

# The New Landscape of Japanese IP Litigation

## Analyzing Record-Breaking Damages and Pro-Enforcement Trends

The Courts in Japan are offering powerful and effective relief for patent holders through three key points: predictable **injunctions**, substantial **damages**, and flexible patent **amendments**.

### Injunction:

- If infringement and validity are found, an **injunction** is almost automatically granted. (except in special cases such as SEP litigation)
- This stands in contrast to the U.S. post-**eBay v. MercExchange**, where injunctive relief is discretionary and requires passing a stringent four-factor test.
- In Japan, irreparable harm is substantially presumed.

### Case: *Pantech v. Google* (Tokyo Dist. Ct., 2025)

- For the first time in Japan, a court **granted an injunction** based on the infringement of an **SEP**.
- The Defendant's **failure to disclose sales information** on the infringing products, which was necessary for calculating the royalty, constituted the “unwillingness”.

### Damages Calculation (Patent Act Art. 102):

Japan's Patent Act provides patentee-friendly calculation methods, such as **presuming** the infringer's profits to be the patentee's damages:

(1) **Patentee's Lost Profits**: Based on the patentee's lost sales volume and profit per unit.

(2) **Infringer's Profits**: The infringer's gains are presumed to be the patentee's damages.

(3) **Reasonable Royalty**: Royalty rates higher than normal royalty rates are presumed.

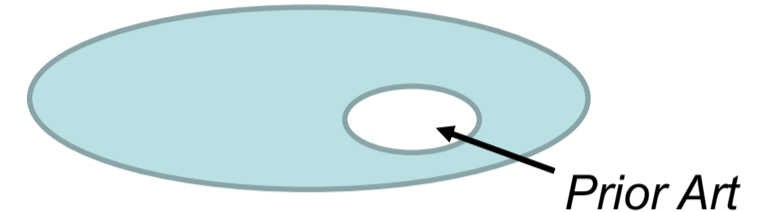
### Case: *Toray v. Sawai & Fuso* (IP High Court, 2025)

**Total Damages: ~¥21.7 Billion (approx. \$140 Million USD)**

- Based on the patentee's lost profits.
- At issue was whether the extended patent covered the generic drug.
- The Court held that the core features (the active ingredient, the medical use, and the dosage form) were identical. The differences in the additives were considered minor and formal, as they did not alter the drug's therapeutic effect.

### “Carve-Out” Amendment:

- Patentees can amend claims even *during* litigation to exclude prior art cited by a defendant.
- Example: “A device comprising X, Y, and Z, **excluding** [the specific embodiment found in Prior Art].”

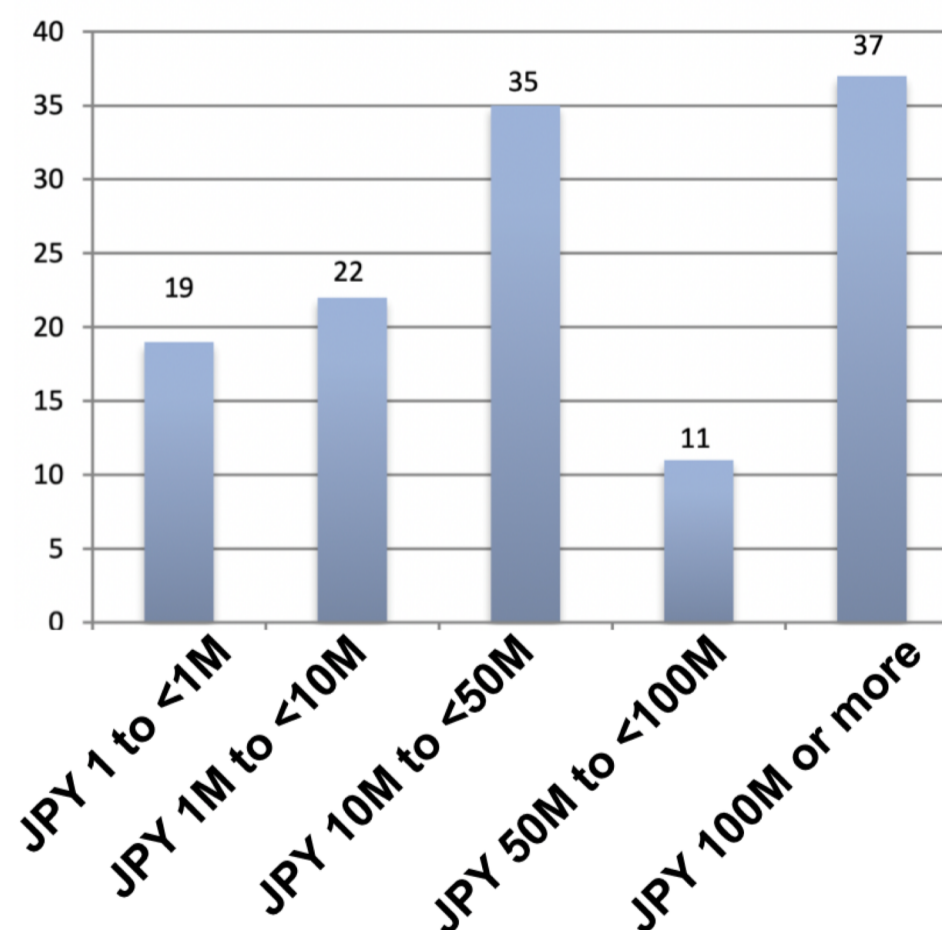
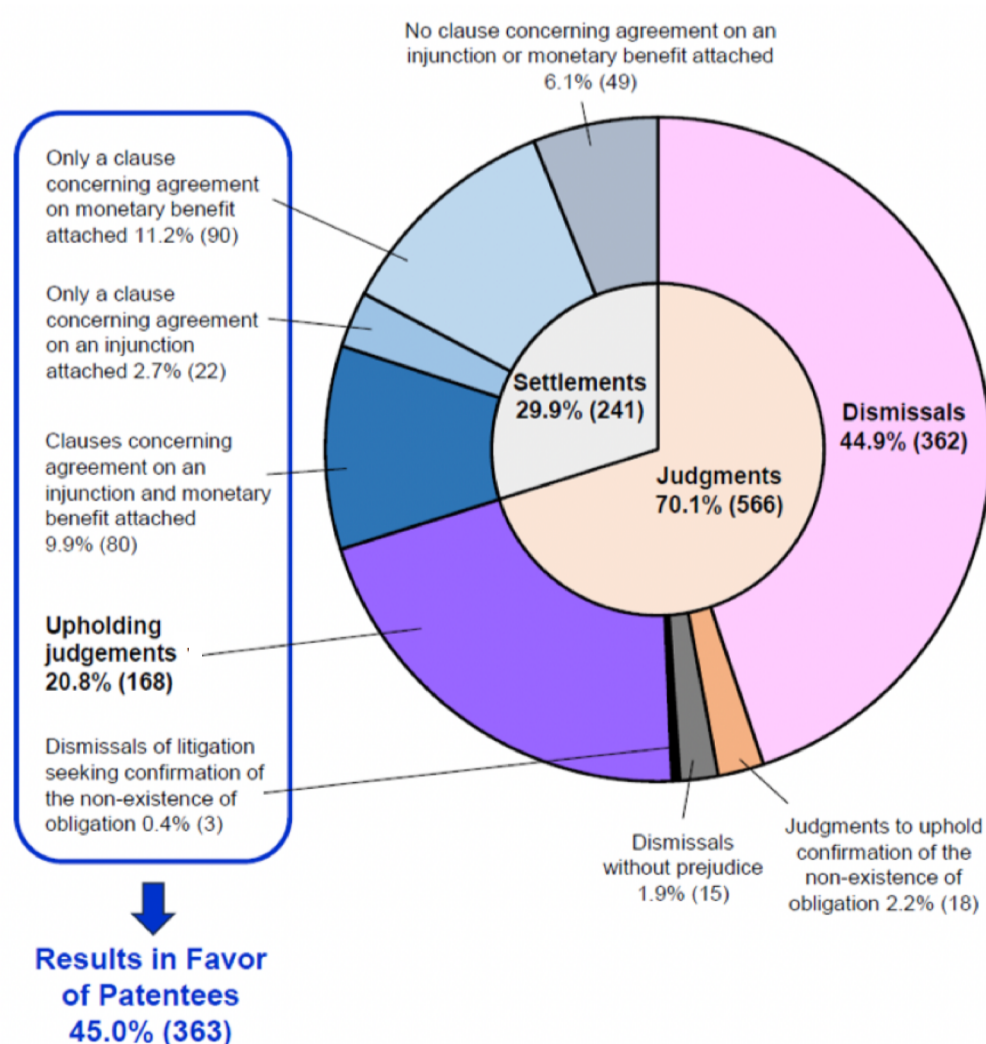


- This allows Patentees to **defeat an invalidity challenge while ensuring the patent remains valid and continues to cover the defendant's infringing product**.

### Case: *Chemours v. AGC* (IP High Court, 2023)

- This decision is on the assumption that, even if **no specific reference to the portion to be excluded is described in the Specification**, the “Carve-Out” Amendment **will be allowed**, on the ground that it narrows the scope of claim.
- The decision also states that “there is **no requirement to exclude only those parts which are identical to a prior art**.”

## Statistics show a rise in damages.



- See more details by visiting IP High Court's website.

<https://www.ip.courts.go.jp/eng/documents/statistics/index.html>



Japan offers patent holders seeking to enforce their rights a powerful combination of **Certainty** (injunctions), **Compensation** (damages), and **Resilience** (amendments). This is why now is the time to actively consider filing for patents in Japan.

