INTRODUCTION

This book is “2017 yearbook of IP-related court cases in the fields of chemistry and biotechnology”, which is a collection of the court cases presented within the year 2017 (posted on the HP of the court). The number of IP-related court cases in the fields of chemistry and biotechnology is “103” in 2017, while it was “119” in 2012, “135” in 2013, “110” in 2014, “101” in 2015, and “90” in 2016. Similar to the previous year books we published, the 2015 version has been compiled to list the court cases on the basis of main four technical fields of “chemistry”, “pharmaceuticals”, “biotechnology” and “food”, in each of which the court cases are arranged on the basis of their points at issue (Articles). Note that, “pharmaceuticals” include not only pharmaceutical drugs but also quasi-drugs, various pharmacological agents, agrichemicals, and cosmetics. “Chemistry” includes not only materials but also structures having chemical features in devices. Although many of the cases have more than one point at issue, this book selects only one point at issue in each of the cases especially from the viewpoint of making the most of court cases in practice. This book also selects as many court cases as possible so long as, even if their points at issue relate to irregularities by the Japan Patent Office or mistakes in the procedure by the applicants, the title of invention, etc. relate to chemistry or biotechnology.

This book is greatly different from many other similar books in that it specializes in the fields of chemistry and biotechnology and is written from the viewpoint of making the most of court cases in practice. As a result of research, the author found that “440” IP-related decisions were posted on the HP of the court in 2017. This book selects “103” decisions that are considered relating to the fields of chemistry and biotechnology (some decisions were deleted after posted on the HP of the court, but this book includes such decisions whose data could already be obtained). This number of decisions accounts for “about 23.4%” of the total number of IP-related decisions in 2017.

The recent IP practice has been becoming more and more difficult to properly handle without knowledge of the latest court cases. It has been important to know the latest court cases as soon as possible and make the most of knowledge from them in practice. This book not only shows overviews of individual decisions but also presents data analyses.
and classification lists of decisions in the chemical and biotech fields. With the help of the lists, graphs, etc., readers can easily see the number and types of cases where novelty, inventiveness, support requirements, clarity requirements, and amendments were accepted, and conclusions of points at issue. Besides, each of the decisions is introduced so that readers can catch at a glance such information as date of decision, case number, court, judge, parties, title of invention, etc., points at issue, relevant article, and field. “Overview of Case” focuses on important matters and points at issue that IP practitioners want to know, briefly describing them. Also, “Judgment (Summary)” states the conclusion as briefly as possible and “Grounds (Summary)” summarizes minimum necessary grounds for decision in relation to the conclusion. “Notes for Interpretation” gives useful information for interpretation of the articles shown in the decision rather than from a practical point of view. “Personal Comments” briefly state the author’s personal impressions and views. If there is a need to go over the court case, please refer to its decision.

“Overview of Case” also shows as detailed information as possible such as application numbers or patent numbers, trial numbers, and publication numbers of cited references, so that readers can make the most of such information for case study. It is recommended to actually do case study on a case to discuss.

Please note that the data are those limited within the year 2017.

I hope that this book would be helpful to IP practitioners in the fields of chemistry and biotechnology.

March in 2018
Koichi Hirota
Patent Attorney
Analysis data of court cases

Fig.1
Percent circle graph by technical fields

- Chemistry: 51% (53)
- Pharmaceuticals: 36% (37)
- Biotechnology: 11% (11)
- Food: 2% (2)

Fig.2
Percent circle graph by type of cases

- Request for rescission of the trial decision: 62% (64)
- Other requests: 38% (39)

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**Fig. 3**
Percent circle graph by courts

- Supreme Court: 85% (88 cases)
- Intellectual Property High Court: 12% (12 cases)
- Tokyo District Court: 2% (2 cases)
- Osaka District Court: 1% (1 case)

**Fig. 4**
Percent circle graph by divisions of Intellectual Property High Court

- First Division: 31% (27 cases)
- Second Division: 15% (13 cases)
- Third Division: 29% (25 cases)
- Fourth Division: 25% (22 cases)
Analysis data of court cases

Fig. 5

Percent circle graph by divisions of district courts

Tokyo District Court Civil Division 29
Tokyo District Court Civil Division 46
Osaka District Court Civil Division 21
Second Petty Bench
Tokyo District Court Civil Division 40
Tokyo District Court Civil Division 47
Osaka District Court Civil Division 26
IP High Court Special Division

Fig. 6

Percent circle graph by conclusions of requests

Dismissal of requests
Approval of requests
Fig. 7
Percent circle graph by conclusions of requests for rescission of the trial decision

- Dismissal of requests
- Approval of requests

43% (27)
57% (36)

Fig. 8
Percent circle graph by conclusions of other requests

- Dismissal of requests
- Approval of requests

21% (6)
79% (23)

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Fig. 9

Percent circle graph by conclusions of judgment of novelty

- 100% (1)

Fig. 10

Percent circle graph by conclusions of judgment of inventive step

- 38% (12)
- 28% (9)
- 16% (5)
- 9% (3)

(Absent → Absent)  (Present → Present)  (Absent → Present)  (Present → Absent)  (Absent)
Fig. 11

Percent circle graph by conclusions of judgment of Inventive step in chemistry

Fig. 12

Percent circle graph by conclusions of judgment of inventive step in pharmaceuticals
Analysis data of court cases

**Fig. 13**

*Percent circle graph by conclusions of judgment of inventive step in biotechnology*

- 100% (1)
- *(Absent → Absent)*

**Fig. 14**

*Percent circle graph by conclusions of judgment of inventive step in food*

- 50% (1)
- *(Absent → Absent)*
- *(Absent → Present)*
Analysis data of court cases

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Fig. 16
Percent circle graph by conclusions of judgment of <Inventive Step> by First Division of Intellectual Property High Court

Fig. 17
Percent circle graph by technical fields as well as conclusions of judgment of <Inventive Step> by First Division of Intellectual Property High Court
Fig. 18
Percent circle graph by conclusions of judgment of *Inventive Step* by Second Division of Intellectual Property High Court

- (Absent → Absent) 25%(1)
- (Present → Present) 50%(2)
- (Present → Absent) 25%(1)

Fig. 19
Percent circle graph by technical fields as well as conclusions of judgment of *Inventive Step* by Second Division of Intellectual Property High Court

- [Chemistry] 25%(1) 25%(1)
- [Pharmaceuticals] 25%(1)

- (Absent → Absent) 25%(1) 25%(1)
- (Present → Present) 50%(2)
- (Present → Absent) 25%(1) 25%(1)
Analysis data of court cases

Fig. 20

Percent circle graph by conclusions of judgment of <Inventive Step> by Third Division of Intellectual Property High Court

*(Absent → Absent)*  *(Absent → Present)*  *(Present → Absent)*

Fig. 21

Percent circle graph by technical fields as well as conclusions of judgment of <Inventive Step> by Third Division of Intellectual Property High Court

*(Absent → Absent)*  *(Absent → Present)*  *(Present → Absent)*

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Fig.22
Percent circle graph by conclusions of judgment of <Inventive Step> by Fourth Division of Intellectual Property High Court

40% (4) 10% (1)
20% (2) 30% (3)

(Absent → Absent) (Present → Present) (Absent → Present) (Present → Absent)

Fig.23
Percent circle graph by technical fields as well as conclusions of judgment of <Inventive Step> by Fourth Division of Intellectual Property High Court

[Chemistry] 20% (2) [Pharmaceuticals] 10% (1)
[Chemistry] 10% (1)
[Pharmaceuticals] 30% (3)

(Absent → Absent) (Present → Present) (Absent → Present) (Present → Absent)