

Comparative Study on Oral Proceedings among JPO, CNIPA and KIPO

(in the 7th JEGTA Meeting, November 20, 2020
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Table of Contents

Introduction.....	4
Chapter 1: Characteristic and comparison on Oral Proceedings in Japan, China and Korea	5
1. General system of Oral Proceedings.....	5
2. Online Oral Proceedings.....	6
Chapter 2: Comparative Table among Japan, China and Korea.....	8
Chapter 3: Overview of Oral Proceedings in Each Country	28
1. Japan.....	28
1.1 Objectives and Advantages of Oral Proceedings	28
1.2 Characteristics of Oral Proceedings	28
1.3 Trial and Appeal Cases Subject to Oral Proceedings	28
1.4 Timing, Number of times, and Style of Oral Proceedings.....	29
1.5 Overall Flow of Oral Proceedings from Preparation to Completion	31
1.6 Fixing a Date.....	31
1.7 Trial Court.....	32
1.8 Notification of Matters to be Examined, Oral Proceedings Statement Brief.....	32
1.9 Persons Appearing in Trial Court.....	33
1.10 Observation of Oral Proceedings	34
1.11 General Flow of Oral Proceedings	34
1.12 Trial Record	35
1.13 No Appearance on the Date of Oral Proceedings.....	36
1.14 Online Oral Proceedings.....	36
2. China.....	41
2.1 The Purpose and Advantages of Oral Proceedings.....	41
2.2 Features of Oral Proceedings.....	41
2.3 Cases Subject to Oral Proceedings	41
2.4 Time and Number of Oral Proceedings	41
2.5 Overall Flow of Oral Proceedings from Preparation to Completion	42
2.6 Date of Oral Proceedings.....	42
2.7 Trial Court.....	42
2.8 Persons Appearing in Oral Proceedings.....	43
2.9 Observation of Oral Proceedings	43
2.10 Routine Flow of Oral Proceedings	43
2.11 Record of Oral Proceedings	44
2.12 Absence of a Party Concerned.....	44
2.13 Online Oral Proceedings.....	45
3. Korea.....	46

3.1 Objectives and Advantages of Oral Proceedings	46
3.2 Characteristics of Oral Proceedings	46
3.3. Trial and Appeal Cases Subject to Oral Proceedings	46
3.4 Timing, Number of Times, and Style of Oral Proceedings.....	47
3.5 Overall Flow of Oral Proceedings from Preparation to Completion	47
3.6 Scheduling Hearings.....	47
3.7 Hearing Rooms.....	48
3.8 Notification of Matters to be Examined, Oral Proceedings Statement Brief.....	48
3.9 Persons Appearing at Hearing Rooms.....	48
3.10 Observation of Oral Proceedings	49
3.11 General Flow of Oral Proceedings	49
3.12 Oral Hearing Report	50
3.13 No Appearance on the Date of Oral Proceedings.....	50
3.14 Online/Video Hearings.....	51

Introduction

It was proposed at the first JEGTA (Joint Experts Group of Trial and Appeal) Meeting held in Japan that Thee Offices (JPO, CNIPA and KIPO) would have conducted comparative studies within the framework of the JEGTA Meetings since then. Comparative studies have been conducted so far under the themes of “Appeal against Decision of Rejection” as well as “Patent Trial for Invalidation” and “Administrative Systems Including Consideration about the Scope of Patent Right for Patent Dispute Resolution” through trilateral cooperation among the Thee Offices.

The theme “Oral Proceedings” was brought up as a theme of the comparative study at the seventh JEGTA Meeting via web-conference in November 2020. Thee Offices chose the theme “Oral Proceedings” because of the following reason.

With the globalization of corporate business activities in recent years, a need to utilize trial for invalidation in various countries has been increased for foreign companies. In principle, oral proceedings are conducted in trial for invalidation etc., and the spread of the new coronavirus requires us to accelerate digitalization, such as online oral proceedings.

Therefore, the comparative study was conducted for the purpose of not only comparing the oral proceedings in respective countries but also identifying various characteristics with a focus on usability of the oral proceedings among the countries.

More specifically, purposes of the comparative study of oral proceedings are as follows:

- To understand an outline of the oral proceedings of three countries respectively
- To identify various characteristics of the oral proceedings in three countries respectively by making a comparison of the oral proceedings
- To especially identify various characteristics of the online oral proceedings in three countries respectively

Chapter 1: Characteristic and comparison on Oral Proceedings in Japan, China and Korea

1. General system of Oral Proceedings

Oral proceedings are considered an extremely important process for parties concerned because both parties concerned can meet together at the Trial Court, and directly claim to administrative judges. On the other hand, it is also an important process for administrative judges because they can make inquiries into evidence and issues in dispute with both parties concerned in attendance, and efficiently advance examination. In this section, each country's general system of oral proceedings mainly for patents is outlined as follows (regarding China, oral proceedings only for patents are described.).

(1) Japan

In Japan, oral proceedings are conducted in trials for invalidation, trials for rescission, in principle. While oral proceedings can be conducted at the JPO main building (IT Trial Court) and METI Annex Building, circuit trials can also be held upon request by the parties concerned. In a Circuit Trial, a facility in the region where the parties concerned reside is rented and employed as a trial court.

In order for the panel to inform issues in dispute to the parties concerned beforehand, a "Notification of Matters to be Examined" is sent by the panel to both parties concerned. The first "Notification of Matters to be Examined" is sent when arranging the date of the oral proceedings. Thereby, issues in dispute can be informed to the parties concerned approximately two months prior to oral proceedings, and it is possible to fully secure the period of time for both parties concerned to prepare for oral proceedings.

(2) China

In China, regarding invalidation or reexamination procedures of patent rights, a panel can determine whether oral proceedings shall be conducted, and the panel will also conduct oral proceedings upon request by the parties concerned. While oral proceedings can be conducted at the offices in Beijing, circuit trials can also be held in eleven areas upon request by the parties concerned. Prior to oral proceedings, the panel sometimes informs issues in dispute to the parties concerned. If the opinions of both parties concerned are adversarial, even if they have been claimed in the documents, it is usually necessary to claim orally.

In addition, one of the characteristics of this is that the number of the parties concerned who can attend oral proceedings is limited to four persons by each party concerned.

(3) Korea

In Korea, when a presiding administrative judge finds it necessary, or requests are made by the parties concerned, oral proceedings are conducted by a panel. One of the objectives of the reform to increase the number of Boards and administrative judges in 2019 is to allow a large number of cases to be heard with oral proceedings. Oral proceedings can be conducted at the buildings in Daejeon, while video hearings by dedicated video equipment and software can be held in Seoul Office. Meanwhile, online remote hearing enables the participants to gain access to hearings from anywhere without having to appear at a hearing room.

2. Online Oral Proceedings

In order to respond to changes in social structure such as digitalization and the spread of infection with the new coronavirus, online oral proceedings is developed in each country from the viewpoint of improving user convenience. In this section, each country's online oral proceedings will be outlined as follows.

(1) Japan

In Japan, online oral proceedings have been operated since October 2021. For the time being, there are the following features. Japan plans to improve the operations as needed while accumulating the results.

First, when requesting the parties concerned to adjust the date of the oral proceedings, a trial clerk shall confirm whether they wish to appear online for the oral proceedings. The consent from both parties concerned is not needed to conduct online oral proceedings. It is possible that some from one party concerned appear online and the rest appear before the Trial Court. Web conference system (Microsoft Teams, Cisco Webex Meetings) is available in online oral proceedings.

A chief administrative judge may allow online streaming to only related persons of the parties concerned (speaking during the oral proceedings is not permitted), subject to the consent of the all parties concerned (online streaming overseas is possible).

(2) China

In China, the consent from both parties concerned is needed to conduct online oral proceedings. It is possible that some from one party concerned appear online and the rest appear before the Trial Court. The dedicated professional software (remote online oral proceedings APP) is available in the oral proceedings. The software can ensure the safety and reliability of online oral hearing. All trial courts can provide online oral hearings.

The parties can participate in oral hearings in different places through the Internet,

and they can also participate in oral hearings in all itinerant trial courts through the Internet.

Online streaming is available for the parties and those who applied before and installed the corresponding APP (online streaming overseas is possible).

(3) Korea

In Korea, online oral proceedings have been operated since August 2021. The consent from both parties concerned is needed to conduct online oral proceedings. It is possible that some from one party concerned appear online and the rest appear before the panel of APJs at the hearing room. Web conference system is available in online oral proceedings.

It is also possible to conduct video hearings by dedicated video equipment and software between the KIPO Seoul Office and the KIPO Daejeon Office since 2014.

Chapter 2: Comparative Table among Japan, China and Korea

(1) Oral Proceedings in 3 Countries

Item	Japan	China	Korea
Types of trials and appeals in which oral proceedings are conducted	<ul style="list-style-type: none"> • In trials for invalidation and trials for rescission, oral proceedings are conducted in principle. (P. Art. 145, U. Art. 41, D. Art. 52, T. Art. 56) • In opposition proceedings (trademark) and advisory opinion proceedings, oral proceedings are conducted either by request or <i>ex officio</i>. 	<ul style="list-style-type: none"> • In the invalidation or reexamination procedure of patent right, the party concerned or the petitioner for reexamination may request for oral proceedings and explain the reasons therefor to the CNIPA. The request shall be submitted in written form. 	<ul style="list-style-type: none"> • Oral proceedings will be conducted upon request from the parties or <i>ex officio</i> (Patent Act Article 154, Utility Model Act Article 33, Design Act Article 142, Trademark Act Article 141) • In inter partes cases, oral proceedings will be conducted in principle upon request from the parties or if deemed necessary for parties to exercise the right to be heard. However, oral hearings may not be conducted when the presiding administrative judge finds that the trial decision can be made solely based on documentary hearings. In this case, the administrative judge shall notify all relevant parties thereof. (The Manual Handling Operations Regulations, Article 39(2))

Item	Japan	China	Korea
Purpose of oral proceedings	<ul style="list-style-type: none"> • Precise understanding of the points of dispute and the technical content etc. by the panel • Securing opportunities for sufficient allegations by the parties concerned 	<ul style="list-style-type: none"> • Precise understanding of the points of dispute and the technical content by the panel • Securing opportunities for sufficient allegations by the parties • Cross-examination, Examination and Verification of Evidence 	<ul style="list-style-type: none"> • Each party shall be given an opportunity to make sufficient arguments and counter-arguments during the oral proceedings. This shall allow further discussion and examination of all the relevant information in depth, which will help administrative judges to better understand the points of disputes at an early stage. • Ensure parties may be more likely to respect and accept the trial decisions.
Number of oral proceedings per case	<ul style="list-style-type: none"> • Once per case in general • More than once depending on the case 	<ul style="list-style-type: none"> • Once per case in general • More than once depending on the case 	<ul style="list-style-type: none"> • One oral proceeding per one case in general • More than once depending on the case, including when new arguments or evidence are to be submitted.

Item	Japan	China	Korea
Submission of request by party	<p>No need to file a request</p> <ul style="list-style-type: none"> • In trials for invalidation and trials for rescission, oral proceedings are conducted in principle. • Documentary proceedings are available upon request by all parties concerned. (Manual for Trial and Appeal Proceedings 33-00.1) 	<ul style="list-style-type: none"> • The panel may decide on its own initiative to take oral hearings (Pt. IV, Ch. 4, 2). • If the party submit a request in written form for oral proceedings (necessary to explain the reason). The panel shall decide to take oral hearings. 	<ul style="list-style-type: none"> • When the presiding administrative judge finds it necessary and the oral hearing is conducted ex officio, parties do not need to file a request. • If the parties wish to request for oral proceedings, they are allowed to do so by submitting a request for oral hearings as a separate form specified by law. (Enforcement Rule of the Patent Act Article 65, Enforcement Rule of the Utility Model Act Article 17, Enforcement Rule of Design Protection Act Article 77, Enforcement Rule of the Trademark Act Article 65)
Locations of trial courts	<ul style="list-style-type: none"> • 3 locations: JPO main building (IT Trial Court) and METI Annex Building (the 1st Trial Court, the 2nd Trial Court) 	<ul style="list-style-type: none"> • 2nd building of KeXueCheng Office Zone(23) and itinerant trial courts including GuangDong(2), JiangSu(2), Shandong, SiChuang, HuNan, LiaoNing, HeNan, FuJian, XinJiang province (The number of itinerant trial courts is still developing) 	<ul style="list-style-type: none"> • 7 Hearing Rooms: 4 in Headquarters Office (Daejeon), 2 in Annex Building (Daejeon), 1 in Seoul Office

Item	Japan	China	Korea
Equipment available in trial courts	<p>IT Trial Court is equipped with:</p> <ul style="list-style-type: none"> • 1. Monitors to which the parties concerned can connect their laptops to provide technical briefings. • 2. Document camera which may be used for inspecting exhibits. (originals or objects) • 3. Microphones <p>1st, 2nd Trial Courts are equipped with projectors and screens, instead of monitors.</p>	<p>All Courts are equipped with:</p> <ul style="list-style-type: none"> • 1. Monitors to which the parties can connect their laptops to provide technical briefings. • 2. Video equipment to record the oral hearing process. • 3. Communication equipments to support the remote oral hearing process. 	<ul style="list-style-type: none"> • Hearing rooms are equipped with a) laptop computers for the panel of judges, each party, trial clerk and stenographers, b) projector and screen for presentations, c) microphones, and d) audio recording device • In addition to the above equipment, video hearing rooms are also equipped with a) large monitors that display parties appearing at Seoul and Daejeon office, b) video recording device, and c) document camera for inspecting exhibits.
Oral proceeding available in any places other than the Office's fixed trial courts	Available ("Circuit Trials" based on request by a party concerned)	Available(at all branches or any other places of a party concerned)	<p>Available</p> <ul style="list-style-type: none"> • Oral proceedings may be conducted at places other than the Office's hearing rooms upon request from the both parties to benefit a person living in a remote area or in an area with poor access to transport. In this case, it is required to gain permission from the President of the IPTAB to do so.

Item	Japan	China	Korea
How to arrange the date of oral proceedings	JPO sends a written date arrangement request to parties or representatives via e-mail etc. (Manual for Trial and Appeal Proceedings 33-01)	CNIPA issued to the parties an oral hearing notice informing held oral hearing date and venue.	<ul style="list-style-type: none"> Once it is decided to hold an oral hearing, IPTAB shall notify the parties or their representatives either by sending them a Notice of Hearing indicating the date, time and location of the hearing or by posting the information online (electronic filing system). (The Manual Handling Operations Regulations, Article 40)
Average period between the start of setting the date and the oral proceeding	Approximately 2 months	Normally no less than 37 days	Approximately within one month

Item	Japan	China	Korea
Notice of oral proceedings date	<ul style="list-style-type: none"> • Notified by simple means, such as phone or e-mail. Parties concerned respond by a written consent to the date. • Alternatively, a writ of summons may be served (at least 2 weeks before the designated date of oral proceedings in principle.) (Manual for Trial and Appeal Proceedings 33-01) 	Specified by a Notification (Pt. IV, Ch. 4, 4).	<ul style="list-style-type: none"> • Parties shall be notified by sending them a Notice of Hearing indicating the date, time and location of the oral hearing. Then, the trial clerk from the Trial Policy Division may again make a phone call and check the list of participants one or two days prior to the hearing date.
Measures taken to deal with the failure of attending the oral proceedings	<ul style="list-style-type: none"> • If both parties concerned have failed to appear before the court, a trial record noting their absence will be prepared. • If one of the parties concerned has failed to appear before the court, oral proceedings will be conducted in the party's absence in principle. • If a party has failed to appear without a justifiable reason, the party is subject to a civil fine not exceeding 100,000 yen. (P. Art. 203, U. Art. 63, D. Art. 76, T. Art. 84) 	<ul style="list-style-type: none"> • If the petitioner for invalidation fails to submit the acknowledgment of receipt within the specified time limit and fails to attend the oral hearing, the request for invalidation should be deemed to have been withdrawn, and the invalidation procedure should terminate. • If the patentee decides to be absent to attend the oral hearing, the proceeding could be taken by default. 	<ul style="list-style-type: none"> • If one of the parties has failed to appear on the oral hearing date, oral hearing shall proceed in the party's absence and such absence shall be recorded in the oral hearing report. • If both parties fail to appear on the oral hearing date, oral proceedings shall be waived and such absence shall be recorded in the oral hearing report. • There is no separate penalty regarding the absence of parties.

Item	Japan	China	Korea
Limit on the number of people present	No restriction under normal circumstances (As part of COVID-19 preventive measures, attendance is restricted to a maximum of 3 people per party.)	Up to four (including an agent) (Pt. IV, Ch. 4, 3).	<ul style="list-style-type: none"> · No restrictions under normal conditions. However, under the current situation where the trial proceedings are affected by COVID-19, the Board may decide maximum attendance based on the capacity of each hearing room.
Identification of points in dispute carried out in advance	<p>Yes</p> <ul style="list-style-type: none"> · Delivery of notification of matters to be examined and submission of oral proceedings statement brief (when necessary) 	Sometimes the panel will also impart dispute points in the notification of oral proceedings.	<p>Yes</p> <ul style="list-style-type: none"> · When delivering the Notice of Hearing, parties shall be notified of the deadline for submitting the oral proceedings statement brief. If necessary, Notification of matters to be examined will also be delivered if it is expected to have issues at dispute during the proceedings.

Item	Japan	China	Korea
Examination of evidence and witnesses in the course of oral proceedings	Examination of evidence and interrogation of witnesses may be conducted on the day of the oral proceedings. (Manual for Trial and Appeal Proceedings 33-05)	Examination of evidence and witnesses may be carried out. As regards to witnesses, only there are statements about the witnesses before the oral proceedings by the party, the said witnesses examination will be carried out.	<ul style="list-style-type: none"> · Examination of evidence and interrogation of witness may be carried out on the oral hearing date. · During the evidence examination, matters that are confirmed and agreed by the both parties shall be recorded in the oral hearing report. During the witness examination, there will be a record of the examination of a witness.
Openness of oral proceedings	Open to the public (except in situations where public order and morality may be injured or a trade secret may become public)(P. Art. 145, U. Art. 41, D. Art. 52, T. Art. 56)	Accessible to public audiences (Pt. IV, Ch. 4, 12). Taken in public, unless they need to be kept confidential (Pt. IV, Ch. 4, 5).	<ul style="list-style-type: none"> · In principle, oral proceedings shall be open to public. (Patent Act Article 154, Utility Model Act Article 33, Design Act Article 142, Trademark Act Article 141) · However, when the party request for oral proceedings to be non-public due to trade secrets or for cases where public order and morality are likely to be compromised, the proceedings shall not be open to public. (The Manual Handling Operations Regulations, Article 39(2))

Item	Japan	China	Korea
<p>Permission of the public to audit oral proceedings</p>	<ul style="list-style-type: none"> • The general public wishing to attend oral proceedings may take in Trial Court. • 20 seats in IT Trial Court, 25 seats in the 1st Trial Court and 10 seats in the 2nd Trial Court under normal circumstances (the number of seats shall be reduced by half as COVID-19 preventive measures) • Seat reservation is not possible • Dates and locations of oral proceedings are posted on the bulletin board in the entrance lobby of the JPO main building and also announced on the website. 	<ul style="list-style-type: none"> • The public may be permitted to audit oral hearings. Public auditors have no right to speak. Without prior approval, photographing, audio or video recording is not permitted. • If necessary, the Board may require auditors to go through the formalities for auditing. • Seats are available in Trial Court. • Seat reservation is not possible. • Dates and locations of oral hearings are posted on the newspaper(China Intellectual Property News) and also announced on the website 	<ul style="list-style-type: none"> • Oral proceedings shall be open to public in general, so that members of the public are allowed to attend oral proceedings upon request. However, when public order and morality are likely to be injured, public admission will not be allowed. (Patent Act Article 154, Utility Model Act Article 33, Design Act Article 142, Trademark Act Article 141) • Once the oral hearing date is determined, the schedule shall be posted IPTAB website and members of public may request for observation online. • The Board may restrict the public admission in consideration of the capacity of the hearing rooms, the request from the parties concerning the trade secrets, or in view of the current COVID-19 circumstances. • Once the Board approves the request for public admission, the staff from the Trial Policy Division shall make a call and notify them of the approval. All visitors are required to bring a valid form of government-issued

Item	Japan	China	Korea
Disclosure of administrative judge's impression in oral proceedings	Partially disclosed depending on the case	Usually not disclosed	Not disclosed
Types of oral notifications in oral proceedings	<p>Examples of notices orally delivered (not required to be delivered in writing)</p> <ul style="list-style-type: none"> • Date of next oral proceedings • Notification of examination by documentary proceedings • Notification of conclusion of trial examination • Invitation for reply/refutation • Notice of reasons for invalidation • Notice of reasons for rejecting a demand for correction • Decision to accept/dismiss amendment 	<p>Examples of notices orally delivered (not required to be delivered in writing):</p> <ul style="list-style-type: none"> • Request to submit the power of attorney • Notification of conclusion of trial examination • Decision to accept/dismiss amendment 	<ul style="list-style-type: none"> • Reply to the Board's examination, deadline for new arguments/opinions that shall be added, or advance notice of conclusion of trial examination may be notified orally.

Item	Japan	China	Korea
Oral statement of what stated in writing	Unnecessary <ul style="list-style-type: none"> · Allegations made only in written statements are acceptable as evidence without being orally stated. (Manual for Trial and Appeal Proceedings 33-00) 	Normally needed, if conflict exist, oral statement will be regarded as formal. If the party state clearly that his opinion is just the same with statement in writing, then he needn't repeat it again.	Unnecessary <ul style="list-style-type: none"> · Statements that are submitted in writing are accepted as a valid evidence without being orally stated.
Withdrawal of request for trial during oral proceedings	Permitted <ul style="list-style-type: none"> · Withdrawal with the consent of the opposite party is permitted before the trial decision becomes final and binding. (P. Art. 155, U. Art. 39-2, D. Art. 52, T. Art. 56). 	Permitted (Pt. IV, Ch. 4, 5.3)	Permitted <ul style="list-style-type: none"> · During the oral proceedings, if the petitioner states his/her intention to withdraw the trial proceedings and the defendants agrees on the withdrawal, the request for withdrawal of trial proceedings and the withdrawal consent shall be submitted at the hearing room. The reasons for such withdrawal shall be entered into the oral hearing report and the request for withdrawal shall be received.

Item	Japan	China	Korea
Trial records	Prepared (P. Art. 147, U. Art. 41, D. Art. 52, T. Art. 56) <ul style="list-style-type: none"> • Prepared by the trial clerk • After sufficient allegations are performed, the chief administrative judge confirms the items to be recorded in the trial record (Manual for Trial and Appeal Proceedings 33-04) for the parties concerned. (Manual for Trial and Appeal Proceedings 33-05) 	Prepared <ul style="list-style-type: none"> • Prepared by the secretary or a panel member • After the termination of an oral hearing, some important items should be confirmed by the both parties (Pt. IV, Ch. 4, 11). 	Prepared <ul style="list-style-type: none"> • Trial clerk from the Trial Policy Division shall record the oral hearing report and the presiding administrative judge and the trial clerk who wrote the report shall sign and seal the oral hearing reports. (Patent Act Article 154, Utility Model Act Article 33, Design Act Article 142, Trademark Act Article 141)

Item	Japan	China	Korea
Matters to be recorded in Trial records	<ul style="list-style-type: none"> • Formality (case number; names of administrative judges, trial clerk, and members of the parties concerned who appeared before the court; date and time of the oral proceedings; etc.) • Substance (Points of statements made by parties, representatives, and intervenors; matters that the chief administrative judge ordered to record, or allowed to record upon request by a party or an intervenor) 	<ul style="list-style-type: none"> • Formality (case number; names of panel members, trial clerk, and members of the parties who attended the oral hearing; date and time of the oral hearings; etc.) • Substance ((1) the Claims renounced in oral hearings, the scope to be requested for invalidation, and the reasons or evidence for the request for invalidation;(2) the Important facts acknowledged by the both parties in oral hearings;(3) the specific fact, ground and evidence for which the application is not in conformity with the relevant provisions of the Patent Law, its Implementing Regulations and the Guidelines and of which the panel has notified the petitioner for reexamination in oral hearings, and the main contents of the submissions by the petitioner for reexamination; and (4)other important items which need to be noted down.) 	<ul style="list-style-type: none"> • Case information, the date, time and location of the oral hearing, public/non-public hearing, the names of administrative judges, members of parties and patent attorneys who appeared before the hearing proceedings, oath by a witness and statements made by parties, representatives, witnesses and appraisers (expert witness), the report/results of the appraisal, matters that the presiding administrative judge ordered to record, or allowed to record upon request from the party, etc.

(2) Comparison of Online Oral Proceedings

Item	Japan	China	Korea
Online oral proceedings	Available	Available	Available

Item	Japan	China	Korea
<p>Necessary requirements (remote location, consent of both parties, etc.)</p>	<ul style="list-style-type: none"> • Online oral proceedings may be conducted based on a determination by a chief administrative judge, upon request from a party concerned or <i>ex officio</i>. • The locations of the parties concerned need to be domestic regardless of whether the locations are remote or inconvenient. • Consent from both parties concerned isn't needed 	<ul style="list-style-type: none"> • Software, Hardware and Communication system should meet requirements • Consent from both parties 	<ul style="list-style-type: none"> • When the parties are any of the following persons: a person with disabilities, a person aged 65 years or older, a person with a substantial difficulty in moving/travelling • When there are more than 10 participants attending from the either party, including parties concerned, representatives (patent attorneys), inventors, witnesses • When the difficulties in moving is justified because the evidence is too large or heavy • When the case is fast-track trial • Inter partes cases for trademarks and/or designs where there is no additional evidence to be submitted during the oral proceedings. • Other cases where the presiding administrative judge deems it necessary (The Manual Handling Operations Regulations, Article 39(4))

Item	Japan	China	Korea
<p>Location where both parties concerned attend online oral proceedings (Office branches only, offices of the representative s, no restriction, etc.)</p>	<ul style="list-style-type: none"> • No restriction but it needs to be domestic location • A chief administrative judge shall order the person(s) appearing online to change their location, if their location is deemed to be inappropriate (such as the cases in which their location is likely to be interfered with the smooth conduct of the oral proceedings due to noise, the presence of third parties etc.) 	<ul style="list-style-type: none"> • No restriction • Any quiet environment which can provide software and hardware for a remote oral hearing 	<ul style="list-style-type: none"> • (Video hearings) Parties may appear at the video hearing rooms either at Seoul Office or Daejeon office. • (Online hearings) No restrictions but it needs to be domestic location

Item	Japan	China	Korea
Methods of verifying Identify (Office personnel present at the location of parties, prior registration, etc.)	<ul style="list-style-type: none"> · (a) Showing an identification card (with a photograph if possible) to a camera built into a computer, etc. · (b) For patent attorneys and lawyers, it is possible to show their patent attorney's badges or lawyer's badges on their bodies to the camera instead of their IDs 	<ul style="list-style-type: none"> · ID Card identification · SMS Verification · Face photograph · Sign online 	<ul style="list-style-type: none"> · (Video hearings) ID Card identification · (Online hearings) Recording of the participants' statement on identity (name, D.O.B.)
Communication measures and systems requested	<ul style="list-style-type: none"> · Web conference system (Microsoft Teams, Cisco Webex Meetings) · A chief administrative judge shall order the person(s) appearing online to change their facility, if it is deemed to be inappropriate (such as the cases in which the communication facility does not have sufficient performance or functions to transmit and receive images and sounds and smoothly conduct the oral proceedings) 	<ul style="list-style-type: none"> · Mobile phone, Tablet and Computer · Stable Network · Remote Trial APP(the link is available in SMS) 	<ul style="list-style-type: none"> · (Video hearings) Parties shall appear at video hearing rooms equipped with all necessary system. · (Online hearings) IT devices (Mobile phone, Tablet, Computer, etc) and Internet stability

Item	Japan	China	Korea
Method of attendance by the public auditors	<ul style="list-style-type: none"> • As above in "Permission of the public to audit oral proceedings," the general public wishing to attend oral proceedings may take in Trial Court. • A chief administrative judge may allow online streaming to only related persons of the parties concerned, subject to the consent of the all parties concerned 	<ul style="list-style-type: none"> • As above in "Permission of the public to audit oral proceedings," the public may be permitted to audit oral hearings in Trial Court. • Online streaming may be done upon approve of panel; Add account information of auditors by panel 	<ul style="list-style-type: none"> • (Video hearings) The same as the oral proceedings (When the members of public make a request for observation and the Board accepts the request, they should appear before the hearing rooms either at Daejeon or Seoul office on the hearing date and bring the government-issued identification to gain access). • (Online hearings) Not allowed in order to maintain the order

Item	Japan	China	Korea
<p>Online examination of evidence (examination of witnesses, examination of documents, inspection, etc.)</p>	<ul style="list-style-type: none"> • In principle, the examination of witnesses is to be conducted with the witnesses appearing either before the Trial Court or at a circuit trial, but it may be conducted online at the discretion of a chief administrative judge (P. Art. 145 (6), (7) and the Code of Civil Procedure Art. 204 as applied mutatis mutandis in the P. Art. 151). • If a panel requires, or the parties concerned desire, to examine the original or actual evidence, it is necessary for the parties concerned to appear before the Trial Court. 	<ul style="list-style-type: none"> • The authenticity of the documents can be verified by the parties by mail to the collegiate panel • Witness testimony can be reviewed by online 	<ul style="list-style-type: none"> • The same as the oral proceedings (witness examination, objects to be examined, etc.) • However, document camera shall be used if the evidence is submitted at the video hearing room and it is necessary to be enlarged and examined in detail.
<p>Availability of guidelines for online procedures</p>	<ul style="list-style-type: none"> • Available in the “Guideline for Oral Proceedings procedures” 	<ul style="list-style-type: none"> • Available in the APP of remote oral hearing • Available in user operating manual • Available in the related SMS 	<ul style="list-style-type: none"> • Procedures remain the same for any type of hearings so that there are no separate guidelines for online hearings and video hearings.

Item	Japan	China	Korea
Other information			<ul style="list-style-type: none"> · For cases when it is not feasible to conduct oral hearings at the hearing rooms due to COVID-19, online interview and telephonic hearing are introduced in order to compensate for the shortcomings of documentary hearings. · This is similar to the technical explanatory sessions and do not have the verifiability like oral hearings, but allows judges to orally examine the parties and have their responses and summarize the points of disputes. The statements made during the interview shall be recorded on the report.

Chapter 3: Overview of Oral Proceedings in Each Country

1. Japan

1.1 Objectives and Advantages of Oral Proceedings

The objectives of oral proceedings are to enable the panel to acquire necessary materials required for rendering a trial decision by deriving arguments from the parties concerned including intervenors, representatives that cannot be stated exhaustively in a written document through inquiries by the Chief Administrative Judge. The objectives include precise comprehension of points of dispute, and also to better understand the exact technical content and/or the technical level, accurate business conditions, etc., in the field of the patent, the industrial design, or the trademark in question through explanations from the parties concerned. As an advantage of oral proceedings, the parties concerned can orally present their arguments that cannot be exhaustively documented, which results in a faster trial examination than documentary proceedings. Moreover, an active lead of trial examination in the oral proceedings allows the parties concerned to present only necessary arguments related to points of dispute and thereby dispense with presenting unrelated arguments and pieces of evidence, which is also advantageous.

1.2 Characteristics of Oral Proceedings

The trial examination at the Japan Patent Office can be conducted either orally or documentarily, which means that all matters presented in written form can be examination materials even though they are not orally stated on the date of oral proceedings. Unlike the oral argument of a civil lawsuit, there is no legal significance in orally stating matters that have been submitted in written form once again before administrative judges. In addition, unlike a civil lawsuit, trials at the Japan Patent Office are based on the principle of *ex officio* examination, which means that an active lead of trial examination in the oral proceedings is allowed, with possible inquiries from viewpoints that are not directly linked to the arguments presented by the parties concerned.

1.3 Trial and Appeal Cases Subject to Oral Proceedings

In a Trial for Invalidation (patent, utility model, industrial design, and trademark), a Trial for Invalidation of a Registration of Extension of Duration (patent), and a Trial for Rescission (trademark), oral proceedings are conducted in principle except those cases where it is judged that there is no need to conduct oral proceedings under the types listed below (P. Art. 145, U. Art. 41, D. Art. 52, T. Art. 56). There is no need for the parties concerned to request oral proceedings. Where only documentary proceedings are conducted without oral proceedings, a Notification of Documentary Proceedings shall be issued.

- (1) Where all parties concerned request documentary proceedings.
- (2) Where it is evident that parties concerned are not in contention.
- (3) Where the request for trial is unlawful which is immediately dismissed.

- (4) Where maintenance of registration is evident in light of the arguments and pieces of evidence presented by the party concerned in Trial for Rescission cases (trademark).

Other trials and appeals, the Opposition to Registration of Trademark (trademark), and the Advisory Opinion (patent, utility model, industrial design, and trademark) are subject to documentary proceedings. However, oral proceedings are possible upon request from a party concerned or *ex officio*. The Opposition to Grant of Patent (patent) is subject to documentary proceedings.

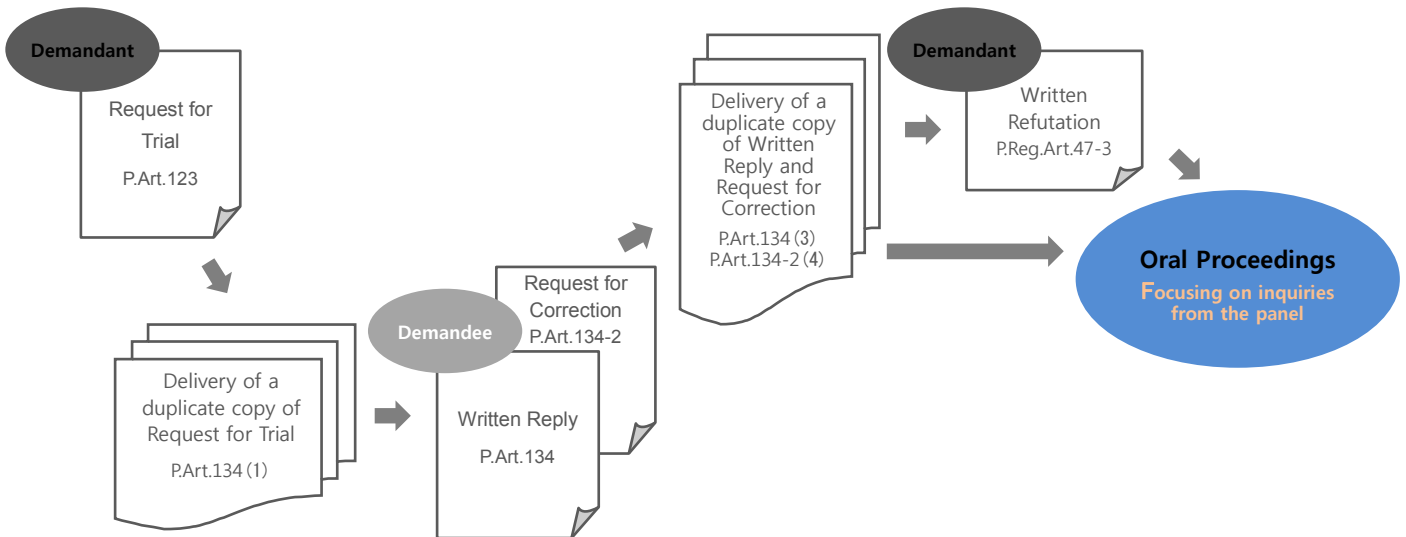
From 1.4 to 1.14 (Online Oral Proceedings), the explanation focuses on oral proceedings in a Trial for Invalidation (patent) as the most typical types of cases.

1.4 Timing, Number of times, and Style of Oral Proceedings

In general, the oral proceedings are conducted only once at the stage where arguments and pieces of evidence have been presented by both parties concerned. However, depending on the contents of the case, the oral proceedings are conducted at an early stage of trial proceedings, even multiple times where necessary.

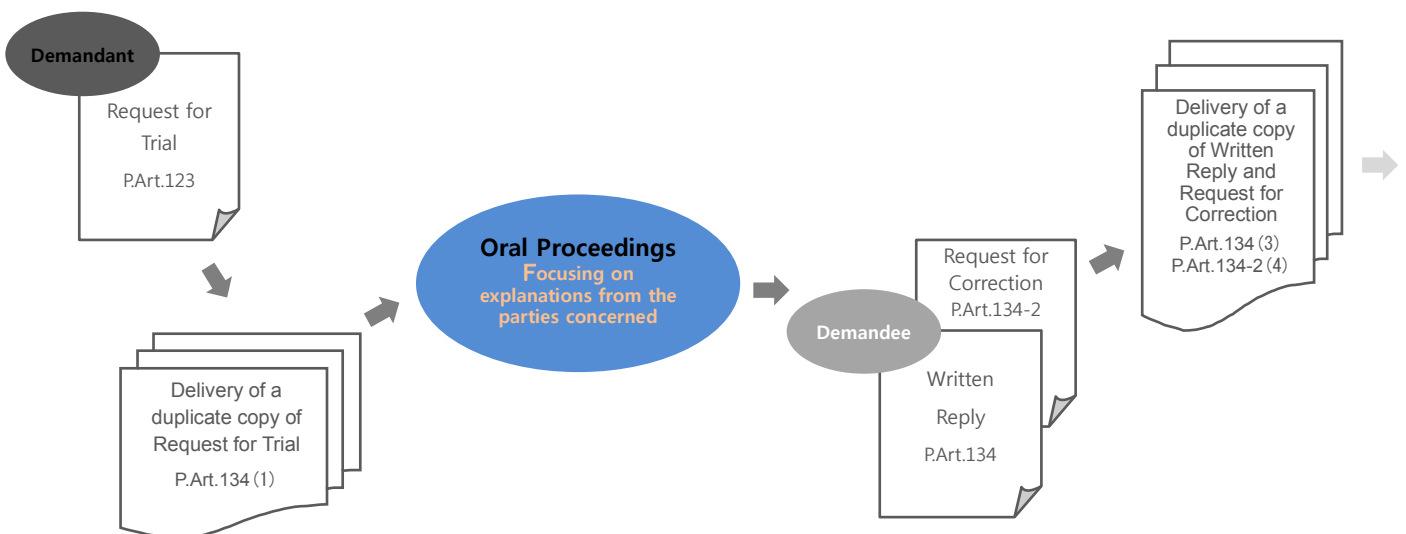
The style of the oral proceedings depends on the progress of trial examination at the time of conducting the oral proceedings. Usually, when the oral proceedings are conducted at the stage where arguments and pieces of evidence have been presented by both parties concerned, for the purpose of sorting out points of dispute, the main contents of oral proceedings will focus on inquiries from the panel (P. Reg. Art. 52-2) as follows.

- (1) Sorting out points of dispute between both parties concerned (interpretation of the patented invention and the cited inventions, confirmation of identical features and differences).
- (2) Clarifying questionable points and unclear points of arguments presented by the parties concerned.
- (3) Recommending withdrawals of unnecessary arguments.



On the other hand, where the oral proceedings are conducted at an early stage of trial proceedings, as the typical cases below, for the purpose of understanding the arguments and the pieces of evidence presented by the parties concerned, the main contents of oral proceedings will focus on explanations from the parties concerned.

- (1) Understanding technical content of cases requires time due to high complexity.
- (2) Understanding background technology, theory, etc., supporting arguments is difficult due to complexity.
- (3) Arguments from a party concerned are unclear or contradictory.
- (4) Sorting out and understanding contents of evidence requires time due to a large number of pieces of evidence presented.
- (5) The intent of presenting a piece of evidence is unclear.
- (6) The case involves a witness interrogation or an inspection.

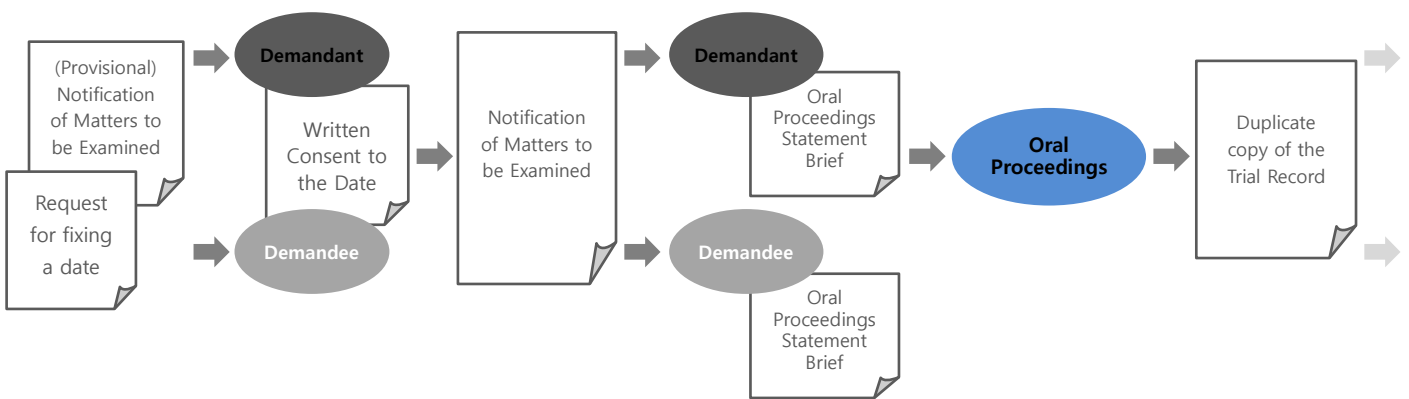


1.5 Overall Flow of Oral Proceedings from Preparation to Completion

The first step of the preparation for oral proceedings is to fix the date. Next, a Notification of Matters to be Examined is sent to both parties concerned. Both parties submit an Oral Proceedings Statement Brief prior to the date of oral proceedings.

The oral proceedings comprise inquiries from the panel and statements by both parties concerned. The Chief Administrative Judge notifies applicable notices where necessary.

The Trial Clerk prepares a Trial Record summarizing the oral proceedings and the Trial Record is confirmed by the parties concerned at the oral proceedings. At a later date, the Trial Clerk sends its duplicate copy to both parties concerned.



1.6 Fixing a Date

Fixing an oral proceedings date is handled by the Trial Clerk according to the following procedures. Where fixing a date is unsuccessful, the Chief Administrative Judge can designate a date *ex officio* (P. Art. 151, mutatis mutandis Civil Procedure 93(1)). The average time envisaged from the initiation of fixing a date and the date of oral proceedings is approximately two months.

(1) Simplified summons

The Trial Clerk requests the parties concerned to fix a date by phone or e-mail etc. Usually, a provisional Notification of Matters to be Examined, in which the matters slated for trial examination on the date of oral proceedings, is sent to the parties concerned by e-mail etc. together with a request for fixing a date. Once the date is fixed, both parties are requested to submit a Written Consent to the Date as a guarantee of appearance to the Trial Clerk.

(2) Service of Writ of Summons

Simplified summons are applied in principle, however, if (a) a party concerned is unreachable beforehand or (b) a party concerned requested for a Writ of Summons, a Writ of Summons is served at least two weeks before the date of oral proceedings in principle.

(3) Service by public notification

In case of a failure of service of Writ of Summons, a service by public notification is carried out by publishing a notification in the Official Gazette and in the Patent Gazette, and also by posting the notification on the bulletin board at the Japan Patent Office. The service by public notification takes effect after 20 days from the date of publication in the Official Gazette (P. Art. 191).

1.7 Trial Court

Oral proceedings are conducted in either of the IT Trial Court (JPO main building), the 1st Trial Court and the 2nd Trial Court (METI annex building). However, if openness of oral proceedings is secured, a meeting room or an interview room may be employed.

In the IT Trial Court, by connecting their own PCs to monitors, the parties concerned can present technical explanations with slides, videos, and sounds, etc., and they can also provide explanations in regard to software-related inventions while running relevant associated computer programs. Presentation of a product implementing the patented invention or a blueprint, etc., is also possible with the use of a document camera. Moreover, during witness interrogation, while the witness presents her/his explanation by writing down letters or drawing figures etc., the document camera can be employed to show the letters or the figures etc., on a screen. Where the original copy of documentary evidence is presented to the witness during an interrogation, the documentary camera can be employed to show the original copy on a screen. In addition, the documentary camera can be employed for an inspection of an actual item or object. 1st, 2nd Trial Courts are equipped with projectors and screens, instead of monitors.

If both parties concerned reside in the same region, upon request from either party, the panel considers organizing oral proceedings in the region (Circuit Trial). In a Circuit Trial, a facility in the region where the parties concerned reside is rented and employed as a trial court. The members of the panel and the Trial Clerk travel to the region and conduct oral proceedings (and examination of evidence).

1.8 Notification of Matters to be Examined, Oral Proceedings Statement Brief

A Notification of Matters to be Examined is a form of inquiry (P. Art. 134(4)), the purpose of which is to allow smooth oral proceedings and to assemble necessary materials for a trial decision by informing beforehand both parties concerned of the matters that the panel intends to examine on the date of oral proceedings and by encouraging them to make preparations including an Oral Proceedings Statement Brief in response to the notification. Normally, a provisional version of the notification is sent to both parties concerned by e-mail etc. at the time of fixing a date, and after the date has been fixed, the finalized notification with information of the fixed date is delivered to both parties by postal mail.

A Notification of Matters to be Examined is prepared by the panel at its discretion, focusing on the following matters (1) to (3) depending on the case.

- (1) Provisional opinions of the panel on the findings of fact concerning the patented invention and the cited inventions, and their identical features and differences, and provisional opinions of the panel on reasons for invalidation such as inappropriate description in the specification.
- (2) Pointing out points of dispute and points of discussion, requesting presentation of arguments and evidence, pointing out and clarifying unclear points in submitted documents, and recommending withdrawals of arguments.
- (3) Request for a technical explanation of the patented invention and its background, etc.

An Oral Proceedings Statement Brief (P. Reg. Art. 51) is a document used to describe arguments to be orally presented on the date of oral proceedings. Both parties are requested to submit the document normally at least one to two weeks before the date. In the Oral Proceedings Statement Brief, the parties present arguments, evidence, and explanations, etc., in response to panel provisional opinions, remarks, requests, etc., written in the Notification of Matters to be Examined.

The objectives of the Oral Proceedings Statement Brief are to ensure thorough statement submission by the parties concerned and the panel's audition thereof, to allow the parties concerned to elaborate construction of logic in their statements, thus enabling the efficient conduct of oral proceedings. Submission is not necessarily mandatory, however, the Chief Administrative Judge may order its submission where it is determined necessary by the Judge, for example, when a prior submitted document is not prepared in a proper and clear manner.

1.9 Persons Appearing in Trial Court

Persons appearing in trial court for oral proceedings are required (a) to have knowledge of trial examination procedures, etc., (b) to have technical knowledge regarding the patented invention in question, and (c) to have the ability and the mandate to properly represent the intention of the party concerned regarding the trial examination of the patent in question. Therefore, the following persons are preferred to appear in trial court.

- (1) Parties, intervenors (in case of a legal person, its president)
- (2) Representatives (patent attorneys or lawyers etc. who have already represented the parties in the course of the trial at the Japan Patent Office)
- (3) Patent attorneys or lawyers with a power of attorney
- (4) Interpreters

If there are inevitable circumstances, for example, where an explanation of highly specialized technical issues is required, at the discretion of the Chief Administrative Judge, an employee of the party concerned such as the inventor, etc., with a letter of proxy is also acceptable to appear in trial court.

The Trial Clerk confirms the number of persons to appear, their names, and relation to the parties concerned at least about one week before the date of oral proceedings. Those who are ineligible to appear in trial court are treated as observers.

1.10 Observation of Oral Proceedings

For the purpose of ensuring the fairness of trials, oral proceedings are conducted in public in principle (P. Art. 145(5)). However, if there is a risk of injuring the public order or morality, the oral proceedings are conducted *in camera*. As an example, some cases may have a request for *in camera* oral proceedings by a party concerned because of trade secrets included in the contents of examination in oral proceedings. In such cases, the panel determines whether the oral proceedings shall be *in camera* or not depending on each individual case.

The information regarding oral proceedings such as the date and the location (and in case of *in camera* oral proceedings, an indication thereof) is publicly announced and any members of the public who wish to attend may do so in the court gallery of the trial court. The Trial Clerk posts the schedule of oral proceedings for one month on the bulletin board in the lobby on the first floor of the main building of the Japan Patent Office and also on its website. In addition, on the morning of the scheduled date, the Trial Clerk posts the case information to be examined on the bulletin board in front of each trial court.

Due to a limited number of seats available in the court gallery of each trial court, if all seats are occupied, a request for observing the oral proceedings may be rejected. Seat reservations are not accepted.

1.11 General Flow of Oral Proceedings

Oral proceedings are conducted according to the following general flow under the lead of the Chief Administrative Judge. Here, in this explanation, it is assumed that the oral proceedings are conducted at the stage where arguments and pieces of evidence have been presented by both parties concerned.

- Announce the opening of oral proceedings.
- Confirm the identities of the persons appearing in trial court.
- Confirm the documents and the pieces of evidence submitted before the trial date.
- Confirm the arguments by both parties concerned, request them to make a statement, and sort out points of dispute.
- Request party concerned to clarify unclear statement information (description) where necessary.
- Order party concerned to submit a written document describing the statement contents at a later date where necessary. (Where a party's statement is lengthy and contents are complicated or unclear, the Chief Administrative Judge may order its submission in written form at a later date.)
- Recommend parties concerned withdraw unnecessary arguments where necessary. Where the demandant intends to withdraw the request for trial (P. Art. 155), the consent of the opposite party is needed (P. Art. 155(2)).
- Disclose the panel's provisional opinions and request the parties concerned to provide explanations where necessary.
- Provide various notices, etc., that do not require delivery in written form where necessary (Invitation for reply/refutation (P. Reg. Art. 47-2, 47-3), Notice of reasons for invalidation (P. Art. 153), Notice of reasons for rejecting a demand for correction (P. Art. 134-2(5)), Decision to accept/dismiss amendment (P. Art. 131-2), etc.)
- Summarize the contents of statements, etc., for preparing a trial record and confirm the summary orally.
- Fix the date and provide adequate notification for the subsequent oral proceedings where necessary (Notice of date (P.

Art. 145(4), mutatis mutandis Civil Procedure Art. 94)).

- Where the trial examination is subject to documentary proceedings afterward, deliver the notification orally to this effect (Notification of examination by documentary proceedings).
- Announce the closing of oral proceedings.

Where conducting examination of evidence such as witness interrogation or inspection, etc., upon request from a party or *ex officio* (P. Art. 150), it is conducted on the day of the oral proceedings in many cases. In such a case, in general, the panel opens the oral proceedings first and confirms matters requiring validation in the examination of evidence. Then, the panel suspends oral proceedings, conducts examination of evidence, and thereafter resumes the oral proceedings.

Two associate Administrative Judges assist the Chief Administrative Judge in conducting oral proceedings in a smooth manner. The Trial Clerk provides instructions to the parties concerned and to the observers, such as the prohibition of video recording, and prepares an Oral Proceedings Trial Record summarizing the oral proceedings.

1.12 Trial Record

The Oral Proceedings Trial Record is an official document prepared by the Trial Clerk for each date in order to notarize the process and the contents of oral proceedings (P. Art. 147(1)). As legally mandated matters to be recorded, the following brief formality and substance requirements are described in the record (P. Reg. Art. 55(1)).

<Formality>

- (1) Trial Number
- (2) Names of the Administrative Judges and the Trial Clerk
- (3) Names of the Parties representatives, intervenors, and interpreters who appeared in Trial Court
- (4) Date, time, and location
- (5) Open to the public or not and the reason for *in camera* in such cases

<Substance>

- (1) Summary of statements made by the parties representatives, and intervenors
- (2) Matters that the Chief Administrative Judge ordered to record and also those matters that the Judge permitted to record upon request from the parties or the intervenors
- (3) Other necessary matters

The following matters, for example, are recorded as substance: (a) new arguments from the parties concerned, clarification of an unclear argument, or withdrawal of an argument, (b) matters notified by the Chief Administrative Judge (the date of next oral proceedings, different kinds of notices, etc.), and (c) matters that the Chief Administrative Judge ordered a party concerned to submit in written form.

Being recorded in the Trial Record, any matters that are not written in a document can be proved to have been stated or

notified, etc. The Chief Administrative Judge reads aloud matters that require recording in the Trial Record for the purpose of confirmation by the parties concerned and instructs the Trial Clerk to record the matters. Once a Trial Record is finalized, its contents are not authorized to be modified.

In addition, in a Trial Record, it is possible to cite written documents, photos, recording tapes, video tapes, etc., that the Administrative Judge considers relevant and those cited materials become a part of the Trial Record by being attached to the record of the trial (P. Reg. Art. 56). Here, while an Administrative Judge is authorized to record the entire or a portion of the oral proceedings (including examination of evidence) (P. Reg. Art. 53), where a party concerned intends to make a recording, the Chief Administrative Judge's permission is required (P. Reg. Art. 54).

Where an examination of evidence, namely, a witness interrogation, an interrogation of a party concerned, an expert testimony, or an inspection is conducted, the Trial Clerk prepares an Examination of Evidence Trial Record (Record of Witness Testimony, Record of a Party Concerned Testimony, Record of Expert Testimony, Record of Inspection) for each date. In this case, the Trial Clerk, with a permission from the Chief Administrative Judge, is authorized to record statements made by the witness, etc., using a recording tape, etc., and substitute the recording for a description in the Trial Record (P. Reg. Art. 57-6).

Once the Trial Record is prepared, the Trial Clerk provides a duplicate copy thereof to both parties concerned by email etc. (except those Trial Records citing a recording tape, etc., and Examination of Evidence Trial Records.)

1.13 No Appearance on the Date of Oral Proceedings

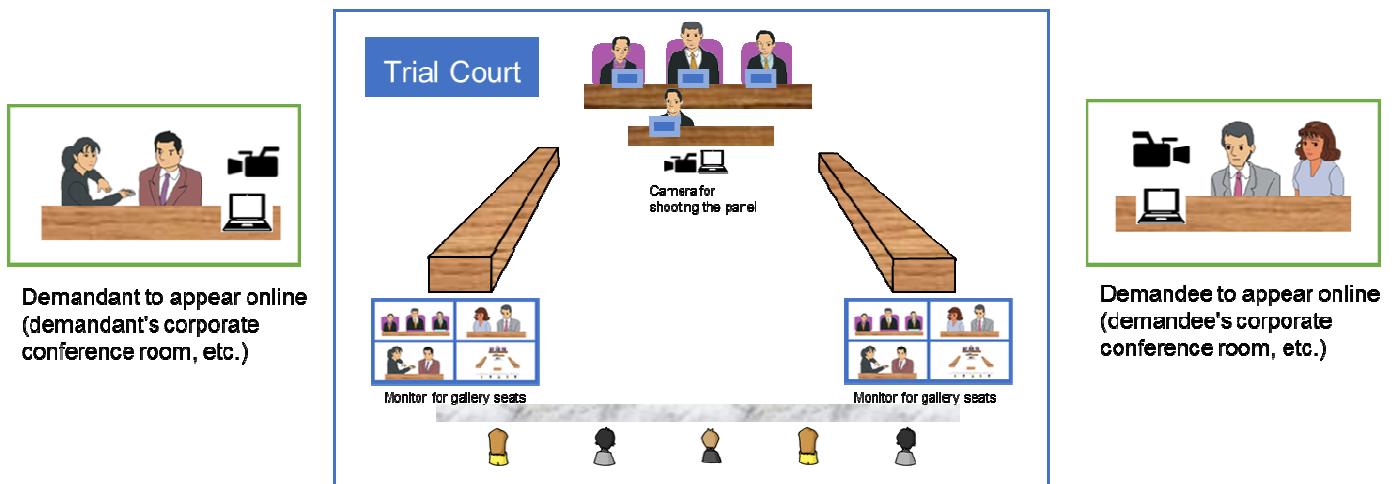
Including the case of oral proceedings, a person who has been summoned by the Japan Patent Office but failed to appear without a justifiable reason shall be punished by a civil fine not exceeding 100,000 yen (P. Art. 203). A justifiable reason is, for example, (a) a serious sickness that prevents the person from appearing, and (b) a disruption or a failure of transportation, etc., caused by a natural disaster that prevents the person from appearing.

Where both parties concerned do not appear on the date of oral proceedings, a Trial Record stating the fact of their absence is prepared. Where one of the parties concerned has appeared, the oral proceedings are conducted in principle.

1.14 Online Oral Proceedings

Based on a determination by a chief administrative judge, the parties concerned may carry out procedures on the date of the oral proceedings without appearing before the Trial Court (hereinafter referred to as "online appearance") by "a method that enables the parties concerned to communicate while mutually recognizing the status of the other party by sending and receiving images and sounds" (hereinafter referred to as "online") (P. Art. 145(6)). The online oral proceedings have been operated since October 2021 in Japan. For the time being, there are the following features. Japan plans to improve operations as needed while accumulating the results.

[Image of oral proceedings using a web conference system]



(1) Requirements

Parties concerned who wish to appear online are allowed to do so in principle. However, a chief administrative judge will make a final determination on whether or not to allow online appearance (P. Art. 145(6)). In addition, if a chief administrative judge deems it necessary for infectious disease countermeasures or for any other reasons, the chief administrative judge may *ex officio* decide to hold an oral proceedings online.

A chief administrative judge may allow online appearances, regardless of whether the domestic locations of the parties concerned are remote or inconvenient.

In cases where *in camera* oral proceedings are conducted, such as cases involving trade secrets, etc., a chief administrative judge shall determine whether or not to allow the parties concerned to appear online for the oral proceedings, taking into account the opinions of the parties concerned.

(2) Persons appearing online in oral proceedings

The requirements for those appearing online in oral proceedings are the same as for the face-to-face oral proceedings.

(3) Form of the online appearance

The following forms are acceptable examples of online appearance.

- (i) All parties concerned appear online
- (ii) Only one party concerned appear online.

[When appearing online]

- (a) Multiple persons from one party concerned appear online from multiple different locations (representative office, corporate conference room, home, etc.).
- (b) Some from one party concerned, appear online and the rest appear before the Trial Court.

In addition, if a panel requires, or the parties concerned desire, to examine the original or actual evidence, it is necessary for the parties concerned to appear before the Trial Court. In this case, a chief administrative judge may allow only some of the

parties concerned to appear before the Trial Court in person and allow the remaining parties concerned to appear online.

(4) Means of communication

Online oral proceedings shall be conducted using a web conference system (e.g., Microsoft Teams, Cisco Webex Meetings, etc.). When appearing online, the parties concerned need to have communication facility that can support the web conference system.

It is not allowed to change the background image (e.g., blur the background) of the person appearing online using the functions of the web conference system. Also, appearances with only images or sounds are not permitted.

However, persons appearing online in oral proceedings may use the functions of the web conference system to project materials in the web conference.

(5) Location of connection

Examples of cases in which the communication facility or the location of the calling parties concerned are deemed to be inappropriate include:

- (i) Cases in which the communication facility does not have sufficient performance or functions to transmit and receive images and sounds and smoothly conduct the oral proceedings; and
- (ii) Cases in which the location of the calling parties concerned is likely to be interfered with the smooth conduct of the oral proceedings due to noise, the presence of third parties etc.

A panel will participate in online oral proceedings at the Trial Court. In the online oral proceedings, the IT Trial Court (JPO main building) will be designated as the place of holding oral proceedings.

(6) Motion and advance preparation

When requesting the parties concerned to adjust the date of the oral proceedings, a trial clerk shall confirm whether they wish to appear online for the oral proceedings.

If any persons wish to appear online on one party concerned, the party concerned shall submit to the trial clerk a schedule for confirming the communication facility and the location of the calling party concerned prior to the oral proceedings, as well as the names of the persons wishing to appear online.

(7) Prior confirmation of communication facility and location of the calling party concerned (confirmation, etc. of the ministerial ordinance requirements as specified in the P. Art. 145(6), etc.)

About one to three weeks prior to the date of the oral proceedings, the communication facility of the person(s) appearing online, the location of the calling party concerned are confirmed beforehand (hereinafter referred to as "prior confirmation") (P. Reg. Art. 51-2(1)). The date of the prior confirmation is decided after a trial clerk requests the person(s) wishing to appear online to adjust the date.

A chief administrative judge, a trial clerk, etc., and the person(s) appearing online shall attend at the prior confirmation. No prior confirmation shall be made for those making a request for online streaming of oral proceedings.

The person(s) appearing online shall participate in the prior confirmation at the communication facility and the location that will be used on the date of the oral proceedings.

No consideration of the contents of the case is given in the prior confirmation in principle.

A chief administrative judge shall check the communication facility of the person(s) appearing online, the location of the calling party concerned, and other matters necessary for the smooth progress of the proceedings on the date of the oral proceedings, and when finding that the communication facility or the location of the calling party concerned is not appropriate, the chief administrative judge shall order the person(s) appearing online to change them.

A chief administrative judge, a trial clerk, etc. shall decide on a backup means of communication (PC, etc.) for those appearing online in case of communication failure, etc. on the date of the oral proceedings.

Based on the results of the confirmation of the ministerial ordinance requirements, a final confirmation shall be made of who will appear before the Trial Court and who will appear online on the date of the oral proceedings. In principle, it is not allowed to change from online appearance to appearance before the Trial Court or vice versa after the final confirmation.

(8) Identity verification of persons, etc. appearing online

For those who appear online or for whom a request for online streaming of oral proceedings (Regulations under the P. Art. 54) has been approved, the identity of the person, etc. shall be verified online before the opening of the oral proceedings.

Identity verification will be conducted by showing an identification card (with a photograph if possible) to a camera built into a computer, etc. For patent attorneys and lawyers, it is possible to show their patent attorney's badges or lawyer's badges on their bodies to the camera instead of their IDs.

(9) Observation and online streaming

When some persons appear online, the general public may observe oral proceedings at the Trial Court. The images and sounds of the persons appearing online can be viewed on a screen, etc. set up in the Trial Court.

In addition, if one party concerned make a request for online streaming of the oral proceedings limited to related persons of the parties concerned (e.g., employees who belong to the party concerned (corporate body), the affiliated corporate body of the party concerned (corporate body), or the Japanese corporate body of the party concerned (foreign corporate body), etc.), a chief administrative judge may allow online streaming to such related persons only, subject to the consent of the all parties concerned.

Although overseas residents may participate in the online streaming as related parties concerned, they are not allowed to appear online in accordance with the provisions of the P. Art. 8.

(10) Online examination of witness

In principle, the examination of witnesses is to be conducted with the witnesses appearing either before the Trial Court or at a circuit trial, but it may be conducted online at the discretion of a chief administrative judge (P. Art. 145(6), (7) and the Code of Civil Procedure Art.204 as applied *mutatis mutandis* in the P. Art. 151).

(11) Response to communication failures, etc.

Even if the transmission of images and sounds is interrupted due to communication failure, etc. during online oral proceedings, a chief administrative judge may continue the oral proceedings after hearing the opinions of both parties concerned, for instance, in the following cases. The details of the measures taken in the event of communication failure, etc. shall be recorded in the Trial Records of Oral Proceedings.

(i) Where a representative of one party concerned appears before the Trial Court and the remaining persons appear online, and a communication failure, etc. has occurred, but the proceedings can be continued by the representative appearing before the Trial Court.

(ii) Where one party concerned is appearing online from multiple locations and a communication failure, etc. has occurred in relation to some of the locations, but the proceedings can be continued by the representative appearing online from another location.

If it becomes difficult to continue the oral proceedings due to communication failure, etc., a chief administrative judge shall record that fact and the contents of the proceedings up to that point in the Trial Records of Oral Proceedings and terminate the oral proceedings. After the trial records are prepared, a copy of the trial records shall be sent to both parties concerned by e-mail, etc.

If the oral proceedings are closed, a chief administrative judge shall decide whether to reschedule the date of the oral proceedings online or to reschedule the date of the oral proceedings without going online, taking into consideration the likelihood of resolution of the communication failure, etc., the opinions of both parties concerned. If the chief administrative judge finds that there is no need to reschedule the date of the oral proceedings, taking into consideration the opinions of both parties concerned and the fact that both parties concerned have made allegations and show proof thoroughly by the time the oral proceedings are terminated, the subsequent proceedings may be conducted by documentary proceedings.

2. China

2.1 The Purpose and Advantages of Oral Proceedings

The purpose of oral proceedings is to ascertain the facts and provide the parties concerned with opportunity to make arguments before the panel. One of the advantages of oral proceedings is to enable the panel to have a precise comprehension of the focus of the dispute and a better understanding of the technical solutions and the technical status through the statements and explanations of both parties. Meanwhile, the parties concerned can also present relevant evidences to assist the panel in understanding the technical solutions and making proper judgments. Since the parties can orally state their points of view that cannot be fully stated in written documents, the panel can also actively guide the parties in the oral hearings, so that the parties can only focus on the discussion related key issues of the dispute, and avoid making irrelevant opinions and evidence. Therefore, compared with written proceedings, oral proceedings have the advantages of faster processing speed and more efficient trial.

2.2 Features of Oral Proceedings

The examination in the patent invalidation procedure can be conducted either orally or documentarily, but most patent invalidation cases require oral proceedings. In the invalidation procedure, all the written opinions and evidence submitted by the parties, either before or on the date of oral proceedings, are within the examination scope, as long as they meet the time limit and have not explicitly been waived. The panel may conduct examination *ex officio* without being restricted by the scope requested by the parties, the arguments and evidence. However, regarding the content of the *ex officio* examination, the panel will conduct a hearing and let both parties address their opinions during the oral proceedings.

2.3 Cases Subject to Oral Proceedings

The panel may, upon the request of the parties concerned or the needs of the case, decide to hear the request for invalidation orally. The parties concerned in the invalidation procedure may request for oral proceedings based on any of the following reasons:

- (1) One of the parties requests for face-to-face cross-examination of evidence and debate with the opposite party;
- (2) There is a need to explain the facts to the panel;
- (3) There is a need to demonstrate a material object; or
- (4) There is a need to call a witness giving evidential statement in testimony.

For cases of request for invalidation for which no oral proceedings has been taken, where the panel receives a request from the party concerned for oral proceedings in written form based on one of the reasons mentioned above, the panel shall decide to take oral proceedings.

2.4 Time and Number of Oral Proceedings

In general, the panel determines the date of the oral proceedings after arguments and pieces of evidence have been presented by both parties concerned and issues Notification of Oral Proceedings to them.

The panel may, upon the request of the parties concerned or the needs of the case, decide to hear the request for invalidation orally. Generally, most cases require only once oral proceeding. However, depending on the circumstances of the case, the oral proceedings can be conducted multiple times if necessary.

2.5 Overall Flow of Oral Proceedings from Preparation to Completion

The first step in the preparation for an oral proceeding is to fix the date. Next, the panel will issue Notification of Oral Proceedings to the parties concerned, informing them of the date, place and other matters of the oral proceedings to be taken. The parties shall submit the acknowledgment of receipt of the notification to the CNIPA within seven days from the date of receipt.

The oral proceedings involve inquiries from the panel and statements of both parties concerned. In oral proceedings, the panel may adjourn for deliberation as the case needs. When the oral proceedings come to an end, the chairman announces the conclusion of the oral proceedings, which may be either the examination decision or any other conclusion.

A clerk notes down the important items of the oral proceedings in the Record of Oral Proceedings, and sends copies to both parties to confirm and sign.

2.6 Date of Oral Proceedings

The panel determines the date of oral proceedings in accordance with needs of the case, and issues Notification of Oral Proceedings to both parties, informing them of the date, place and other matters of the oral proceedings to be taken. The average time envisaged from the issuance of Notification of Oral Proceedings to the date of oral proceedings is at least 37 days.

Normally the date and place of the oral proceedings shall not be changed once they are fixed. Where it is necessary to change the date or place in a special situation, the change shall be subject to the consent of both parties or the approval of the Director General or Deputy Director General. The parties shall submit the acknowledgment of receipt of the notification to the CNIPA within seven days from the date of receipt.

2.7 Trial Court

Oral proceedings can be conducted in either one of the 23 trial courts in the Patent Reexamination and Invalidation Department of CNIPA or one of the itinerant trial courts across the country.

In the 23 trial courts, the parties can connect their PCs to the projection screen to play slides, videos, audios etc. for technical

explanations.

If both parties concerned reside in the same or adjacent region, the panel may travel to one of the itinerant trial courts, taking itinerant oral proceedings and handling cases on the spot.

2.8 Persons Appearing in Oral Proceedings

There are no special requirements for the qualifications of attendants to oral proceedings. Generally, the following persons will appear in oral proceedings.

- (1) Parties concerned
- (2) Representatives (patent agents or citizens with power of attorney)
- (3) Patent attorneys with power of attorney
- (4) Witness
- (5) Translators

2.9 Observation of Oral Proceedings

Oral proceedings shall be conducted in public, unless they need to be kept confidential in accordance with the provisions of the laws or regulations.

The information of oral proceedings regarding the date and the location is publicly announced on China Intellectual Property News as well as official website of the CNIPA, and the public who wish to attend can listen to the oral proceedings. Due to limited seats in the auditorium of each trial court, requests for observing the oral proceedings may be rejected when it is full. Reservation of Seats is not accepted.

2.10 Routine Flow of Oral Proceedings

Under the guidance of the chairman of the panel, oral proceedings generally follow the following procedures.

- Before the oral proceedings start, the panel shall check the identities of the persons appear in the oral proceedings and make sure they are eligible to appear;
- The chairman opens the oral proceedings and introduces the panel members;
- The party concerned introduces the persons appear in the oral proceedings on its part and, where two parties appear, the opposite party shall be consulted for any objection to the eligibility of the persons appearing on either part;
- The chairman announces the rights and obligations of the parties concerned, inquires whether the party concerned would file a motion to recuse the panel members, and whether the party concerned requests to call a witness in testimony or to make a demonstration of material evidence;
- In inter parte oral proceedings, the parties concerned shall be inquired as to whether they are willing to make compromise;

- When the investigation starts, the panel checks the scope and the causes for invalidation and the evidence submitted by both parties, and determines the scope of the oral proceedings;
- Following investigation is the proceeding of debate, where the parties may respectively make arguments and debate on the matters in dispute and the application of laws and regulations to the facts as shown by the evidence;
- During the debate, the panel members may raise questions, but shall not make any tendentious statements;
- The parties make their final statements;
- The chairman announces the end of the oral proceedings.

2.11 Record of Oral Proceedings

The Record of Oral Proceedings is the minutes prepared by the clerk for the oral proceedings in order to record the process and content of oral proceedings. The recording matters may involve following formal items and substantial items:

<Formal items>

- (1) Case number
- (2) Names of the panel members and the clerk
- (3) Names of the parties concerned, representatives, and other persons who appeared in the oral proceedings
- (4) Date, time and location

<Substantial items>

- (1) Summary of statements made by the parties concerned or their representatives
- (2) Matters that the panel ordered to record, and those matters that the panel permitted to record upon the requests of the parties concerned
- (3) Other necessary matters

After important items of oral proceedings being noted down or the termination of oral proceedings, the panel shall hand the minutes to the parties for reading. For errors or mistakes in the minutes, the party concerned may request rectification. After being confirmed, the minutes shall be signed by the parties and kept in file. Where any party refuses to sign, the chairman shall note it in the Record of Oral Proceedings.

In addition to the Record of Oral Proceedings, the panel can also use audio and video equipment to record the entire oral proceedings. At present, all oral proceedings are videotaped, while the parties are not allowed to make any audio or video recording.

2.12 Absence of a Party Concerned

Where one of the parties fails to appear in the oral proceedings, the panel shall take the oral proceedings according to the prescribed procedures so long as the presence of the other party in the oral proceedings complies with the procedural requirements.

Where the petitioner fails to make a response to Notification of Oral Proceedings within the specified time limit and fails to appear in the oral proceedings, the request for invalidation is deemed withdrawn and the invalidation procedure terminates.

2.13 Online Oral Proceedings

At present, online oral proceeding system has been deployed in all trial courts. Download link of the APP is delivered through text message along with notification of oral proceedings to the parties concerned. As long as the parties have the appropriate hardware (such as mobile phones, Pads or PCs) and software conditions, they can download the remote online oral proceedings APP or log in the online oral proceedings webpage to participate in the remote oral proceedings. The User Guide Manual in the online oral proceedings APP provides online instructions for the parties concerned.

Before the online oral proceedings start, the parties concerned are required to provide their identity information, and perform SMS verification, face recognition, online signature and other identity authentication to verify their identities when logging in the remote oral proceeding system.

During the oral proceedings, both parties can upload evidence, PPT and other documents, and make demonstrations online.

Public audiences can listen to the oral proceedings online with the approval of the panel. Their account information will be added to the system.

When online oral proceedings come to an end, the parties can view the minutes of oral proceedings online and confirm with electronic signatures.

3. Korea

3.1 Objectives and Advantages of Oral Proceedings

An oral hearing is a type of hearing that both parties of the case shall appear before a panel of 3 or 5 administrative judges (hereinafter referred to as “Board”) and make oral arguments in order to summarize the key points in disputes at an early stage.

Oral proceedings allow the Board to hear the statements directly from parties and witnesses. The Board may also find seeming inconsistencies in their arguments and clarify ambiguous issues by asking questions in real time. This enables the Board to narrow the issues early in dispute and concentrate more on the evidence examination, which will lead to more efficient and reliable trials and appeals.

Moreover, not only relevant parties but also third parties may also appear to observe an oral hearing, which is expected to result in more transparent and reliable proceedings. Meanwhile, unlike civil cases, the presiding administrative judges have more direct control over oral hearings and more actively steer the collation of evidence as a result of the inquisitorial system.

3.2 Characteristics of Oral Proceedings

IPTAB allows both oral hearings and document-based proceedings. An oral hearing can take place upon specific request by one of the parties or if the Board considers it necessary because of specific circumstances. Unlike civil proceedings based on the adversarial system and principle of orality, in IPTAB proceedings, written arguments shall be deemed to have the same effect as oral arguments by way of oral hearing. Therefore, it is not necessary to orally repeat arguments that are already made in the documents submitted in advance. That is to say, oral hearings at IPTAB are not so much about the admissibility of pleadings but the examination of evidence, questioning about the issues in disputes and narrowing them, comprehension of complex technologies, and so on.

3.3. Trial and Appeal Cases Subject to Oral Proceedings

Oral proceedings shall be conducted in *inter partes* cases, since one of the main purposes of the proceedings is to narrow the issues in disputes with an exchange of oral arguments by the both parties. The following are examples of cases in which are deemed highly necessary to hold oral proceedings.

- (1) Where either party or both parties request an oral hearing
- (2) Where deemed necessary to exercise the right to be heard to clarify the ambiguous issues in the grounds of request or grounds for claim
- (3) Where the explanation from the parties are necessary regarding the invention or evidence
- (4) Where examination of evidence and witness, and inspection are involved
- (5) Where the presiding administrative judge finds it necessary for effective proceedings

Under the IPTAB Trial Practice Regulations §39-2, it stipulates that oral hearings shall be held by default in case 1 and 2 above. Even in such cases, if the presiding administrative judge finds that the case can be examined based solely on the trial documents, oral proceedings may not be held.

3.4 Timing, Number of Times, and Style of Oral Proceedings

In general, oral proceedings shall be conducted once per case, after the defendant submits his/her written reply. Depending on the contents of the case, oral proceedings may be held multiple times and a technical explanatory session may be held before the oral hearing in order to better understand arguments and evidence submitted by both parties and to identify the points in disputes.

Oral proceedings can be conducted either in-person or video hearings: An in-person hearing requires parties and the Board be physically present together in a hearing room on the premises in Daejeon, while video hearings enable parties to participate in oral hearings in a hearing room in Seoul which is equipped with video-conferencing equipment. The procedure may be different depending on whether to need an attendance of witnesses or an inspection of physical evidence. The presiding administrative judge shall preside over the proceedings, so that participants may be entitled to speak only when the presiding administrative judge allows to do so. In general, it is common to start the oral proceedings with an examination of admissibility of evidence and followed by arguments made by the both parties, examination from the Board, examination of witnesses and additional statements from the parties.

3.5 Overall Flow of Oral Proceedings from Preparation to Completion

Once it is determined to hold an oral hearing either upon request or *ex officio*, the presiding administrative judge shall determine the date, location and type of oral proceedings and the Notice of Hearing (that states the purpose of the hearing and the above information) shall be sent to both parties concerned. The parties are also encouraged to submit a compendium for oral argument in advance of the hearing in order to aid the Board in preparing for oral hearings and examining the cases thoroughly. The Board will send a Notification of Matters to be Examined when it is expected that there will be specific issues to be handled during the oral proceedings.

During the hearings, parties will make arguments before the Board and the Board will also question the parties. A written transcript of an oral hearing will be available about 10 days after the hearing and it is allowed to read upon request.

3.6 Scheduling Hearings

Where an oral hearing is to be held, the parties and intervenors will be notified of the date and location of the oral hearing. The Board may have a conference with the parties to schedule oral proceedings and parties are informed to submit a compendium for oral argument, which summarizes their arguments and points in dispute, at least one week prior to the scheduled oral hearing date. Notice of Hearing is sent approximately one month prior to the oral hearing date in order to allow sufficient time for parties to prepare the arguments and issues in disputes and submit the Oral Proceedings Statement

Brief.

If a party finds it absolutely necessary to have the hearing rescheduled, the rescheduling request should be submitted. The hearings may also be rescheduled *ex officio* if the Board deems it necessary.

3.7 Hearing Rooms

There are 4 hearing rooms on the IPTAB headquarters for patent cases and 2 hearing rooms on the annex for trademark and design cases. Each building has 1 video hearing room equipped with special IT equipment, which can connect to the video hearing room in Seoul.

Due to an increasing request for video hearings, videoconferencing equipment has been installed in 2 technical explanatory rooms in Seoul added to a video hearing room in Seoul office. Online hearing rooms are added to each building (headquarters and annex), which allows parties to participate in oral hearings remotely even from their home, without having to appear in IPTAB hearing rooms.

All hearing rooms have presentation capabilities via a projector and a document projector (ELMO). Especially, video hearing rooms have two large screens on which the parties can put up their presentations and recording devices are installed for all rooms.

3.8 Notification of Matters to be Examined, Oral Proceedings Statement Brief

(1) Notification of Matters to be Examined

Where it is expected that there will be specific issues to be examined during the oral proceedings, the presiding administrative judge may send a Notification of Matters to be Examined.

(2) Oral Proceedings Statement Brief

Parties who have received a Notice of Hearing are also encouraged to submit a compendium for oral argument which includes the arguments, the gist of evidence, etc. within the designated time period.

3.9 Persons Appearing at Hearing Rooms

Parties concerned or representatives participate in the oral proceedings. When the party is a corporation, the representative of the corporation will attend the hearing as the party and other employees may appear at the hearing as observers. However, if they are deemed to be more qualified to explain the details of the case, they may make a spoken statement on a certain topic on behalf of the parties concerned with the permission of the presiding administrative judge.

Additionally, when requested by a party, and where the Board believes live testimony will be helpful in making a decision, the Board will permit live testimony at the oral hearing.

The hearing clerks (or stenographers) finalize attendance list and check their attendance at least 2-3 days prior to the date of oral proceedings.

3.10 Observation of Oral Proceedings

Oral proceedings can be either public or non-public. Public hearings are open to the general public for observation. When the Board decides to hold public hearings, the provisional list of scheduled hearings will be posted on the IPTAB website in advance and any member of the public may request observations prior to the date of the hearing. However, when it is deemed against public order or good morals, public observation will not be granted (Patent Act Article 154). Public admission can be limited when a party requests a non-public oral hearing for protection of trade secrets or when the hearing room fills to capacity (IPTAB Trial Practice Regulations §39(2), (4), (5)).

The Trial Policy Division will inform those who requested an observation of whether the request has been granted or denied prior to the date of the oral hearing. All public attendees are encouraged to arrive at least 10 minutes prior to the start of the hearing and a valid form of government-issued identification is required to gain access. Recently, in accordance with the government guidance on COVID-19, visitors should get their temperature taken, wear face masks, and use hand sanitizer before entering the IPTAB hearing rooms and keep physical distancing inside the hearing rooms.

3.11 General Flow of Oral Proceedings

Oral proceedings are conducted according to the following general flow under the direction of the presiding administrative judge.

- (1) Announcing the opening of oral proceedings
- (2) Verifying the identities of the persons appearing
- (3) Confirmation of the evidence submitted prior to the date of hearing (examination of admissibility of evidence)
- (4) Arguments made by the both parties
- (5) Questioning from the Board to clarify unclear or key issues and responses from the parties
- (6) Additional statements made by the parties concerned
- (7) Matters subject to notification from the Board
 - Confirmation of the matters to be recorded in the Oral Hearing Report, including arguments withdrawn by the parties concerned, any evidence or arguments that has been admitted by the both parties without any dispute, etc.
 - Notification of the additional documents required to be submitted and the deadline for submission thereof upon the request from the Board
 - Where the case is subject to document-based proceedings afterward, deliver the notification orally to this effect
 - Notification of the estimated date of termination of trial proceeding, where necessary
 - Advice for both parties to settle, where necessary
- (8) Announcing the closing of oral proceedings

When there is a need for testimonies by witnesses or expert witnesses, questioning will be normally conducted after the number 5 above.

3.12 Oral Hearing Report

A hearing clerk who attended the oral hearing shall draw up and upload the Oral Hearing Report to the trial record database within 10 days from the date of the oral hearing. Arguments or testimonies at the oral hearing per se are not considered legally admissible. However, an Oral Hearing Report, a document written by authorities under the Civil Procedure Act, can be admitted as legal evidence.

When preparing an Oral Hearing Report, the following formal and substantial matters are required to be included in the report. Formal matters must be entered in the report and if any of these are missing, the report has no legal validity.

(1) Formal matters to be recorded

- Case number & Indication of the case
- Names of administrative judges and hearing clerk, etc.
- Names of parties, representatives and interpreters who were present and names of parties who were not present
- Date and location of the oral hearing
- Whether the hearing was open to public or not and the reason for deciding to go non-public

(2) Substantial matters to be recorded

- Summary of statements made by both parties
- Points of dispute and examination of admissibility of evidence
- Order of clarification by the Board
- Matters that the presiding administrative judge ordered to record in the hearing report (matters to be recorded and other notification)

An Oral Hearing Report is required to be signed by the hearing clerk who wrote the report, and the presiding administrative judge. A written transcript of an oral hearing will be considered as a part of the Oral Hearing Report. Finalized report is accessible to both parties upon request for perusal copy.

A separate report will be made when there is questioning of witnesses and parties, and/or on-site inspection.

3.13 No Appearance on the Date of Oral Proceedings

Parties or representatives who are notified of the date of an oral hearing may decide not to attend the oral hearing. Should a party find it absolutely necessary to attend but the circumstance prevents the party concerned from attending, it is advised to submit the rescheduling request along with the justifiable reasons for the request prior to the scheduled date. There is no

penalty for the absence of parties. However, when a witness, etc. disobeys a summons, he/she may be fined not more than 500,000 KRW.

Even if either of both parties fails to appear at the oral hearing, the hearing will still be held in the party's absence and such absence will be recorded in the Oral Hearing Report.

3.14 Online/Video Hearings

Presiding administrative judge may hold a video hearing, which allows parties to appear at IPTAB video hearing room upon request from either party or both parties in any of the following cases (IPTAB Trial Practice Regulations §39-4):

- (1) When parties concerned are people with disabilities or over the age of 65 or with mobility impairment
- (2) Where there are participants of 10 or more from either party, including parties concerned, patent attorneys, intervenors, witnesses, etc.
- (3) Where it has been justified that evidence is too heavy or large so that it hinders them from traveling
- (4) Where the case is treated to be expedited
- (5) Where the presiding administrative judge finds it necessary to hold oral proceedings at a place other than IPTAB hearing rooms in Daejeon

When the parties wish to request for video hearings in any of the above cases, it is required to submit the written request for video hearings, stating the reasons for such request, along with the necessary documents attached, evidencing such request. When requested by either party (or both parties), the Boards shall decide whether to hold an oral proceeding via online with the consent of the parties, and inform the parties of such decision by indicating the type and location of the hearing on the Notice of Hearing.

As of 16 August in 2021, online remote hearing has been introduced due to an increasing demand from the users. It will allow parties and participants to attend oral hearings remotely from anywhere (office, home, etc.) via online, even without having to appear in the IPTAB video hearing room. The video-conferencing platform established by the Ministry of Interior and Safety is currently used for online oral hearings.