

International Jurisdiction over Actions concerning Intellectual Property Rights (summary)

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In regard to the international jurisdiction over actions concerning intellectual property rights, it is generally thought that actions concerning registration or validity of intellectual property rights that arise from registration are distinguished from other actions, and, over the former the courts of the country of registration have exclusive jurisdiction, and the latter are subject to general jurisdiction rules. According to this thought, actions concerning registration or validity of foreign intellectual property rights that arise from registration cannot be filed to the domestic courts. However, what kind of actions are included as actions concerning registration or validity, is not clear. On the other hand, infringement actions of intellectual property rights that arise from registration can be filed to courts of countries other than the registration country, but how the defense of invalidity should be treated is also unclear. This article examines mainly these two problems in comparison with European law.

Over actions concerning the validity of a right, bases for recognizing the exclusive jurisdiction of courts of the country of registration are not necessarily firm, but judgments of Japanese courts about the validity of foreign intellectual property rights would not be recognized or enforced in foreign countries. Therefore, it is proper to confirm the exclusive jurisdiction of courts of the country of registration over actions concerning the validity of a right. On the other hand, in regard to actions concerning registration of a right, when the issue is ownership of a right, the action should be subject to general jurisdiction rules, because it is mere private dispute.

Next, in regard to the defense of invalidity, European Court of Justice held in *GAT v. LuK* (Case C-4/03) that “the rule of exclusive jurisdiction……concerns all proceeding relating to registration or validity of a patent, irrespective of whether the issue is raised by way of an action or plea in objection.” But, I think that, in case of the defense of invalidity, Japanese courts can decide the validity of foreign intellectual property rights. The reason why is that, as stated above,

bases for recognizing the exclusive jurisdiction of courts of the country of registration over actions concerning validity of a right are not necessarily firm, and, in case of the defense of invalidity, even if Japanese courts decide that foreign intellectual property rights are invalid, the judgments have merely *inter partes* effect, therefore, bases for the rule that only courts of registration country can examine the validity of a right are less firm.