News: Conclusion has been made on How to Interpret Product-By-Process Claims in Japan.

It has been clarified that both at an examination stage and upon interpretation of rights in Japan, the product-by-process claims will be judged based on the Identical Product Theory. In other words, the product recited in the product-by-process claims is not limited by the process recited therein, but the product-by-process claims are judged based on whether the claimed products themselves are identical (Decision by the 2nd Petty Bench of the Supreme Court on June 5, 2015 (2012 (Jyu) 1204)).

The original decision by the Intellectual Property High Court held that "Genuine Product-By-Process Claims", which have inevitable reasons to be defined with the process, should be interpreted without being limited to the process, while "Non-Genuine Product-By-Process Claims", which do not have such reasons, should be interpreted by being limited to the process.

The Supreme Court, however, overturned this decision by the Intellectual Property High Court. The Supreme Court understands that whether there are inevitable reasons to define processes in claims is a matter of clarity requirements for claims.