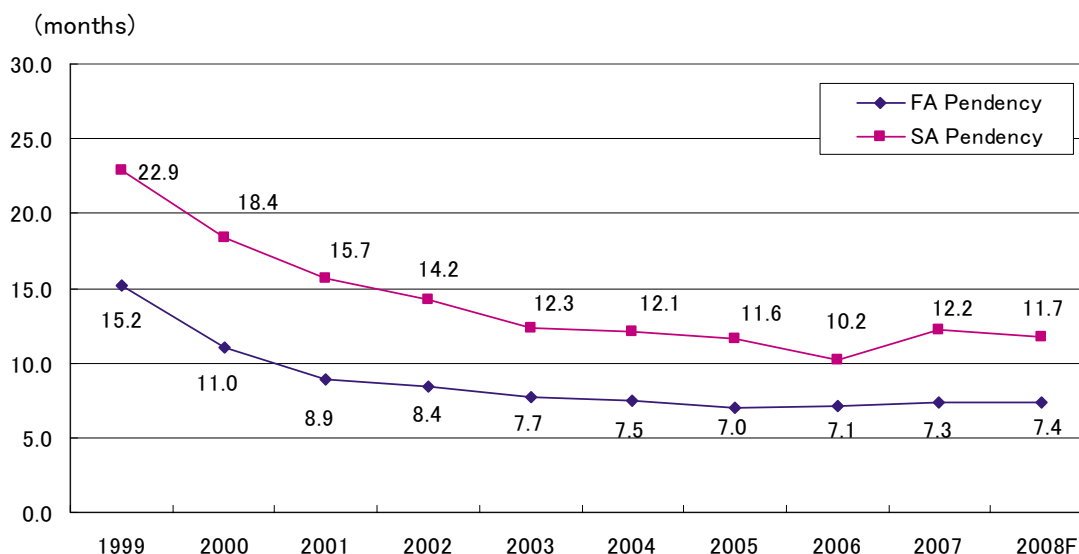
As for accelerated examination for other reasons, 83 requests were made and the average time from the request until the dispatch of a notice of first action result was 2.3 months.

¹³ Design of a part of an article: Since the amended Design Act entered into force in 1999, it became possible to register design of a part that cannot be physically separated from the entire article.

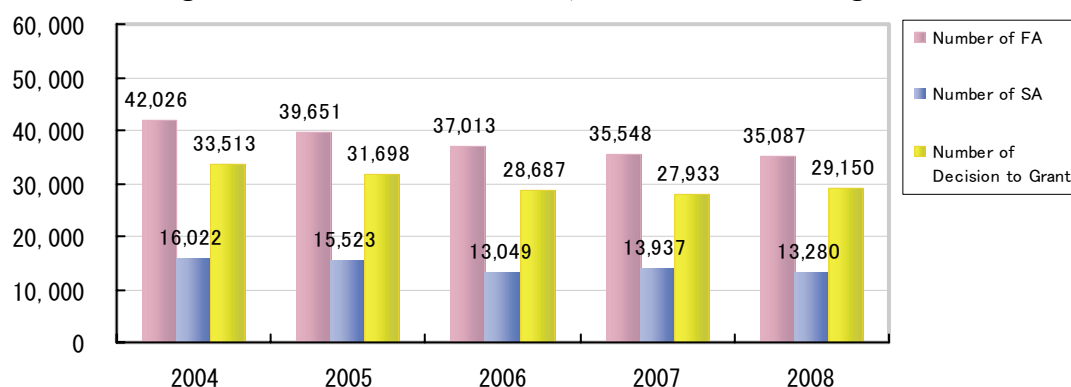
¹⁴ The related design system enables enforcement of the design rights for designers similar to the principal design only when it is applied by the same applicant, and it was introduced in 1999.

¹⁵ See Part2, Chapter 3, 3.

Changes in the Average First and Second Action Pendency of Design Application



Changes in the Number of First Actions, Second Actions and Registrations



Notes:

1. First action pendency: Period from the filing date to the date when the first notice of examination is dispatched
2. Second action pendency: Period from the filing date to the date when the decision following the first action is dispatched
3. The number of registrations is the total number of decisions of registration as the first action and those as the second action

4. Trademark

(1) Trends in trademark applications

The number of trademark applications in 2008 decreased to 119,185, decreasing by 16.8% over the previous year. This is considered to be due to the influence of the period when a number of applications is filed (preferential period of the trademark system for retail and wholesale services), because trademark system for retail and wholesale services¹⁶ was introduced in April 2007.

Although a factor of the decrease in applications is thought to be due to the recent economic recession, it is necessary to keep eyes on the application trends to examine the effect

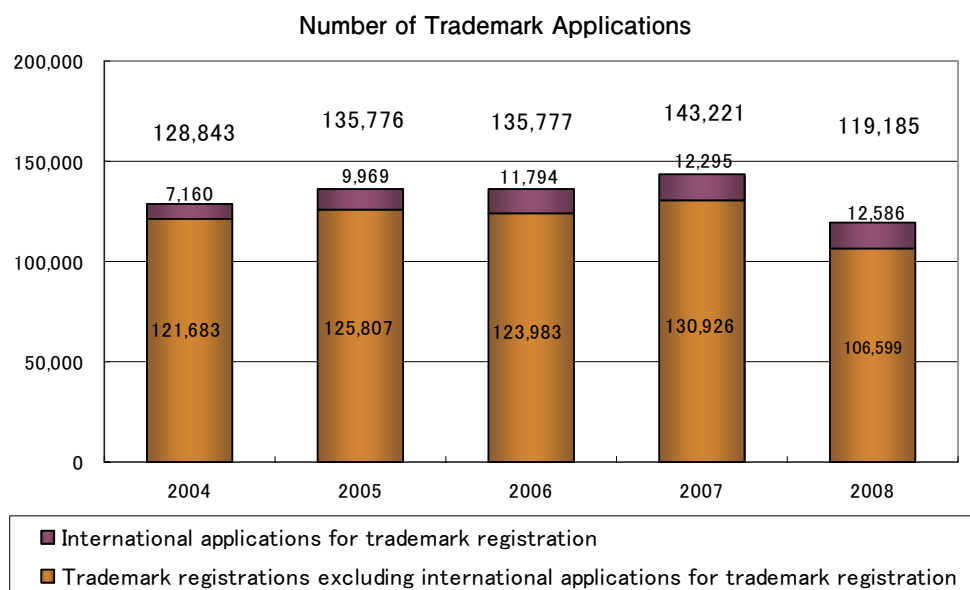
¹⁶ The trademark system for retail and wholesale services was introduced for the purpose of enhancing the convenience of the undertaker or of harmonizing the international system, and a mark that used for retail and wholesale services can be protected as a service mark. The number of applications increased from April 1, 2007 to July 2, 2007 because the preferential period was set.

in the future.

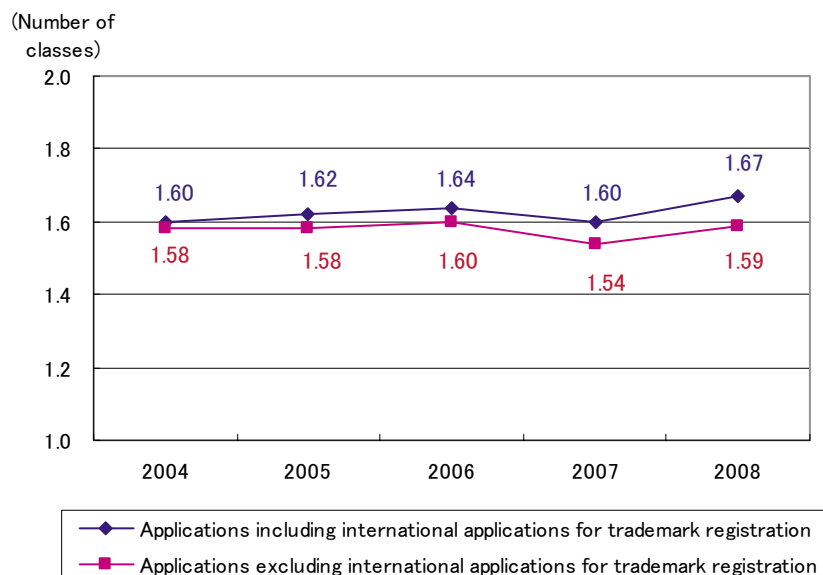
Also the number of international applications for trademark registration¹⁷ has increased in 2008 to 12,586, increasing by 2.4% over the previous year, and has been still on the rise.

The average number of classes¹⁸ per trademark application (the multiple class rate) in 2008 stayed at around the same level as that in 2007, at 1.67.

(Source) Statistical Data Chapter 1 (6) and Chapter 3 (14)



Average Number of Classes Designated per Application (multi-class rate)



(2) Status of Trademark Examination

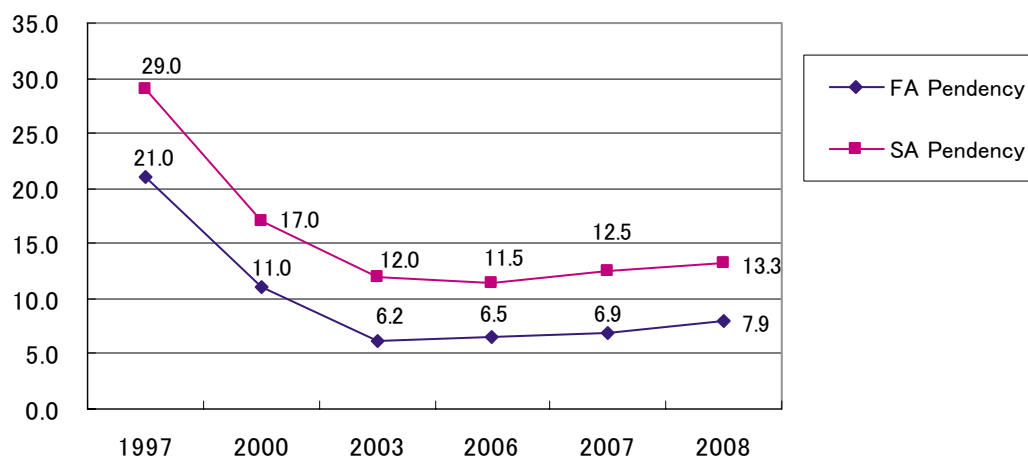
Hitherto, efforts are being made to improve examination efficiency through further

¹⁷ International applications under the Madrid Protocol designating the JPO (See Article 68-9 of the Trademark Act of Japan)

¹⁸ When filing a trademark application, the application must designate one or two or more goods (services) to which the trademark should be applied, and describe their corresponding classes in the request. Goods and services are classified into 45 classes.

automation of the examination process and use of private-sector capacity. In 2007, the trademark system for retail and wholesale services has been newly introduced and the examination pendency (hereinafter referred to as “FA period”) was 7.9 months in 2008 due to the influence of a period when a number of applications was filed (the preferential period of the trademark system for retail and wholesale services). The number of registrations increased to 91,784 in 2008, increasing by 2.0% over the previous year.

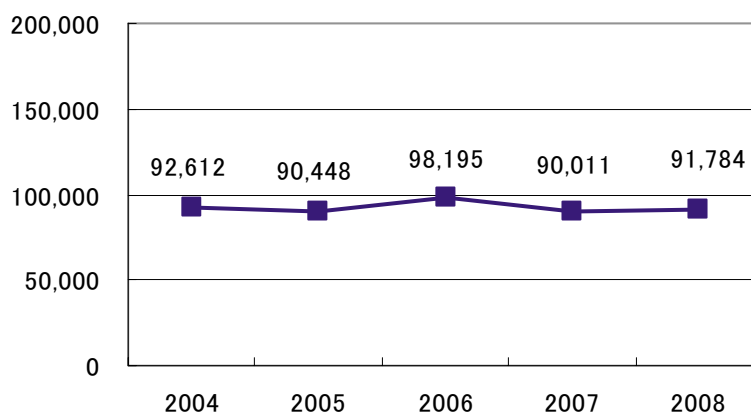
Changes in the Average First and Second Office Action Pendency of Trademark Application
(months)



Notes:

1. FA Pendency: Period from the filing date to the date when the first notice of examination is dispatched.
2. SA Pendency: Period from the filing date to the date when the decision following the first action is dispatched.
3. The preferential period of the trademark system for retail and wholesale services is from April 1, 2007 to July 2, 2007.

Number of Trademark Registrations



Note:

1. Figures do not include the number of international applications for trademark registration designating the JPO.

5. Appeals and Trials

(1) Status of Appeals and Trials

1) Trends in Appeals and Requests for Trials

The system of appeals and trials has two functions. One is to examine applications as the upper instance and the other is to settle disputes on the validity of patents. The trends of the former pre-grant appeals and trials (including appeals against an examiner's decision of refusal whose main function is the role as the upper instance) are closely related to the trends of examination, while the trends of the latter post-grant appeals and trials (including invalidation trials¹⁹ whose main function is to settle disputes) are closely related to the trends of disputes concerning industrial property rights, such as infringement lawsuits.

a. Trends in Appeals against an Examiner's Decision of Refusal

Although the number of appeals against an examiner's decision of refusal for patent applications has been increasing, it decreased by 5% in 2008 from the previous year. The number of appeals against an examiner's decision of refusal for designs decreased 29% over the previous year and for trademarks decreased 34% over the previous year. The appeal rate, which is the percentage of the number of appeals out of the number of decisions of refusal, has also decreased for patents²⁰, designs²¹ and trademarks²², respectively. The economic recession since the end of 2008 may reduce the number of appeals and the appeal rate, so that it is necessary to keep eyes on the trends in the future.

Looking at the results of reconsideration by an examiner before appeal proceedings²³ for patent applications in the past several years, the number of applications for which the original decision was cancelled and a decision to grant a patent was given (the number of applications patented in the reconsideration procedure) has been increasing. In 2008, the number of applications patented in the reconsideration procedure exceeded the number of applications for which the original decision of refusal was maintained (the number of reconsideration reports²⁴). The Appeals Department will continue to promote for an acquisition of right at the stage of examination and reconsideration by an examiner, in order to reduce the burden of both the applicant and the JPO.

¹⁹ Trials requested to the JPO for the invalidation of already-registered patents, utility rights, designs and trademarks :

²⁰ The recent appeal rates with respect to patents have been 20% in 2006, 22% in 2007, and 20% in 2008.

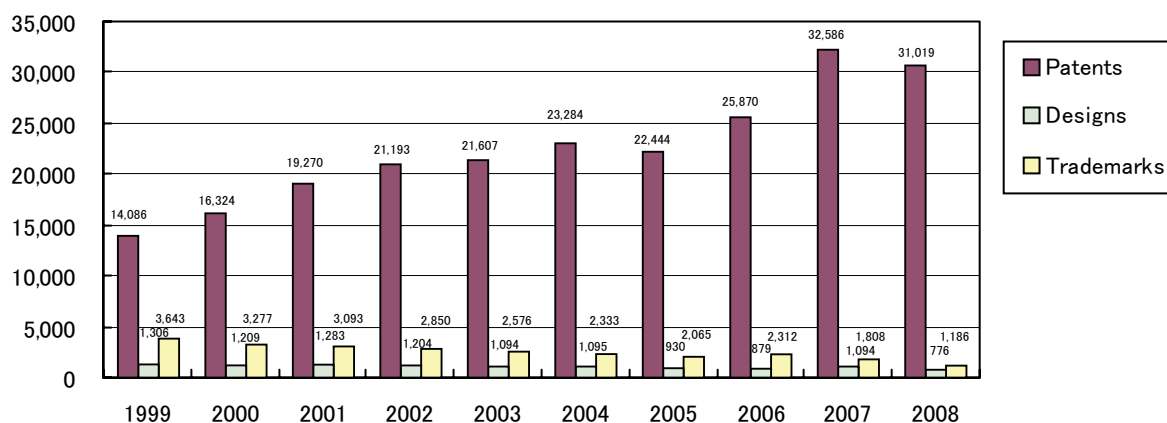
²¹ The recent appeal rates with respect to designs have been 11% in 2006, 15% in 2007, and 13% in 2008.

²² The recent appeal rates with respect to trademarks have been 8% in 2006, 8% in 2007, and 6% in 2008.

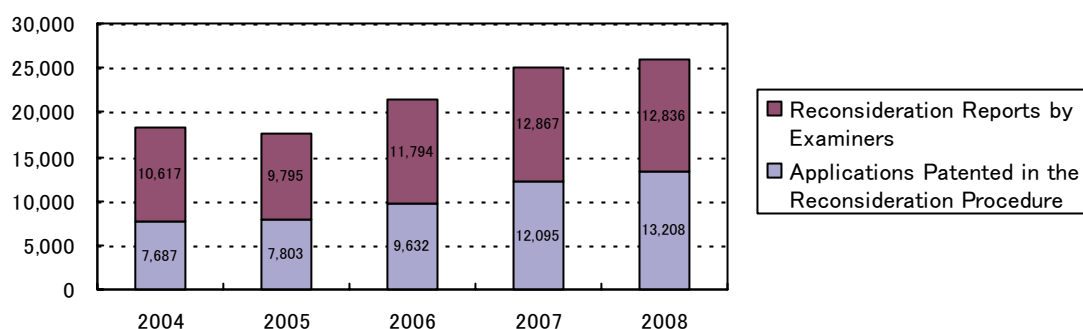
²³ If the scope of claims has been amended at the time of requesting an appeal against an examiner's decision of refusal, the examiner first examines the amendment pursuant to Article 162 of the Patent Act. This procedure is called reconsideration by an examiner before appeal proceedings.

²⁴ In the reconsideration by an examiner before appeal, if the examiner decides to maintain the decision of refusal even after the amendments, the examiner reports the results of the examination to the JPO commissioner. After this, an appeal examination is conducted by a collegial body of appeal examiners.

Number of Appeals against an Examiner's Decision of Refusal



Results of Reconsideration by an Examiner before Appeal Proceedings (Patents)

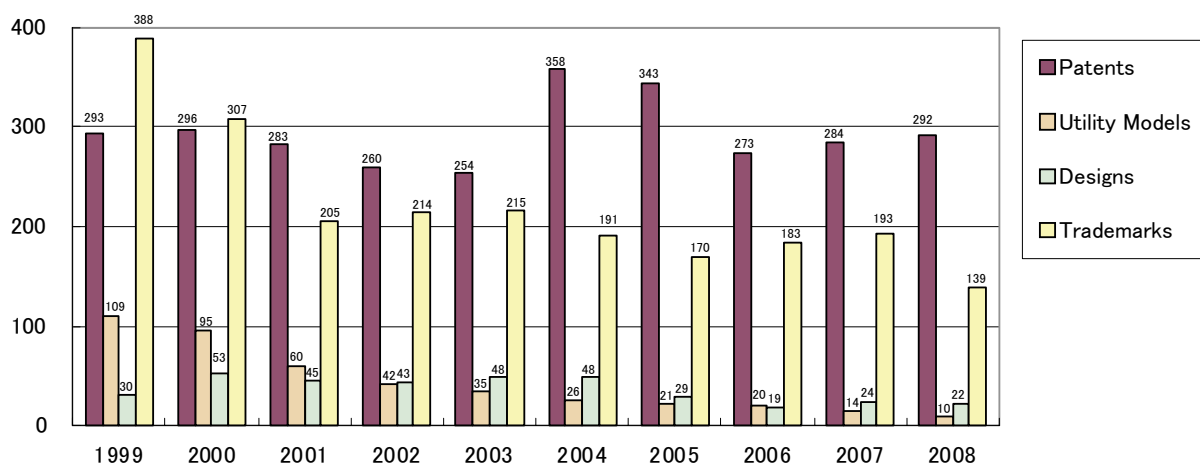


b. Trials for Invalidation of a Patent

Due to the 2003 revision of law, the system of opposition to the grant of a patent²⁵ was integrated into the system of trial for invalidation of a patent. This prompted the number of demands for trials for invalidation of patents to increase temporarily after 2004. It declined in 2006, but it has little changed thereafter.

The numbers of demands for trials for invalidation of a utility model and design registration has been on a declining trend and the number of demands for invalidation of a trademark decreased in 2008.

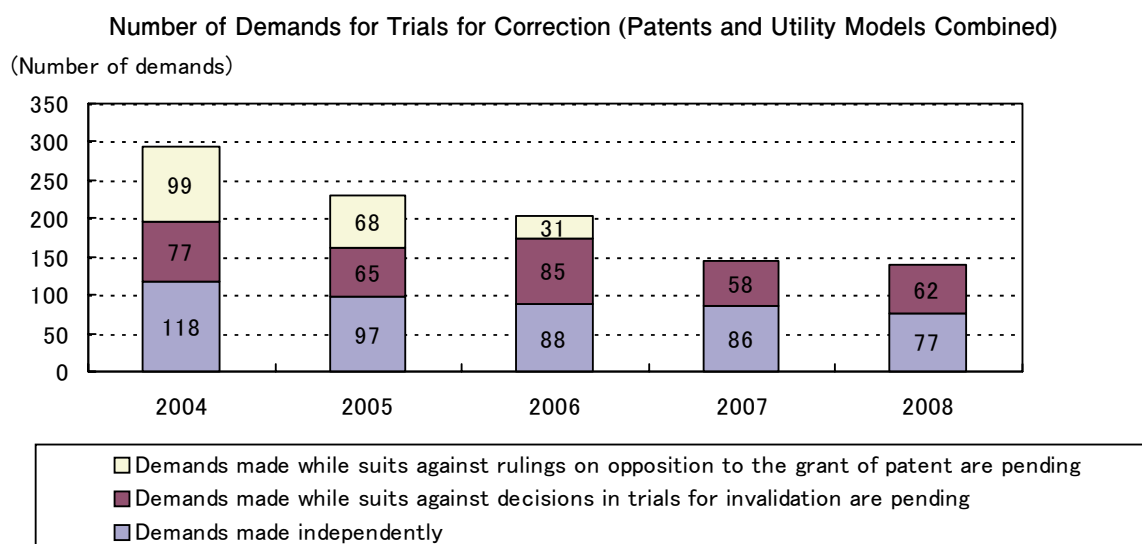
Number of Demands for Trials for Invalidation



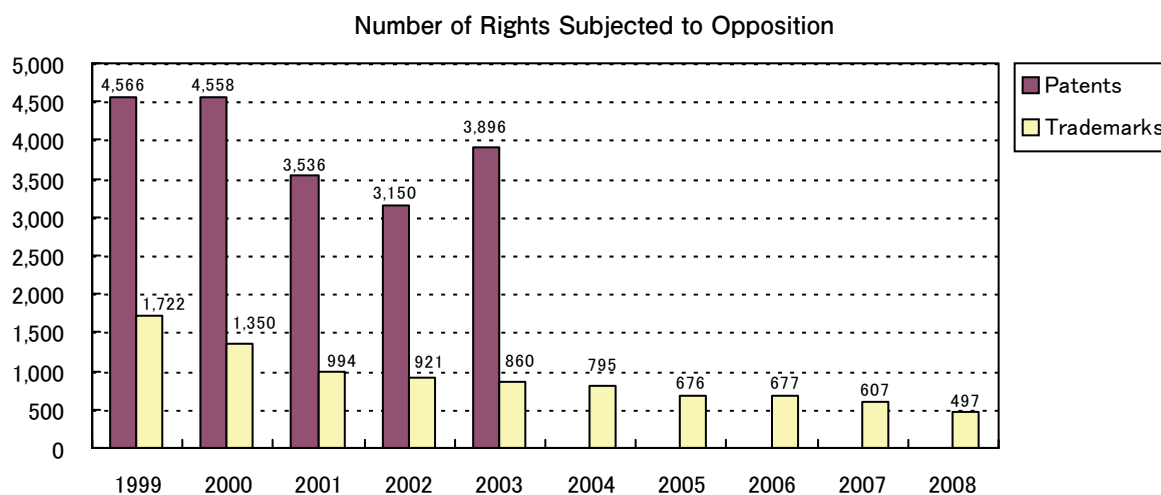
²⁵ A system which permits the cancellation of a patent only within a certain period after the registration of the patent right:

c. Decline in the Number of Demands for Trials for Correction²⁶ of Patents and Utility Models

The number of demands for trials for correction of patents and utility models has been decreasing. This seems to be attributable to a decline in the number of demands filed during the pendency of lawsuits against decisions on opposition to the grant of a patent, which account for a certain number of demands for trials for correction. The major reason was that, with the 2003 revision of law, due to abolishment of the system of opposition to the grant of a patent, there was a decrease in the number of lawsuits against decisions on opposition to the grant of a patent.

**d. Gradually Declining Oppositions²⁷ to Trademark Registration**

The number of oppositions to trademark registration has been gradually declining.



Note: The system of opposition to the grant of a patent was abolished with the 2003 revision of law and integrated into the system of trial for invalidation on January 1, 2004.

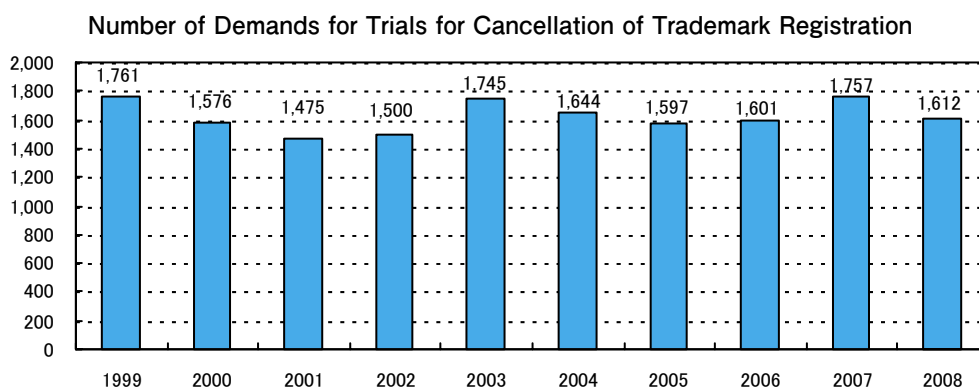
e. Changes in the Number of Demands for Trials for Cancellation²⁸ of Trademark Registration

The number of demands for trials for cancellation of trademark registration has stayed at the same level.

²⁶ Appeals and trials for correcting the description, claims or drawings on his own after the patentee acquires the right:

²⁷ A system which requests the cancellation of a trademark right after its registration for a certain period:

²⁸ Appeals and trials for cancelling a trademark where an owner of trademark right has not used the trademark for more than 3 years in a row:



2) Trends of Examination by the JPO Appeals Department

a. Patent and Utility Model

The average first action pendency for appeals against examiner's decision of refusal in 2008 was 22 months. The average first action pendency is expected to lengthen with the increase in the number of requests for appeals against an examiner's decision of refusal in line with the increase in the number of examinations conducted by the Examination Departments. Therefore, in order to shorten the appeal pendency, the Appeals Department takes various measures including use of appeal researchers, conducting questioning²⁹ using the reconsideration reports, and implementing a consolidated appeal examination of related cases.

Looking at the appeal examination results related to patent applications, the quality and strictness of examination have evidently increased over the past several years. Among the decisions in appeals against an examiner's decision of refusal, the percentage of decisions that denied the appeal (appeal denial rate³⁰) tends to increase from about 25% in 1999 to about 54% in 2008. The increase in the appeal denial rate in appeals against an examiner's decision of refusal indicates an increase in cases where inventions that were not patented in the examination phase were also not patented in the appeal phase.

With regard to trials for invalidation, trial examinations are conducted on a preferential basis in order to contribute to early settlement of disputes over rights. In 2008, the average pendency in trials for invalidation was 9.5 months which is the same level as 2007. Oral proceedings³¹ were actively used in the trials for invalidation of a patent/utility model in order to raise the quality of the trial examination and the number of the oral proceedings (including designs and trademarks) has increased to 182 in 2008.

With respect to trials for correction, efforts were made for quick trial examinations because the trials were often demanded in connection with infringement lawsuits. As a result, the average trial pendency in 2008 was 2.4 months.

²⁹ Through the questioning procedure, the appellant is notified of the opinion the examiner has formed in the reconsideration procedure, and is given the opportunity to procedure a counterargument. This allows the collegial body of appeal examiners to conduct an examination by also taking into account the appellant's counterargument to the examiner's opinion, and at the same time to confirm the appellant's intention to continue with the appeal proceedings after receiving the reconsideration results. Consequently, the system contributes to further raising the quality of appeal examinations and improving the processing efficiency of the entire JPO.

³⁰ The appeal denial rate indicates the percentage of the Appeals Department's decisions holding the appeal invalid and decisions/rulings to dismiss the appeal to the total number of its decisions and rulings.

³¹ In this system, the collegial body of appeal to examiners conducts questioning orally so that the party concerned is encouraged to establish his appeal appropriately and points in issue are arranged.

b. Design

Appeal examinations against an examiner's decision of refusal have become more efficient in recent years. The average first action pendency in 2008 was 7.4 months which has been the same level as 2007.

With regard to trials for invalidation, trial examinations are conducted on a preferential basis in order to contribute to early settlement of disputes over rights. In 2008, the average trial pendency was 7.1 months which has been shortened from that in the last year.

c. Trademark

Appeal examinations against an examiner's decision of refusal have become more efficient in recent years, allowing the first action pendency to be shorter year by year. The average first action pendency in 2008 was 10.4 months which has been shortened by 3 months from that in the previous year.

With regard to trials for trademark invalidation, trial examinations are conducted on a preferential basis in order to contribute to early settlement of disputes over rights. In 2008, the average trial pendency was 11.0 months even though sufficient opportunities for appeal were given to the appellant and the appellee.

The average trial pendency for oppositions in 2008 was 8.9 months and that for trials for cancellation was 6.1 months which has been almost the same level from the previous year.

Status of Appeal and Trial Examination in 2008

	Appeals against an examiner's decision of refusal		Trials for invalidation		Trials for correction		Oppositions		Trials for cancellation	
	No. of first actions *1	Average first action pendency (months)*2	No. of cases processed*3	Average trial pendency (months)*4	No. of cases processed*3	Average trial pendency (months)*4	No. of cases processed*3	Average trial pendency (months)*4	No. of cases processed*3	Average trial pendency (months)*4
Patent/ Utility model	19,812	22	319	10	129	2				
Design	974	7	33	7						
Trademark	2,249	10	168	11			497	9	1,711	6

Notes: 1. Number of cases in which the first examination results were notified

2. Average period from the date of appeal until the date the notification of the first examination results in dispatched

3. including withdrawals

4. Average period from the date of demand for the trial until the date of the final disposition (decision or ruling)

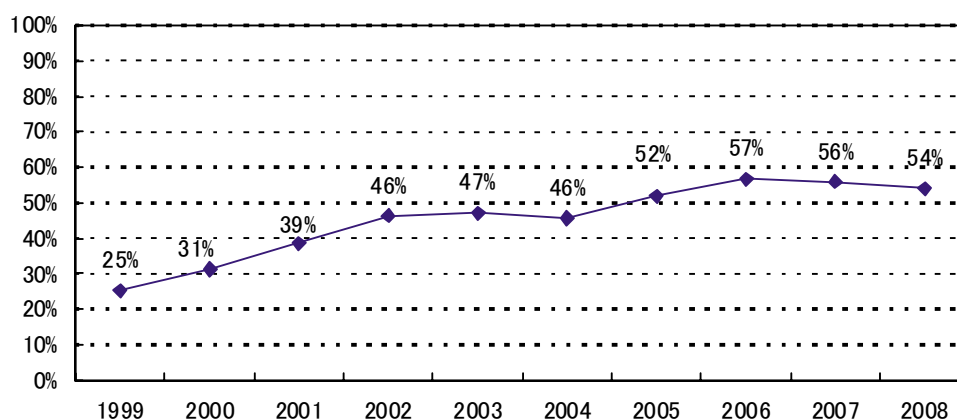
Appeals and Trial Examination Results*1 in 2008

	Ex-parte appeals *2		Inter-partes trials *3		Oppositions	
	Appeal accepted	Appeal denied *4	Appeal accepted	Appeal denied *4	Appeal accepted *5	Appeal denied *6
Patent/Utility model	6,568	7,719	192	89		
Design	694	277	12	15		
Trademark	1,605	387	1,460	263	74	415

Notes:

1. Only those for which final appeal/trial decision has been made
2. Appeals against an examiner's decision of refusal, appeals against an examiner's decision to dismiss amendment, and trials for correction
3. Trials for invalidation and trials for cancellation
4. Including dismissals
5. Including partial revoke
6. Including withdrawals

Changes in Appeal Denial Rate in Appeals against an Examiner's Decision of Refusal



(2) Status of Actions against the JPO Appeals Department's Decisions

1) Trends of Actions Filed³²

Looking at the number of actions against the JPO Appeals Department's decisions in 2008, it is clear that the number of ex-parte appeals has increased for trademarks, compared to that in 2007. As for the number of inter-parties trials, it has increased by 34% over the previous year for patents and utility models and increased also for designs and trademarks.

With respect to lawsuits against ex-parte appeal decisions related to patents and utility models in 2008, the number of appeal cases in which the Appeals Department denied the appeal was 7,719 and the number of actions filed against such decisions was 188. The action rate³³ was 2.4%, which is the same level as 2007.

³² An action taken for cancellation of a trial decision of the JPO by a person who wish to appeal against the decision: It is filed to the Intellectual Property High Court.

³³ The proportion of appeal decisions and rulings against which an action has been filed to the total number of appeal decisions and rulings:

Number of Actions in 2008

	Patent/Utility model		Design		Trademark	
	2007	2008	2007	2008	2007	2008
Ex-parte appeals ^{*1}	192	188	13	9	19	28
Inter-partes trials ^{*2}	140	187	2	6	61	72
Oppositions	1	1			4	2

Notes:

1. Appeals against an examiner's decision of refusal, appeals against an examiner's ruling to dismiss amendment, and trials for correction
2. Trials for invalidation and trials for cancellation

(2) Rate of Cancellation of the JPO Appeals Department's Decisions Remaining at a Low Level

Looking at the status of lawsuits against the Appeal Department's ex-parte appeal decisions related to patents and utility models, the rate of cancellation of the decisions slightly increased from 13.2% in 2007 to 17.5% in 2008. It remains at a low level compared to the peak in the last ten years at 36.3% in 1999. The JPO will continue to make efforts to reduce the rate of cancellation of the decisions by further raising the quality of appeal/trial examinations through reviewing of court decisions.

Number of Court Decisions ^{*1} in 2008

	Patent/Utility model		Design		Trademark	
	Claim dismissed	Appeal Department's decision cancelled	Claim dismissed	Appeal Department's decision cancelled	Claim dismissed	Appeal Department's decision cancelled
Ex-parte appeals ^{*2}	141	30	5	7	12	4
Appeal decision cancellation rate	17.5%		58.3%		25.0%	
Inter-partes trials ^{*3}	72	27	2	1	21	11
Trial decision cancellation rate	27.3%		33.3%		34.4%	
Oppositions	3	2			2	1
Ruling cancellation rate	40%				33.3%	

Notes:

1. Excluding the court ruling to cancel the Appeal Department's decision pursuant to Article 181(2) of the Patent Act and the court decision that due to a correction becoming final and conclusive during the pendency of the case
2. Appeals against an examiner's decision of refusal, appeals against an examiner's ruling to dismiss amendment, and trials for correction
3. Trials for invalidation and trials for cancellation