

## Could the Current International Exclusive Jurisdiction Clauses for Registered Intellectual Properties be Justified? (summary)

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Article 3.5 of the Japanese Code of Civil Procedure provides that Japan should have its international exclusive jurisdiction over several categories of proceedings with their connecting points being within Japan's territory. Many academics in Japan have insisted that this provision have a reflecting effect, and then Japan reject its own jurisdiction when the connecting point employed by the provision points to a foreign country. However, I don't think this majority opinion could be clearly plausible. Each of countries has its exclusive jurisdiction clause, which reflects its own sovereignty interests. All countries' sovereignty interests are not sure to be the same. If we would like to respect a foreign country's sovereignty interests, there is no doubt that we have to check out the country's own exclusive jurisdiction clause. Therefore, even though we let the Japan's exclusive jurisdiction clause have a reflecting effect, it never means that we precisely recognize and respect a foreign country's sovereignty interests.

Secondly, article 3.5 (2) of the Code stipulates that Japan have its exclusive jurisdiction over the proceedings related to a registration when the place where the registration is to be made is within Japan. This provision applies to intellectual property right cases, and the majority insists that it should cover the dispute over the validity of registration as well as those where the contractual parties fight over which one is entitled to a registration. I cannot agree to this majority opinion neither. In the case of intellectual property rights, a technical invention generally leads to patent registrations in many countries and the registered patent holder (assignor) might hope to make bulk sale of all his/her patents to an entity (assignee). Think over the case where the assignor and the assignee dispute over which one is entitled to all the patent registrations they deal in. According to the majority opinion, which has strongly supported a reflecting effect of international exclusive jurisdiction clauses, Japan could only extend its jurisdiction over the dispute related to the Japanese patent, but the disputes related to other patents would have to be brought to one or more foreign countries' courts. However, this conclusion could be contrary to transaction purposes common to the assignor and the assignee, and then get detrimental to their legal

foreseeability.

This paper has finally come to the conclusion that (1) a reflecting effect of the exclusive jurisdiction clause should be denied, and (2) Article 3.5 (2) of the Japanese Code of Civil Procedure should be thought to exclude the dispute over the issue who is entitled to a registration.