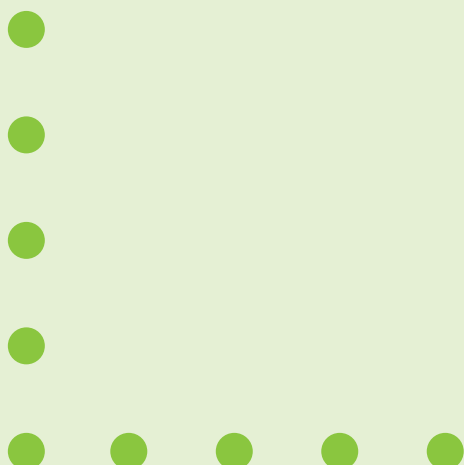


Part 1

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

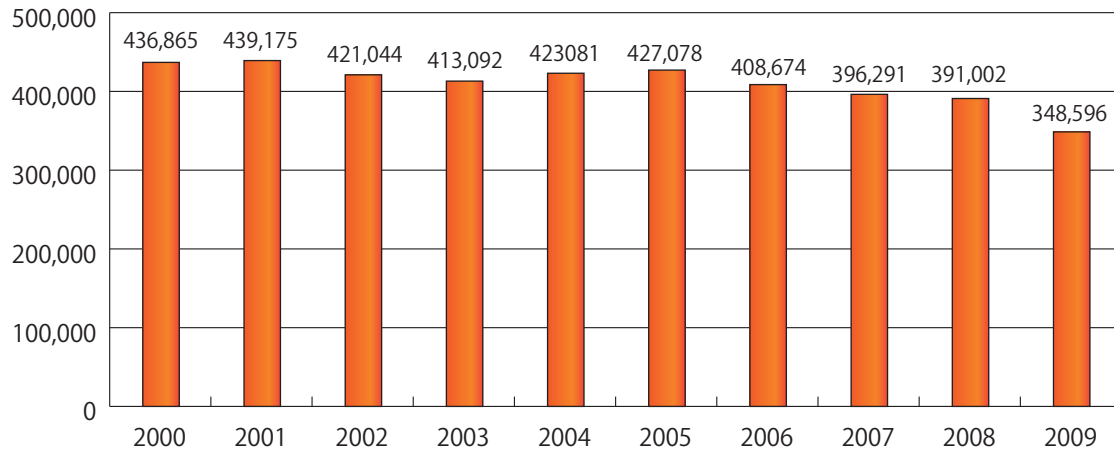
1) Patent Application shifting toward Acquisition of Beneficial and High-quality Patent Right and Increasing PCT Applications

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 2009 was 348,596 (decrease by 10.8% from the previous year). The recent economic recession is considered to be one factor behind the decrease, but another factor is that more applicants are changing their intellectual property strategy from acquiring and filing a large volume of patents to acquiring high-quality patents. It is not clear if the number of applications will continue to decrease in the future. Therefore, it is necessary to keep eyes on the trends of patent applications after 2010.

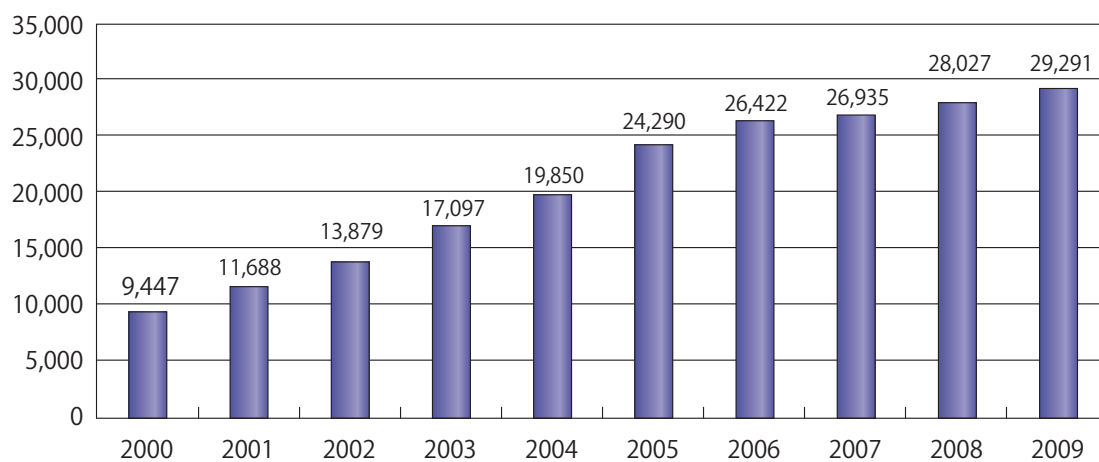
Meanwhile, the number of international applications under the Patent Cooperation Treaty (hereinafter referred to as the “PCT applications”) whose receiving office is the Japan Patent Office (JPO) in 2009 was 29,291, 4.5% growth from the previous year, continuing to indicate the tendency to rise in spite of the decline of the number of patent applications in Japan. This indicates that applicants emphasize on international applications backed by the progress in the globalization of business activities. In addition, procedures for entering national phase¹ of each country need to be performed within 30 months from the priority date in the case of the PCT applications. Therefore, there is a possibility that the PCT applications have been used to secure the application date and at the same time to fully consider whether or not they bear the costs for translation and request for examination necessary for actually entering national phase of each country and obtaining the patent.

¹ The procedure to bring international applications into the national procedure of each office.

Changes in the Number of Patent Applications



Changes in the Number of PCT Applications



2) Emergence and End of "Bump in Requests"

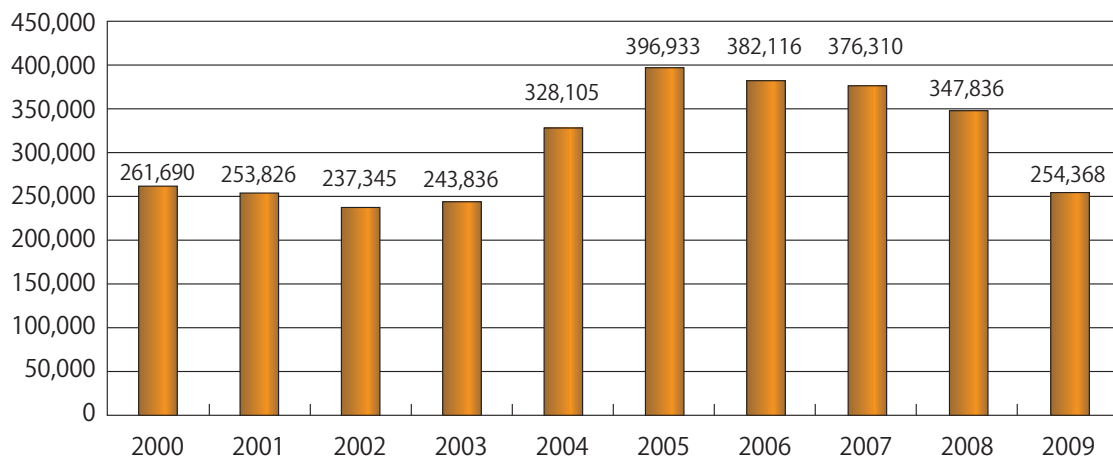
The period of requests for examination has been reduced from seven years to three years for the applications filed in and after October 2001. The requests for examination for applications subject to a three-year request period had been intensively made since 2004, because many of requests of such applications 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 examination for applications with a seven-year request period has remained between 50% and 60%, the final rate for the applications² 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 from the previous year), and further to 396,933 in 2005 (a 21% increase from the previous year).

² 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.

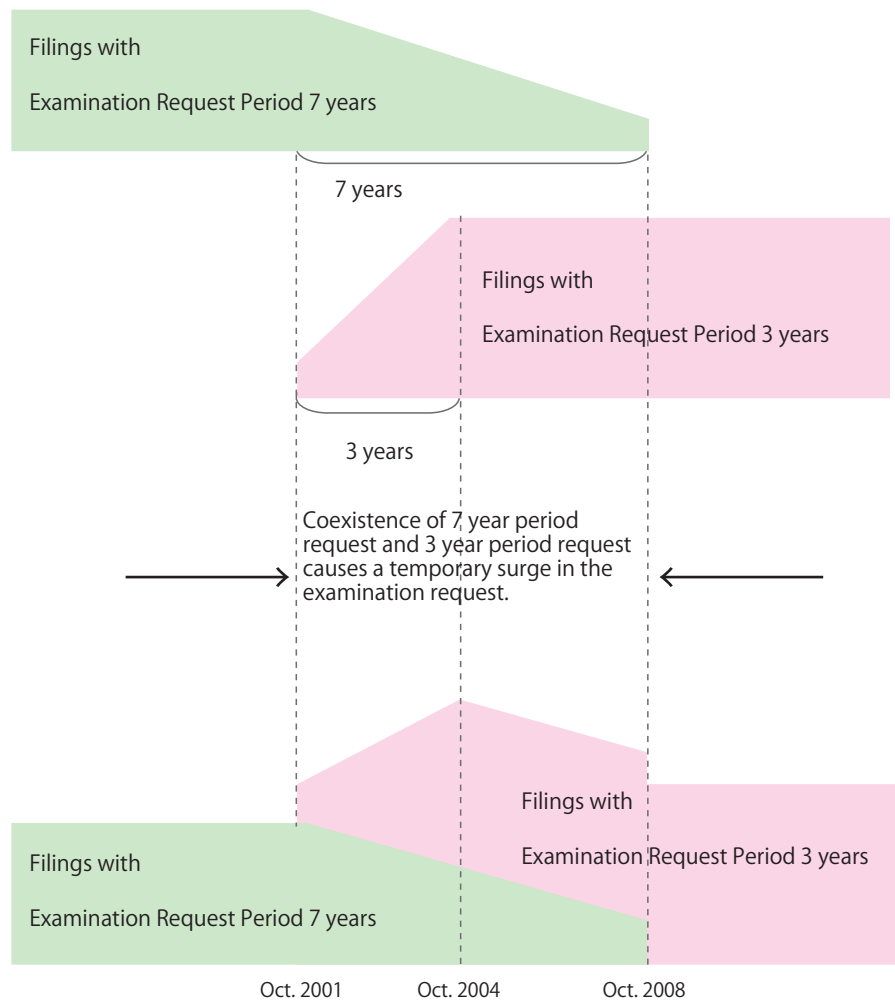
However, the number of requests for examination has fallen into the downward turn since 2006 when the “bump in requests” has passed its peak, and it decreased significantly to 254,368 (a 26.9% decrease from the previous year) because the “bump in requests” ended when all applications with a seven-year request period reached the time limit for making the requests for examination at the end of September 2008.

Moreover, the number of requests for examination with a three-year request period also decreased significantly by 11.2% in 2009 (286,386 in 2008). One factor behind this is that, in addition to an effect of the economic recession in recent years similar to the trends of applications, applicants are more selective in making requests for examination.

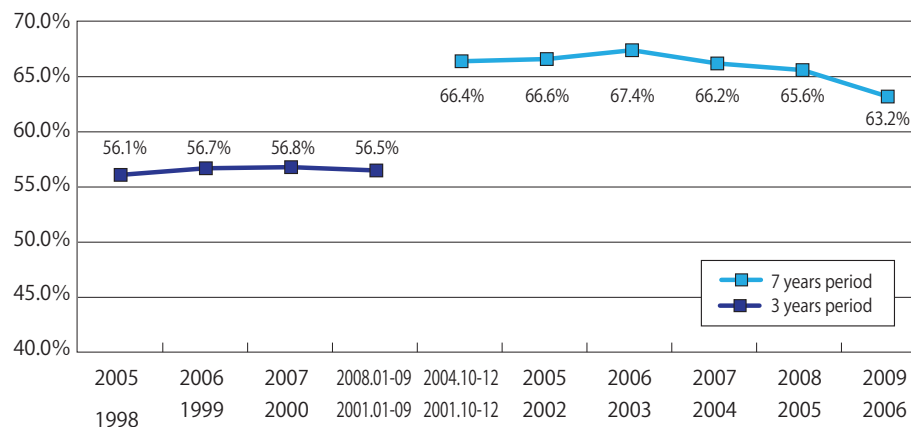
Changes in the Number of Requests for Examination



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



Changes in the Final Rate of Requests for Examination



*1 The year when the application was filed

*2 The final year to file the request for examination

Notes:

1. An international application designating Japan is counted with the application year of an international application as the application year.
2. The final rate of the examination requests is provisional; the related applications were made in the year 2006 and their final year for request was the year of 2009.

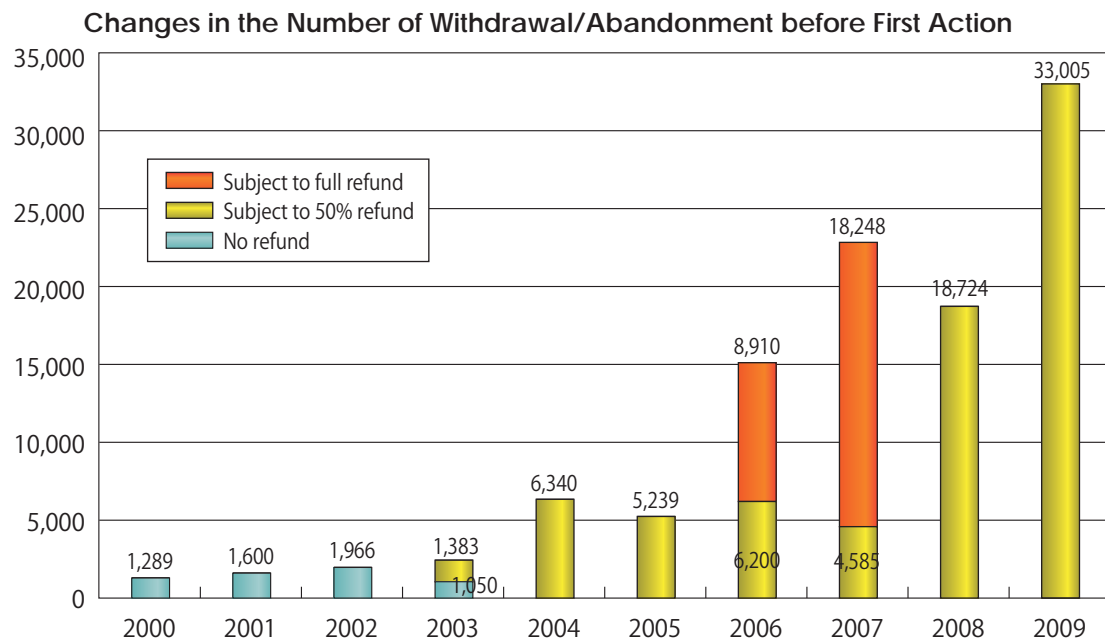
3) Surge in the Number of Withdrawals/Abandonments before the First Action after Having Requested Examination³

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 stayed in effect for one year from August 9, 2006 to August 8, 2007, was introduced.

Even after the implementation period of the full-refund system, the number of withdrawals/ abandonments of application 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.

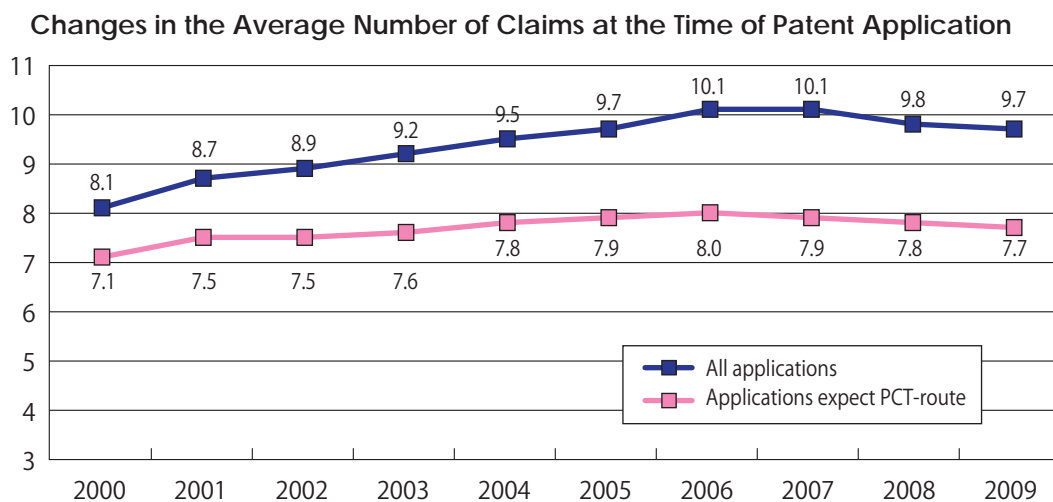
Moreover, the number of withdrawals/ abandonments of applications has increased remarkably since the end of 2008 because of the recent economic recession. The number of withdrawals/ abandonments before the first action in 2009 was 33,005 (a 76.3% increase from the previous year).

³ Before the delivery of the documents for the patent examination such as Notification of Reasons for Refusal etc. to the applicant.



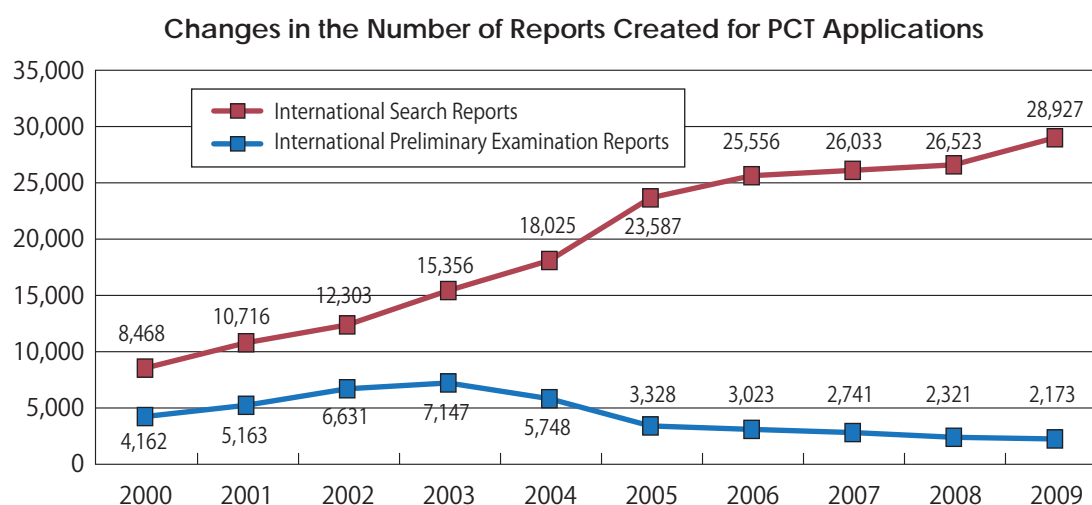
4) Changes in the Average Number of Claims

The content of patent applications has become more complex and sophisticated along with the innovative progress, especially in the fields of cutting-edge technologies, and along with the necessity in differentiating products from other competing products in the fields of matured technologies, and the economic globalization. While the average number of claims in patent applications filed in Japan had continued to increase until 2006, it has been in the trend of slight decline since 2007. The reason for this is that the applicants are more selective about the description of claims as in the case of applications and requests for examination in recent years.



5) Increase in the Number of International Search Reports⁴ of PCT Applications

In line with the increase in the number of PCT applications as shown in 1) above, the number of international search reports, created by the JPO as an international search organization, increased from 26,523 in 2008 to 28,927 in 2009, up 9.1% over the previous year. On the other hand, since 2004 when the Enhanced International Search System in which a written opinion⁵ (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, the number of international preliminary reports has been decreasing along with a decrease in the number of requests for an international preliminary examination report.⁶



⁴ When an international PCT application is filed and the JPO is selected as the international searching authority, an examiner searches relevant prior art and establishes an international search report.

⁵ 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.

⁶ The examiner establishes an international preliminary examination report to indicate his/her final decision in the international preliminary examination.

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

6) Increase in the Number of First Actions⁷ and Decrease in the Number of Patent Backlogs

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 and increasing the outsourcing of prior art searches. As a result, the number of first actions in the JPO has steadily increased over the past several years (an increase from 243,548 in 2005 to 361,439 in 2009).

In 2009, the number of first actions exceeded the number of requests for examination, and the number of the applications awaiting the first action (backlogs) decreased to 717,000 (a decrease of 17.4% from the previous year) as of the end of 2009 coupled with the increase in the number of withdrawals/abandonment. The period of waiting for examination is expected to be gradually decreased in the future as the number of backlogs will decrease.

The JPO has made various efforts⁸ to achieve expeditious and efficient patent examinations. As a result, in 2009, the number of subsequent examinations⁹ also increased 7.9% over the previous year. In line with an increasing number of examinations, the number of decisions to grant a patent came to 178,000 in 2009. On the other hand, the rate of decisions to grant a patent was 50.2%. There is little change from 2008.

⁷ First action is an examination performed at first following the request for the examination by the applicant.

⁸ See Part 2, Chapter 2.

⁹ Examinations conducted in response to a written opinion or a written amendment submitted by the applicant following the first action.

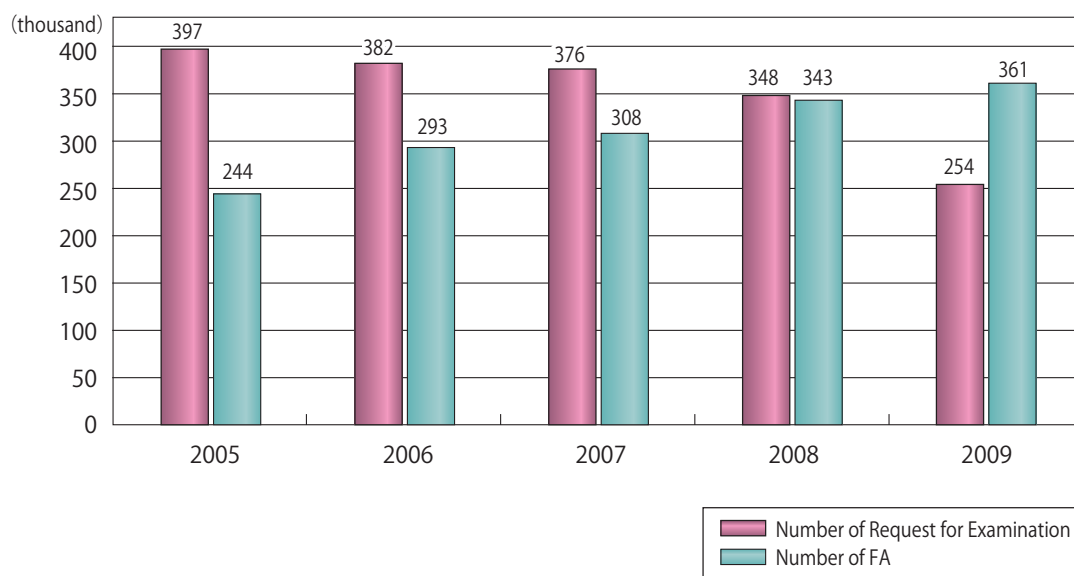
Changes in Patent Examination Performance

Record	2005	2006	2007	2008	2009	Year-on-year
Number of First Actions	243,548	292,756	307,665	342,654	361,439	105%
Number of Subsequent Examinations	179,760	226,815	264,776	283,638	306,018	108%
Number of International Search Reports of PCT	23,587	25,556	26,033	26,523	28,927	109%
Number of International Preliminary Examination Reports of PCT	3,328	3,023	2,741	2,321	2,173	94%
Number of Reconsiderations by Examiner before Appeal Proceedings	19,491	22,289	27,432	28,478	24,131	85%
Number of Reports of Expert Opinion on Registrability of the Utility Model	1,261	1,052	1,116	880	718	82%
Total	470,975	571,491	629,763	684,494	723,406	106%

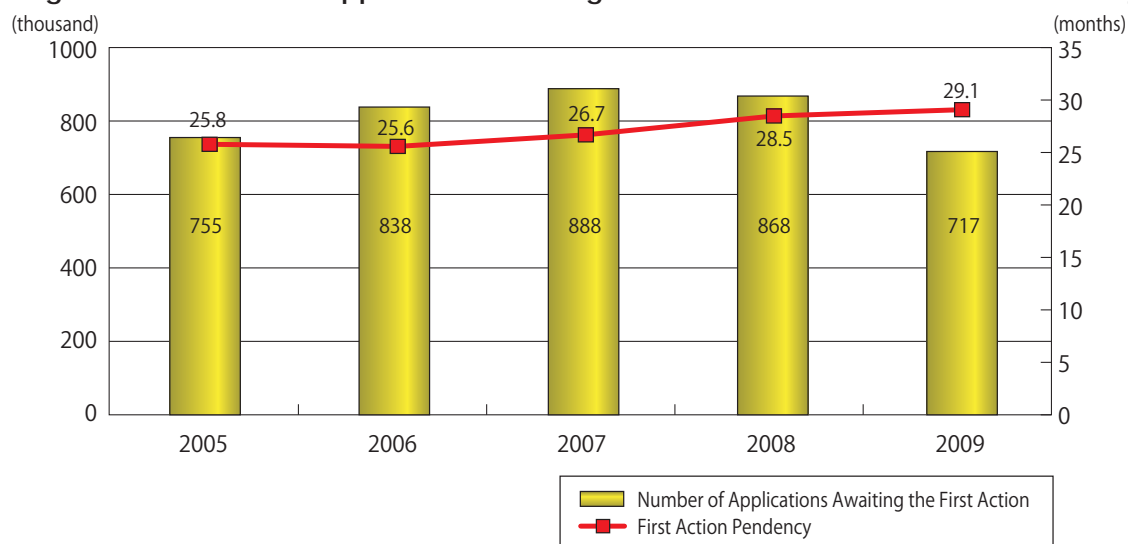
Notes:

- 1.The "year-on-year" column is a comparison between 2009 and 2008.
- 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").

Changes in the Number of Requests for Examination and Number of First Actions



Changes in the Number of Applications Awaiting the First Action and First Action Pendancy



Note:

“Number of Applications Awaiting” does not include the number of applications which were applied for requests for deferred payment of examination request fees

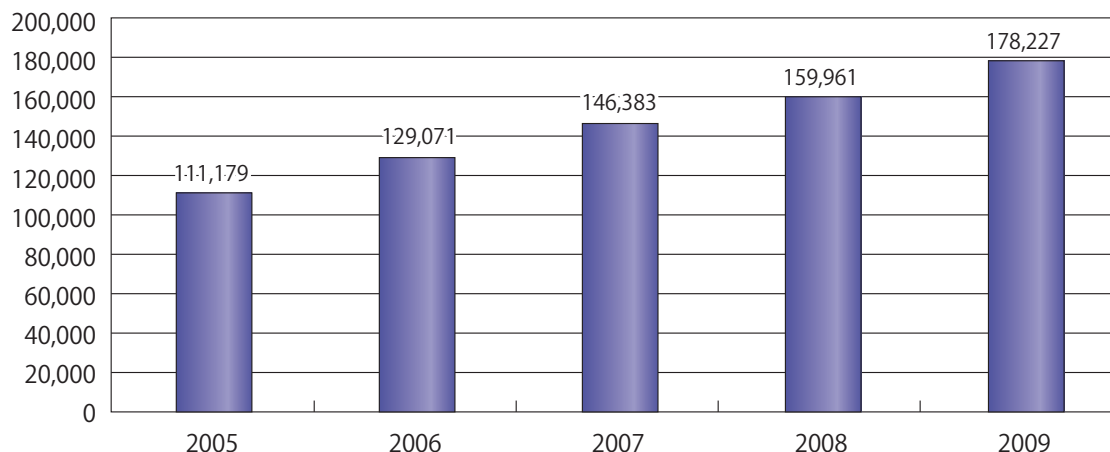
Changes in Final Decision Performance

Performance	2005	2006	2007	2008	2009	Year-on-year
Number of Decisions to Grant a Patent	111,179	129,071	146,383	159,961	178,227	111%
Number of Decisions of Refusal	109,149	129,400	147,678	154,163	171,396	111%
(Of which number of decisions of refusal without a dissenting response from the applicant)	61,328	68,879	78,246	85,443	105,004	123%
Withdrawals/Abandonment After the First Action	6,266	7,915	5,567	4,779	5,169	108%
Rate of Decisions to Grant a Patent	49.1%	48.5%	48.9%	50.2%	50.2%	-
Rate of Decisions of Refusal	50.9%	51.5%	51.1%	49.8%	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.

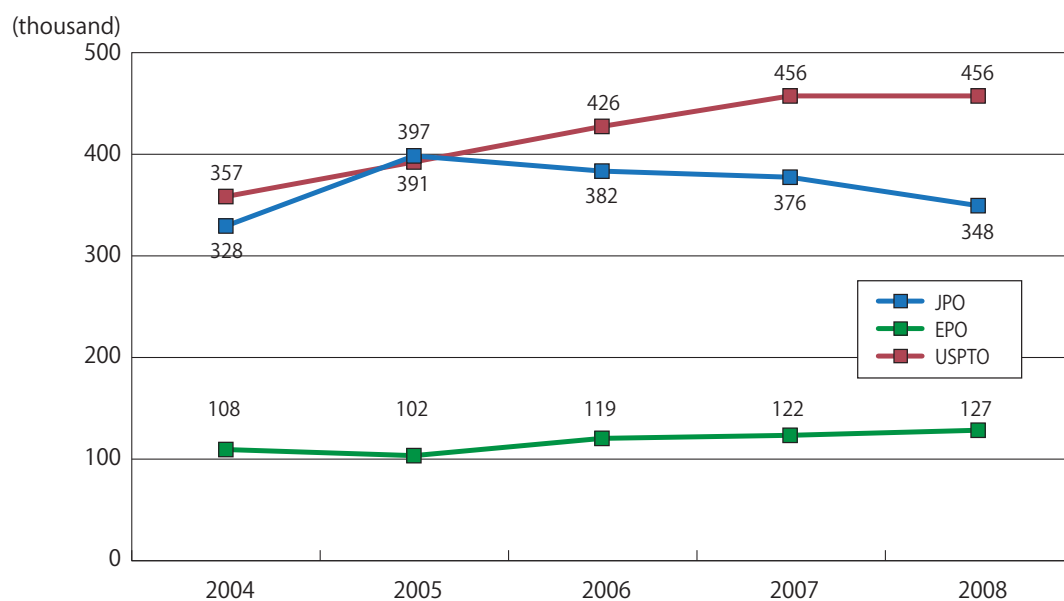
Changes in the Number of Decisions to Grant a Patent



Not only Japan, but also Europe and the 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 a burden on the patent examination 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 dramatically increased examiners, to be more precise, the EPO has increased about 1,200 examiners and the USPTO has increased 3,000 examiners during the ten years from 2000 to 2009. Specifically, the USPTO employed 588 new examiners in FY2009 (from October 2008 to September 2009) (a pure increase of 188 examiners from the previous year as of the end of September 2009). Although the number of new employees is expected to be around 250 in FY2010 due to the limitation of budget, it has the plan of employing 1,000 examiners in FY2011 and FY2012.

Similarly, the JPO had employed fixed-term examiners since 2004, and during ten years from 2001 to 2010, it has increased 607 examiners including fixed-term examiners.

Changes in the 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)

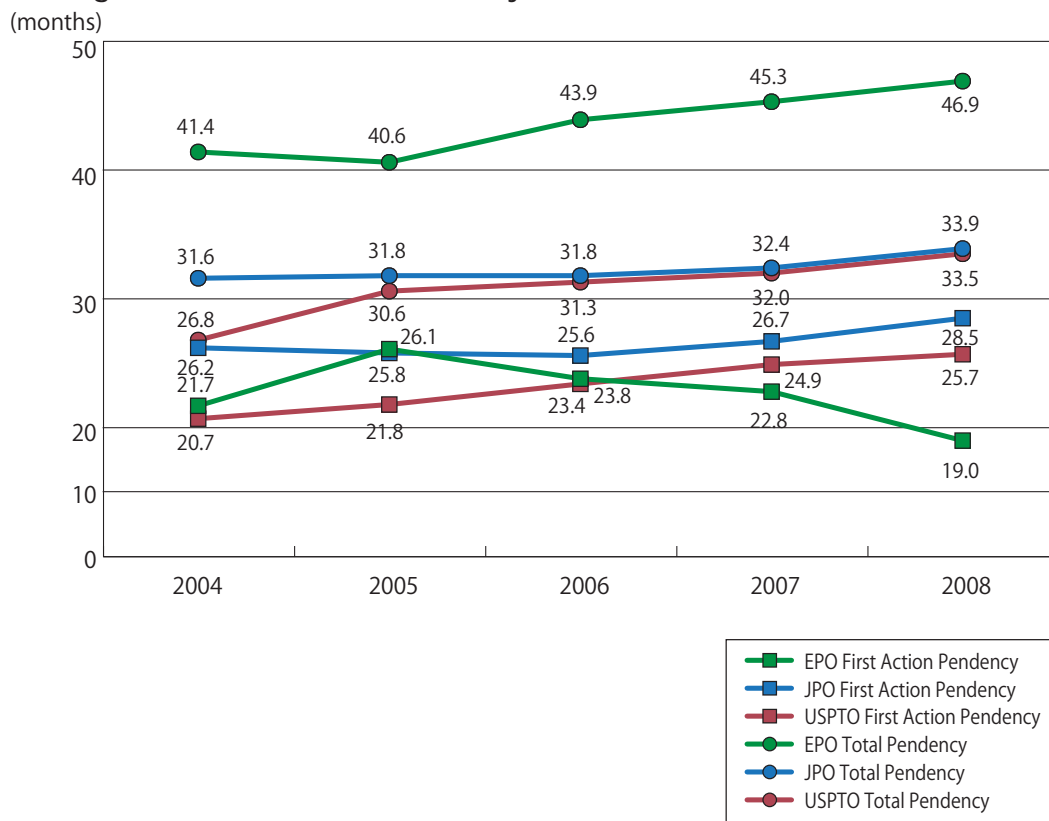


Sources:

USPTO webpage

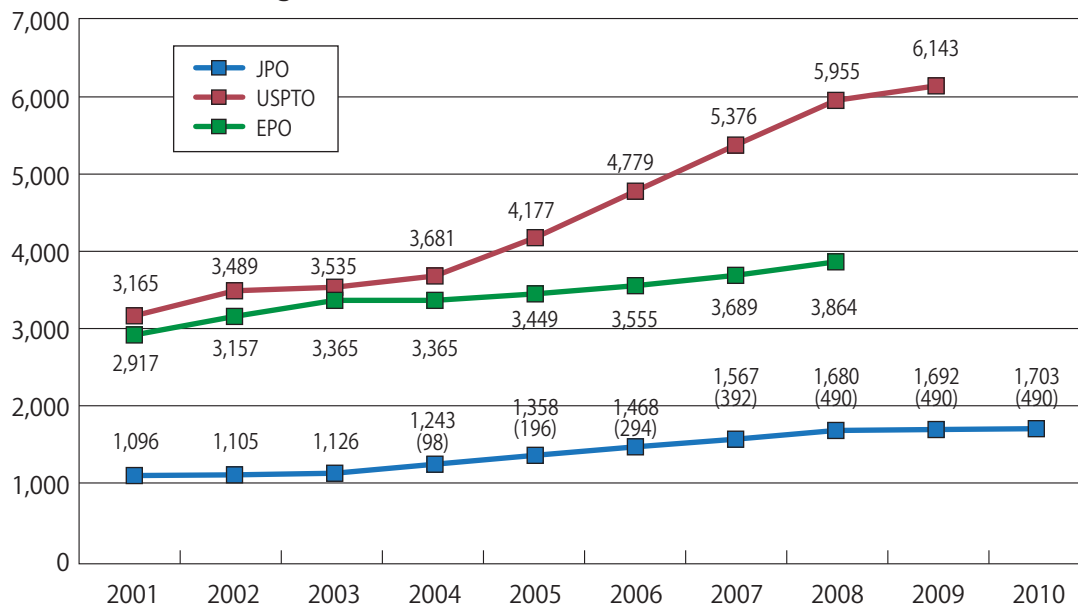
EPO Annual Report

Changes in the Examination Pendency and Final Decision Term at Trilateral Offices



Source: Trilateral Statistical Report, Four Offices 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.

Sources:

USPTO: Annual Report

EPO: Trilateral Statistical Report, Four Offices Statistical Report

2. Utility Model

(1) Changes in the number of utility model applications

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 amended utility model system entered into force in April 2005 in order to make the system more attractive.

(Outline of the Amended Utility Model System)

Extension of the term of utility model right

Reduction in the annual fee for utility model right

Expansion of the allowable scope of correction

Allowance of filing a patent application based on a utility model registration

With the enforcement of the amended utility model system, the number of utility model applications came to 11,386 in 2005, increasing by about 43% from the previous year. Although the number of utility model applications has been decreasing since 2006, 9,507 applications were filed in 2009, same level as the previous year despite the significant decrease in the number of patent applications in 2009. It can be said that this simple system that allows the applicants to obtain a right at a reasonable cost 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.

Changes in the Number of Applications Filed under the New Utility Model System

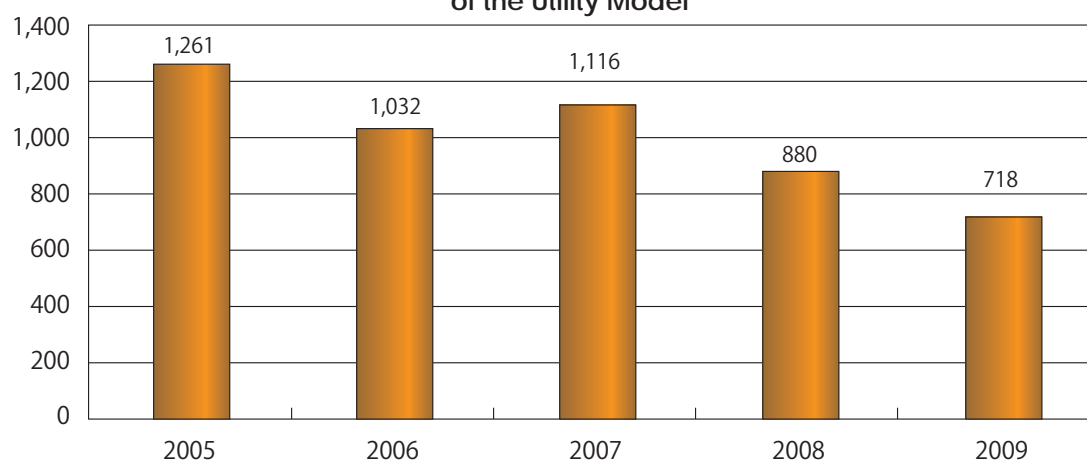
	2002	2003	2004	2005	2006	2007	2008	2009
New Utility Model Applications	8,587	8,155	7,983	11,386	10,965	10,315	9,452	9,507

(2) Status of Technical Reports of Expert Opinion on Registerability 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 registerability 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 to judge the validity of a right and notified the requester (Articles 12 and 13 of the Utility Model Act).

The number of the prepared report of expert opinion on registerability of the utility model has hovered, but it continued to drop to 718 in 2009 (a decrease by 18% over the previous year) from 2008. The recent economic recession is thought to be a factor of this decrease.

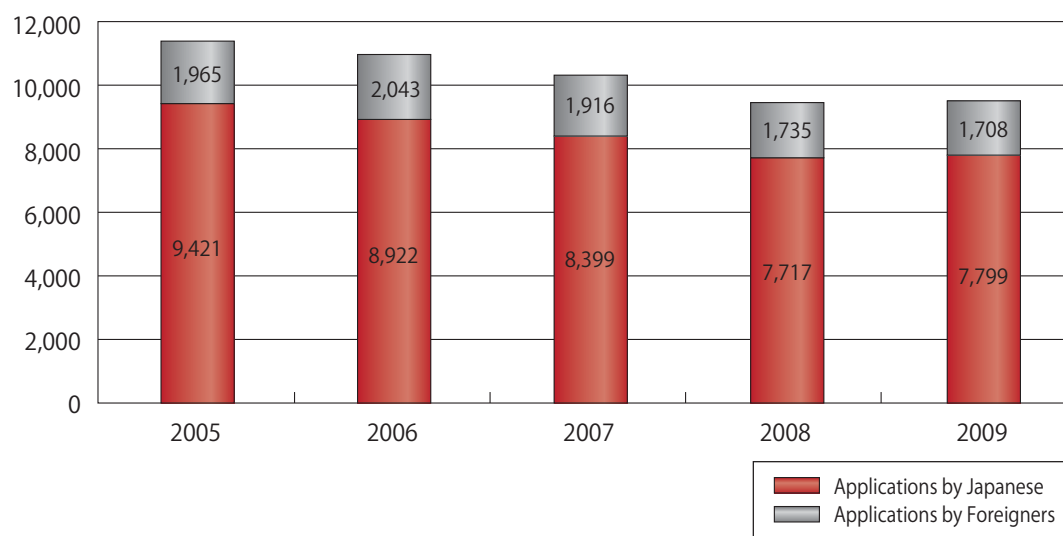
Changes in the Number of Prepared Reports of Expert Opinion on Registerability of the Utility Model



(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.

Changes in the Number of Applications for utility model (divided by the Japanese and foreigners)



3. Design

(1) Status of Design Application and Examination in Japan

1) Trends in Applications for Design Registration

Though in the past ten years, the number of applications peaked in 2004 (40,756) and has decreased since then. It decreased significantly by 8% in 2009 compared to the 2008 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 designs to be filed are more carefully selected, etc., so that it is necessary to continue to keep eyes on the trends of applications.

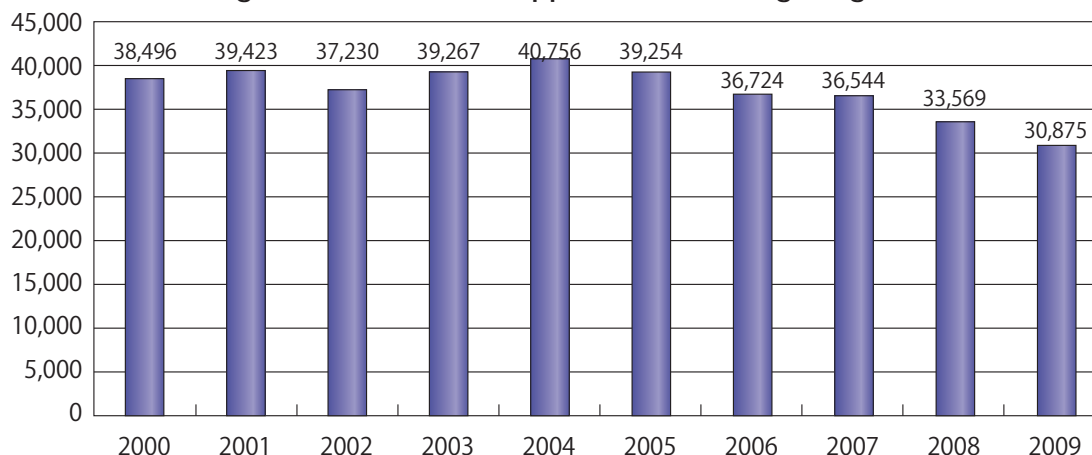
Since the introduction of the partial design system¹⁰ in 1999, the ratio of applications for partial design has been increasing each year, reaching about 28% of all the applications in 2009.

The usage ratio of the related design system,¹¹ introduced in the same year, has decreased since 2007.

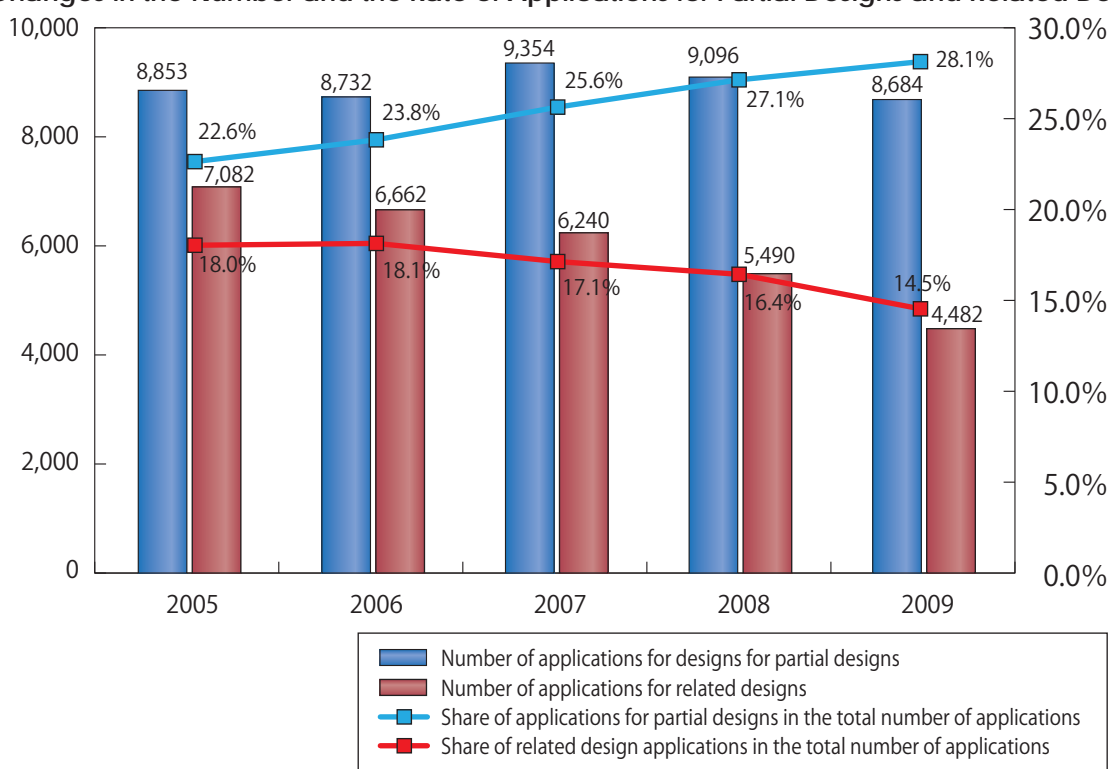
10 Design of a part of an article: Since the amended Design Act entered into force in 1999, it became possible to register a design of a part an article that even cannot be physically separated from the entire article.

11 The related design system enables the enforcement of the design rights for a related design which is similar to the principal design only when the design application for the related design is filed by the same applicant as the principal design, and this system was introduced in 1999.

Changes in the Number of Applications for Design Registration

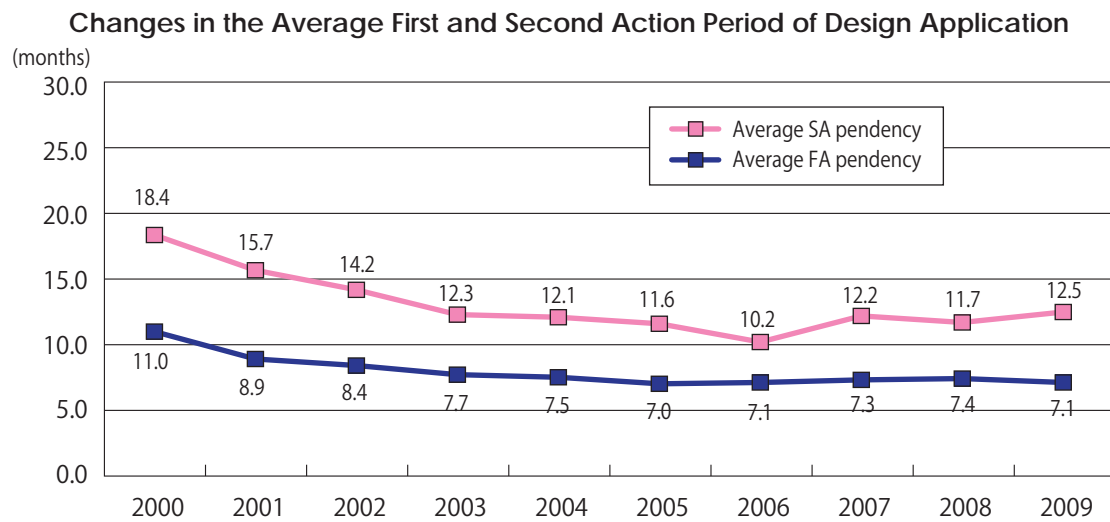


Changes in the Number and the Rate of Applications for Partial Designs and Related Designs



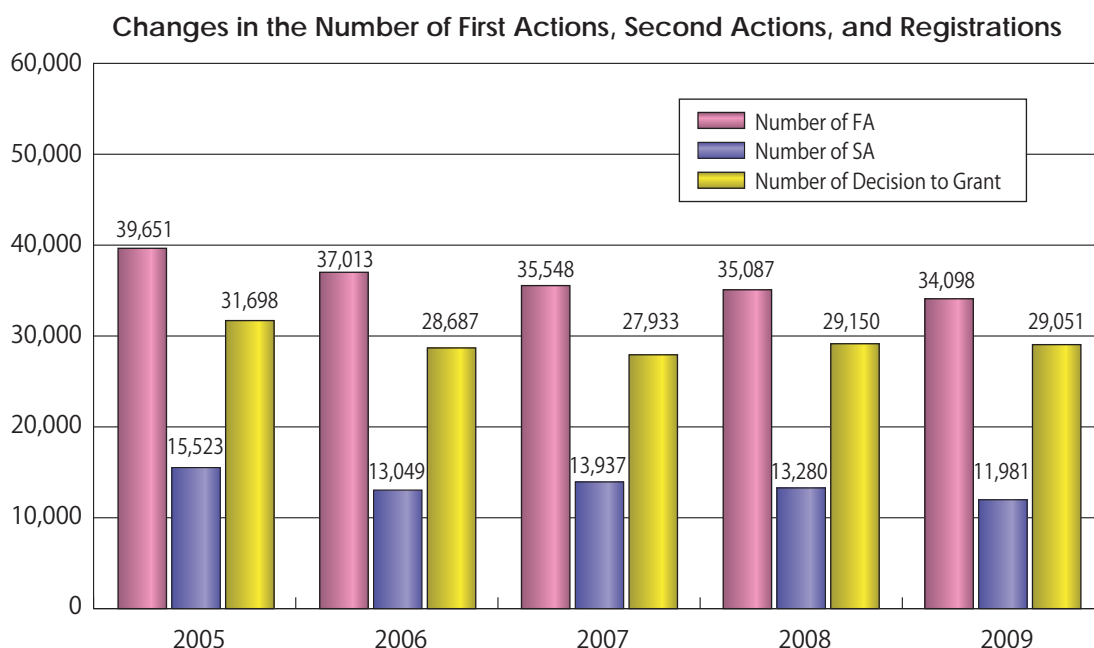
2) Status of Design Examination

In 2009, the number of applications for which the first notice of examination results (first action) was dispatched (hereinafter referred to as the "number of FA") fell from 35,087 in 2008 to 34,098. While the period from the filing date to the date when the first notice of examination is dispatched (hereinafter referred to as the "FA period") in 2009 was reduced to 7.1 months compared to the previous year, the period from the filing date to the date when the decision following the first action (second action) is dispatched (hereinafter referred to as the "SA period") was 12.5 months on average. The number of applications among which the decision was dispatched through the application to the first action (hereinafter referred to as the "number of SA") was 11,981. Meanwhile, the average number of design registrations has remained at around 30,000 for the last five years.



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.



Notes:

1. First Actions are the first notices which were issued and dispatched during the pendency period.
2. Second Actions are issued during the 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. Trademarks

(1) Changes in the Trademark Applications and Status of Trademark Examination in Japan

1) Trends in Trademark Applications

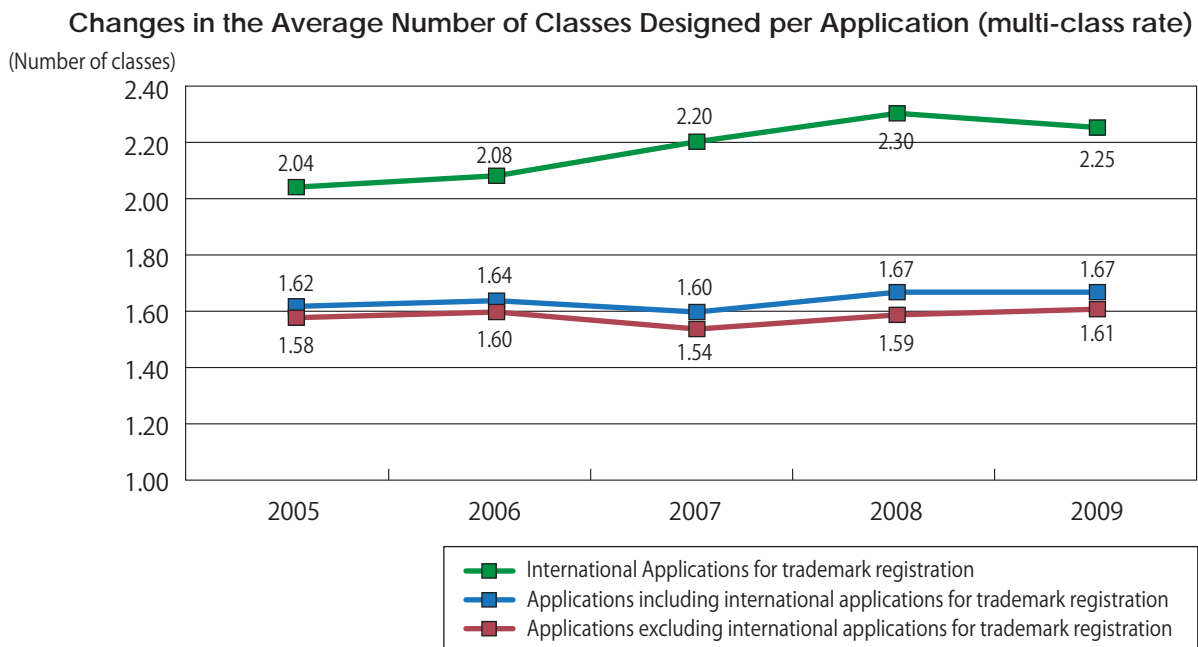
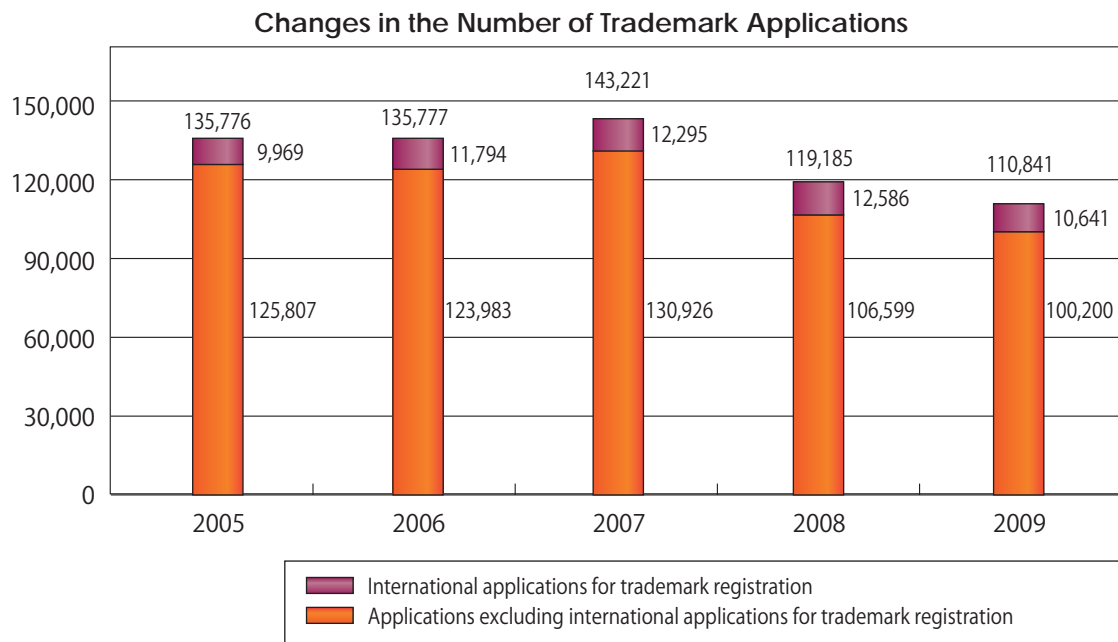
The number of trademark applications in 2009 decreased to 110,841, decreasing by 7.0% over the previous year.

Also the number of international applications¹² for trademark registration decreased in 2009 to 10,641, drop 15.5% over the previous year. This was the first decrease since the accession to the Treaty. The recent global economic recession may be one factor for the decrease, and it may be also another factor that the applicants tend to select necessary trademarks than ever before. It is necessary to continue to keep eyes on the trends of applications.

The average number of classes¹³ per trademark application (the multiple class rates) has stayed at the same level since 2005, 1.67.

¹² International applications under the Madrid Protocol designating the JPO (See Article 68-9 of the Trademark Act of Japan)

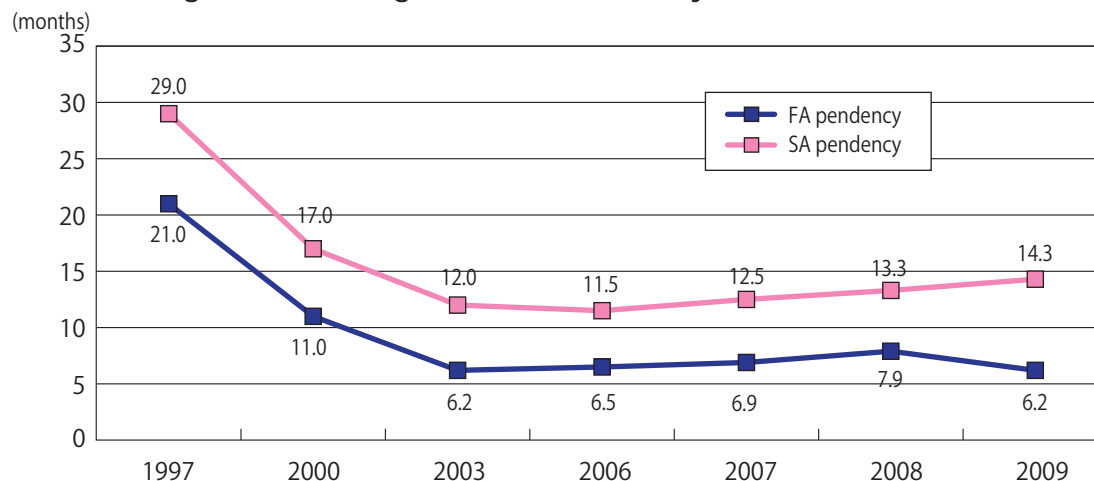
¹³ When filing a trademark application, the application must designate one or two or more goods (services) to which the trademark should be applied, and describe their corresponding classes in the request. Goods and services are classified into 45 classes.



2) Status of Trademark Examination

Hitherto, efforts are being made to improve examination efficiency through further automation of the examination process and use of private-sector capacity. In 2009, the average examination pendency was 6.2 months and the period from the first action to the dispatch of decision was 14.3 months. The number of registrations increased to 98,398 in 2009, up 7.2% over the previous year.

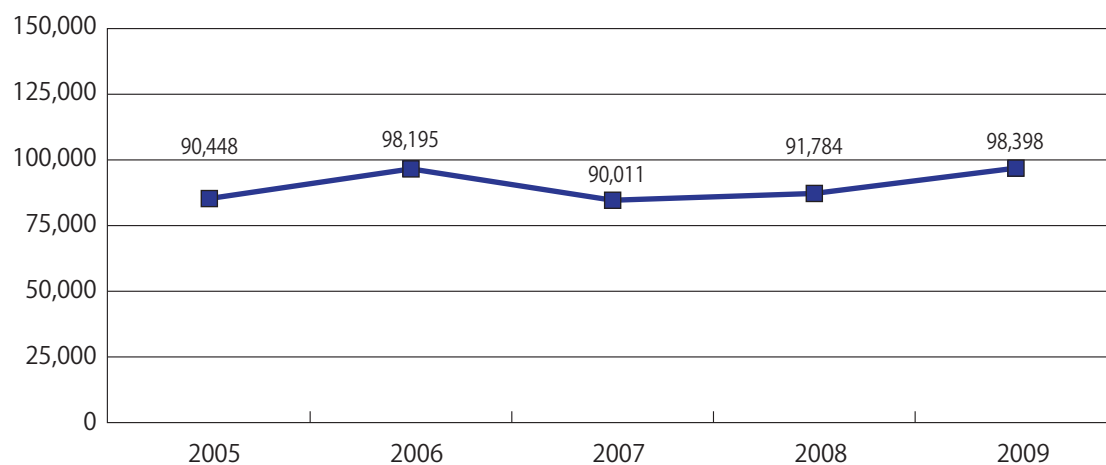
Changes in the Average FA and SA Pendency in Trademark Examination



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.

Changes in the Number of Trademark Registrations



Note: 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 (including appeals against an examiner's decision of refusal¹⁴ whose main function is the role as the upper instance) are closely related to the trends of examination in Examination Department, while the trends of the latter post-grant trials (including invalidation trials¹⁵ 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 had been increasing, it decreased by 22% in 2009 from the previous year. This is because the period for appeal against an examiner's decision of refusal was extended from 30 days to 3 months from April 2009, so that the period from the decision of refusal to the appeal became longer than before. The economic recession is considered to be another factor. In the case of design, the number of appeals decreased by 34% over the previous year due to decreased number of examiner's decisions of refusal.

As for trademark, the number of appeals against an examiner's decision of refusal increased by 19% over the previous year, 2008. This is because the number of appeal in the field of services (retail) that came under the protection in 2007 increased in 2009 and the number of appeals in 2008 decreased significantly (a decrease by 34% over the 2007 level) due to the economic recession.

Looking at the results of examiner's reconsideration¹⁶ before appeal proceedings for patent applications in the past several years, the number of applications for which the original decision of refusal was cancelled and a decision to grant a patent was given (the number of granting patent in the reconsideration procedure) has been increasing. In 2009, the number of granted patents in the reconsideration procedure exceeded the number of applications for which the original decision of refusal was maintained (the number of maintaining of refusals)¹⁷ following 2008. The Appeals Department will continue to promote efforts for an early granting of patent

¹⁴ Appeals requested to the JPO for oppositions to decision of refusal made by a patent examiner

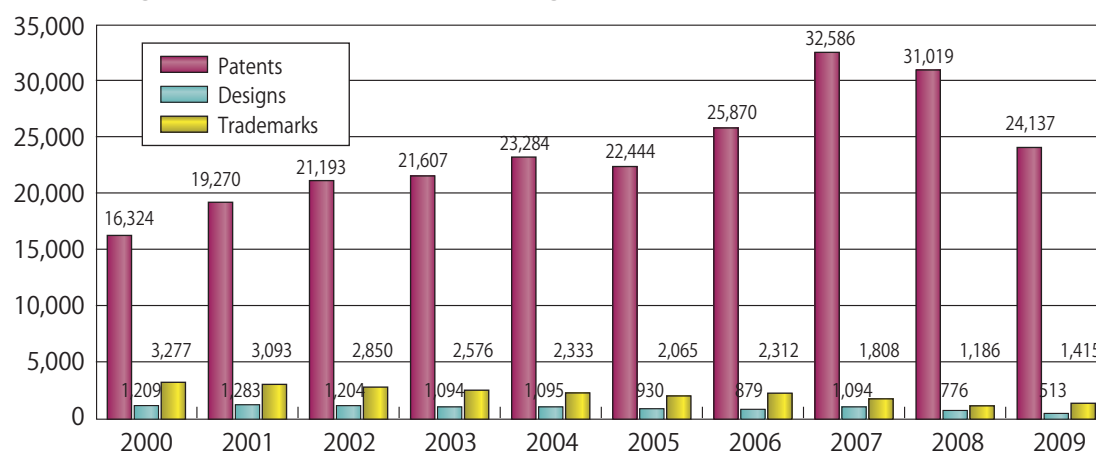
¹⁵ Appeals and trials requested to the JPO for the invalidation of already-registered patents, utility rights, designs and trademarks:

¹⁶ 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.

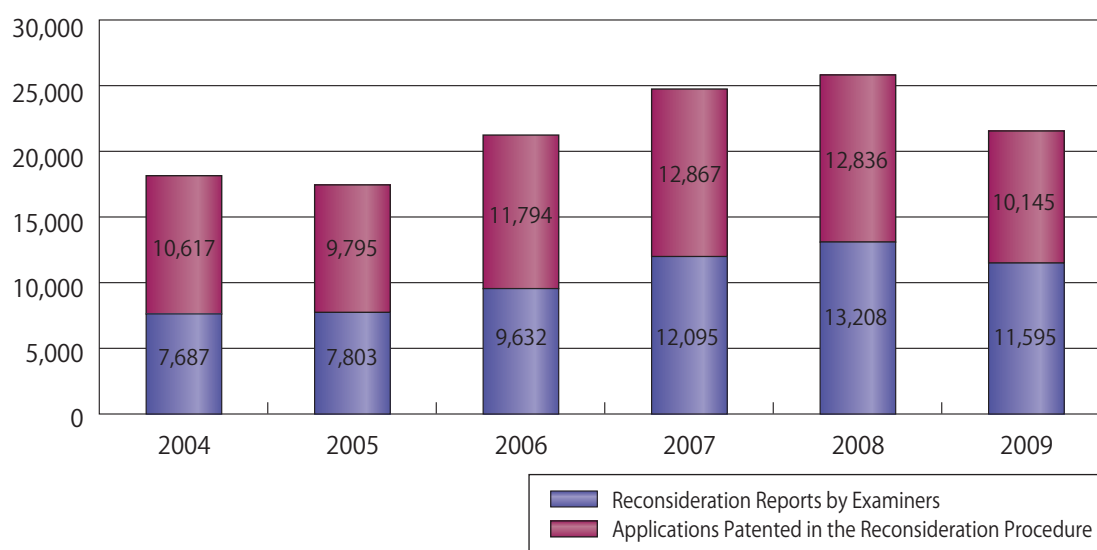
¹⁷ In the reconsideration by an examiner before appeal proceedings, if the examiner decides to maintain the decision of refusal even after the amendments, the examiner reports the results of the examination to the JPO commissioner. After this, an appeal examination is conducted by a board of appeal.

at the stage of examination and examiner's reconsideration,¹⁸ in order to reduce the burden of both the applicant and the JPO.

Changes in the Number of Appeals against an Examiner's Decision of Refusal



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



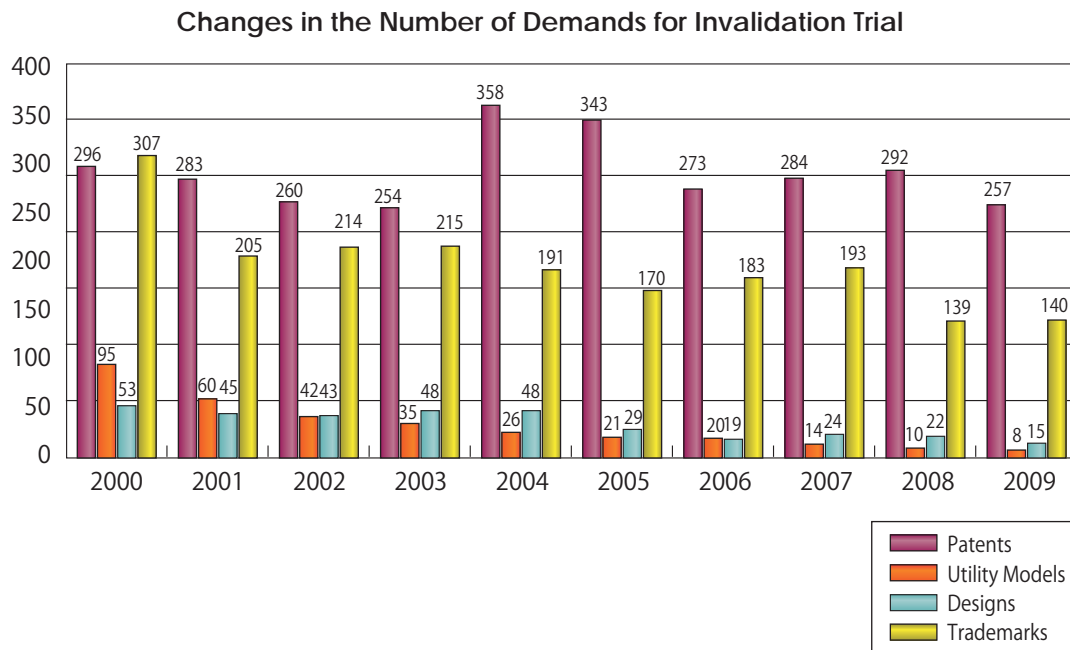
b. Trends in Invalidation Trials

Due to the 2003 revision of law, the system of opposition to the grant of a patent was integrated into the invalidation trial system. This promoted the number of demands for invalidation trials of patents to increase temporarily after 2004. It declined in 2006, but it has little changed thereafter.¹⁹

¹⁸ See Part 2, Chapter 5-3.

¹⁹ A system which permits the cancellation of a patent only within a certain period after the registration of the patent right:

The numbers of demands for invalidation trials of utility model and design registration have been on a declining trend and the number of demands for invalidation trial of trademark was on the same level as 2008.

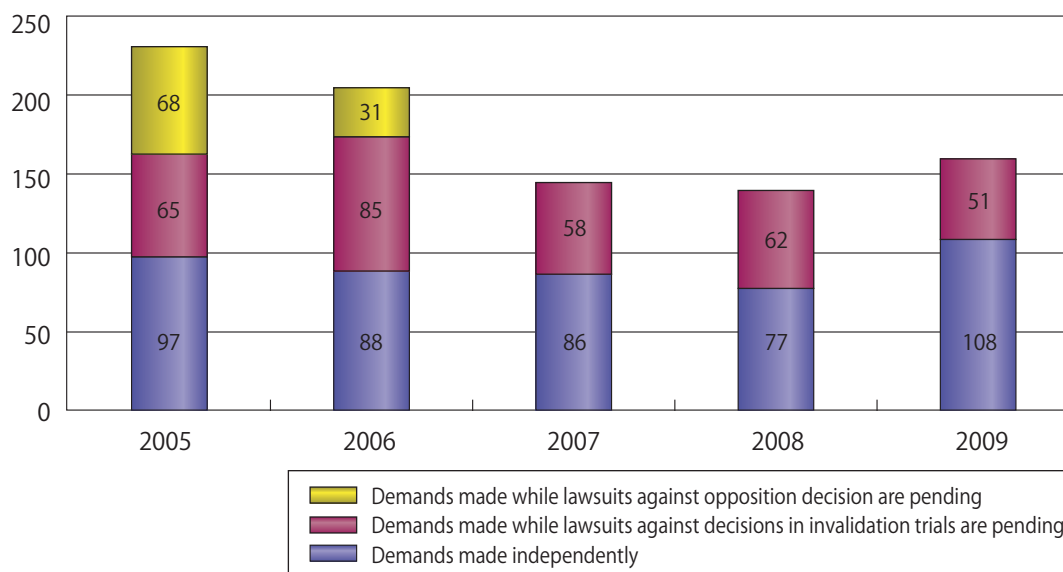


c. Trends in Limitation / Correction Trials of Patents and Utility Models²⁰

The number of demands for limitation / correction trials of patents and utility models has maintained nearly unchanged since 2007. Although the number of demands filed during the pendency of lawsuits against decisions on opposition to the grant of a patent, which accounts for a certain percentage of demands for limitation / correction trials, had been decreasing as a whole, because the opposition system was abolished in the 2003 revision of law, and thus the number of lawsuit against opposition decision had decreased. However, the total number of demands made during the pendency of lawsuits against decisions in invalidation trials and the demands made independently has hovered at around 150 in the past five years.

²⁰ Trials for limiting / correcting the description, claims or drawings on his own after the patentee acquires the right:

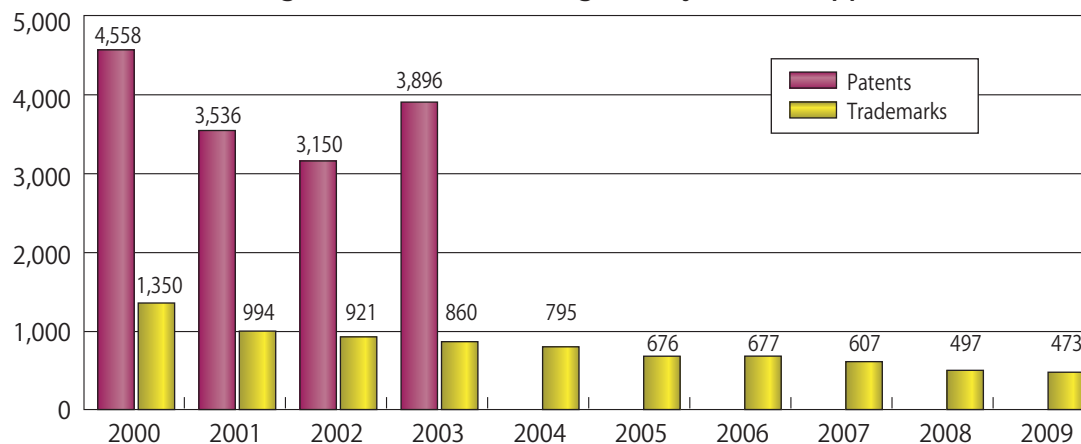
**Changes in the Number of Demands for Limitation / Correction Trials
(Patents and Utility Models Combined)**



d. Trends in Oppositions

The number of oppositions to trademark registration has been gradually declining.²¹

Changes in the Number of Rights Subjected to Opposition



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

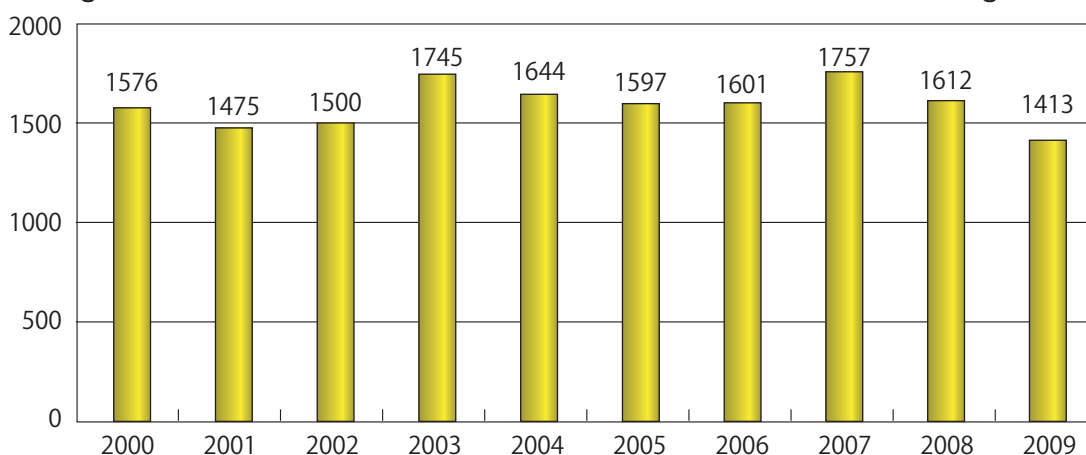
e. Trends in Cancellation Trial of Trademark Registration²²

The number of demands for cancellation trials of trademark registration has been declining since 2007.

²¹ A system which requests the cancellation of a trademark right after its registration for a certain period

²² Trials for cancelling a trademark where an owner of trademark right has not used the trademark for more than 3 years in a row:

Changes in the Number of Demands for Cancellation Trials of Trademark Registration



2) Trends of Examination by the JPO Appeals Department

a. Patent and Utility Model

The average first action pendency for appeals against an examiner's decision of refusal in 2009 was 24.7 months. The number of pending appeals is expected to increase with the increase in the number of appeals 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 questioning with dispatch of examiner's reconsideration reports, and implementing an appeal examination in a batch of related cases.²³

Looking at the appeal examination results related to patent applications, the quality and strictness of appeal 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 rate)²⁴ tends to increase from about 31% in 2000 to about 52% in 2009. 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 invalidation trials, trial examinations are conducted on a preferential basis in order to contribute to early settlement of disputes over rights. In 2009, the average pendency in trials for invalidation was 8.8 months, a decrease of 0.7 months from the previous year. Oral proceedings were actively used in the invalidation trials of a patent/utility model in order to raise the quality of the trial examination and the number of oral proceedings (including designs²⁵

²³ 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 board of appeal 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.

²⁴ 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.

²⁵ In this system, the board of appeal conducts questioning orally so that the party concerned is encouraged to establish his appeal appropriately and points in issue are arranged.

and trademarks) has increased to 203 in 2009.

With regard to the trials for limitation / 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 2009 was 2.1 months.

b. Design

Appeal examinations against an examiner's decision of refusal have become more efficient in recent years. The average first action pendency in 2009 was 8.1 months.

With regard to invalidation trials, trial examinations are conducted on a preferential basis in order to contribute to early settlement of disputes over rights. In 2009, the average trial pendency was 8.2 months.

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 2009 was 9.1 months, shortening of 1.3 months from the previous year.

With regard to invalidation trials for trademark, trial examinations are conducted on a preferential basis in order to contribute to early settlement of disputes over rights. In 2009, the average trial pendency was 11.1 months, showing the same level as that of the previous year.

The average trial pendency for oppositions in 2009 was 9.0 months and that for trials for cancellation was 6.2 months. These figures are almost the same level as those of the previous year.

Status of Appeal and Trial Examination Processing in 2009

	Appeals against an examiner's decision of refusal		Invalidation trials		Limitation / Correction trials		Oppositions		Cancellation trials	
	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	15,328	24.7	288	8.8	157	2.1				
Design	670	8.1	14	8.2						
Trademark	1,054	9.1	242	11.1			596	9.0	1,631	6.2

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 is 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)

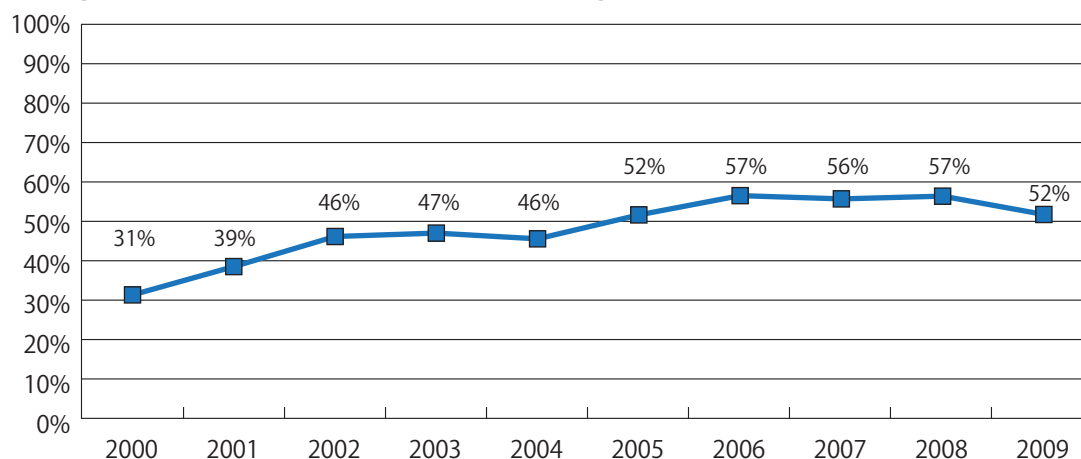
Appeal and Trial Examination Results in 2009*¹

	Ex-parte appeals* ²		Inter-partes trials* ³		Oppositions	
	Appeal accepted	Appeal denied* ⁴	Appeal accepted	Appeal denied* ⁴	Appeal accepted	Appeal denied* ⁴
Patent/Utility model	7,478	8,010	127	125		
Design	478	231	6	8		
Trademark	681	428	1,396	287	113	408

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 limitation / correction trials
3. Invalidation trials and cancellation trials
4. Including dismissals
5. Including partial revoke
6. Including withdrawals

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



Note:

"Appeal Denial Rate" is the number of denials (including dismissals), divided by the number of acceptances plus the number of denials (including dismissals)

(2) Status of Lawsuits against the JPO Appeals Department's Decisions²⁶

1) Trends of Lawsuits

Looking at the number of lawsuits against the JPO Appeals Department's decisions in 2009, the number of ex-parte appeals has decreased in all fields of industrial property rights compared to the number in 2008. With regard to lawsuits against ex-parte appeal decisions related to patents and utility models in 2009, the number of appeal cases in which the Appeals Department denied the appeal was 8,010 and the number of lawsuits filed against such decision was 143. The lawsuit-filed rate was 1.8%, which is a 2.4% decrease over the previous year.²⁷

As for the number of inter-parties trials, it has slightly decreased for patents/utility models and increased for trademarks over the previous year.

²⁶ 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.

²⁷ The proportion of appeal decisions and rulings against which a lawsuit has been filed to the total number of appeal decisions and rulings:

Number of Lawsuits in 2009

	Patent/Utility model		Design		Trademark	
	2008	2009	2008	2009	2008	2009
Ex-parte appeals* ¹	188	143	9	4	28	19
Inter-partes trials* ²	187	176	6	6	72	86
Oppositions	1	1			2	5

Notes:

1. Appeals against an examiner's decision of refusal, appeals against an examiner's ruling to dismiss amendment, and limitation / correction trials

2. Invalidation trials and cancellation trials

2) Cancellation Rate of the JPO Appeals Department's Decisions

Looking at the status of lawsuits against the Appeals Department's ex-parte appeal decisions related to patents and utility models, the cancellation rate of the Appeals Department's decisions increased from 17.5% in 2008 to 33.1% in 2009. On the other hand, the cancellation rate of the decisions for trademarks decreased significantly from 25.0% in 2008 to 6.6% in 2009. The JPO will continue to make efforts to reduce the cancellation rate by further raising the quality of appeal/trial examinations through reviewing of court decisions.

Number of Court Decisions in 2009*¹(Figures 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	85(141)	42(30)	3(5)	3(7)	14(12)	1(4)
Appeal decision cancellation rate	33.1% (17.5%)		50.0% (58.3%)		6.6% (25.0%)	
Inter-partes trials* ³	78(72)	29(27)	2(2)	1(1)	45(21)	16(11)
Trial decision cancellation rate	27.1% (27.3%)		33.3% (33.3%)		26.2% (34.4%)	
Oppositions	0(3)	0(2)			0(2)	1(1)
Opposition decision cancellation rate	— (40.0%)				100.0% (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 limitation / correction trials

3.Invalidation trials and cancellation trials