



Overview of Patent Litigation in the United States

米国特許訴訟の概要

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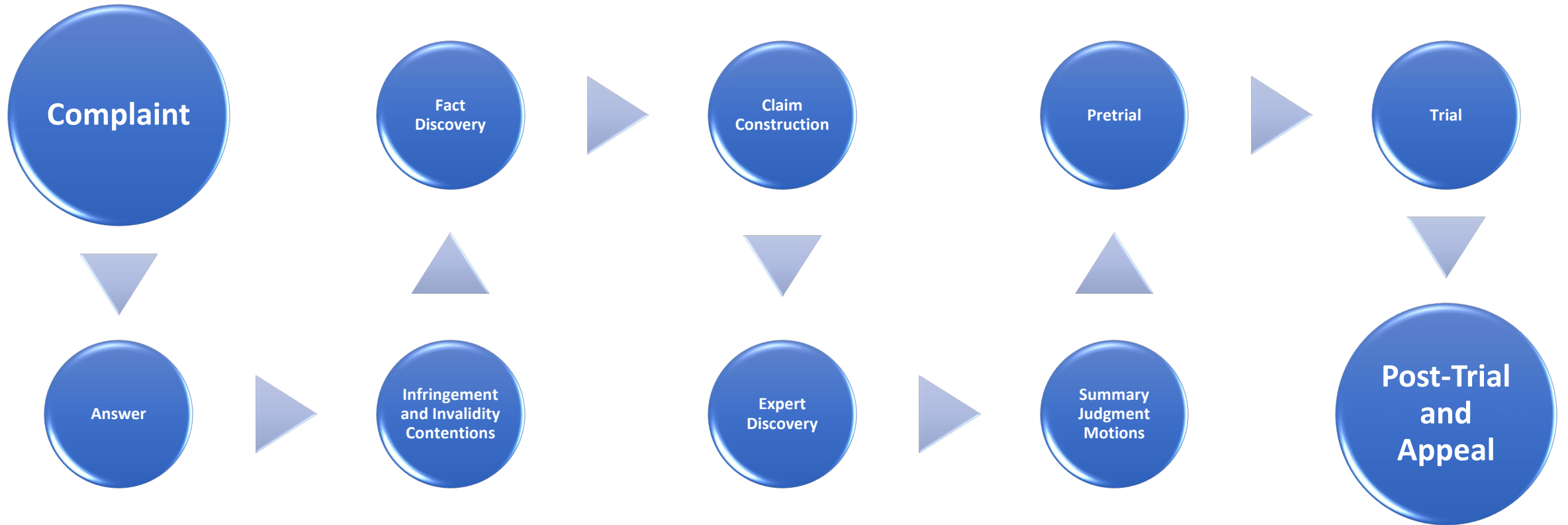
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ANATOMY OF PATENT INFRINGEMENT SUIT 特許侵害訴訟の構造

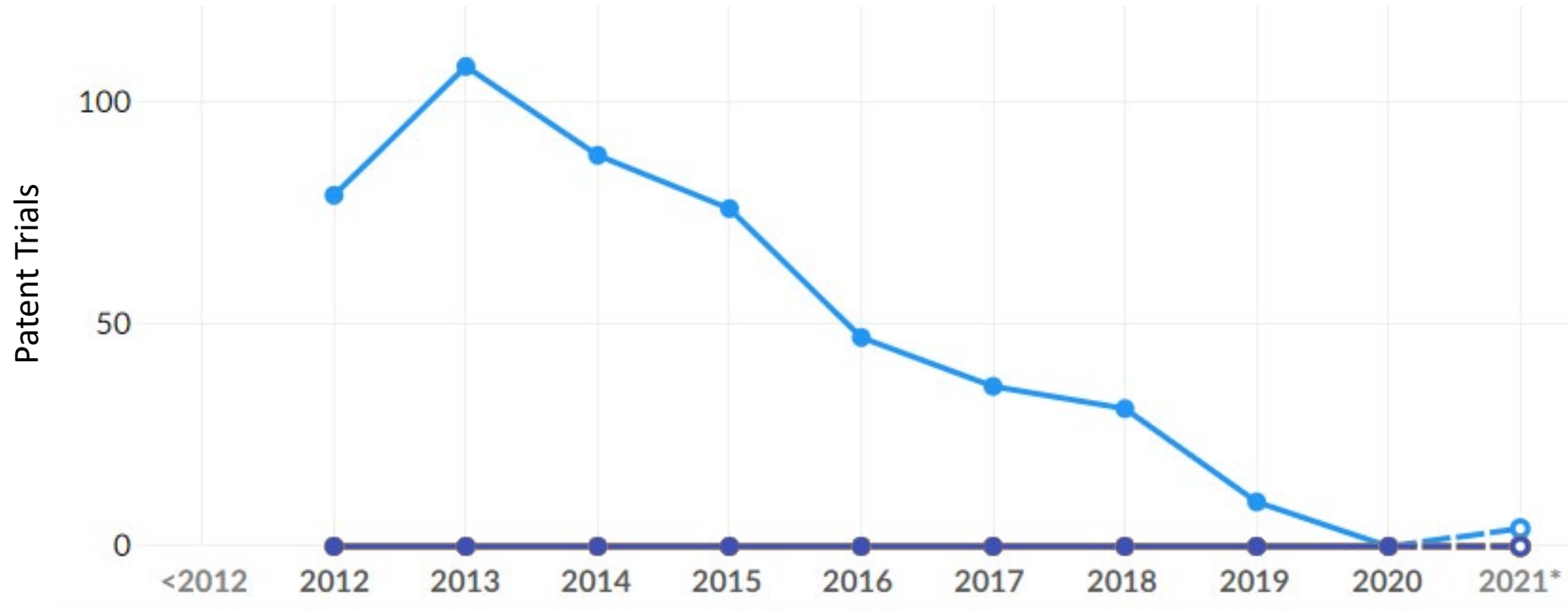
Key Case Milestones 主要なマイルストーン



AVERAGE TIMELINE FOR KEY CASE MILESTONES 平均所要時間

Case Event	Typical Timing After Complaint
Complaint	
Answer	+ 1 month
Infringement and Invalidity Contentions	+ 2-3 months; + 4-5 months
Fact Discovery <ul style="list-style-type: none"> • Document production • Written discovery • Depositions 	+ 10-14 months
Claim Construction	+ 5 months
Expert Discovery	+ 16 months
Summary Judgment Motions	+ 10-18 months
Pretrial	+ 18-22 months
Trial	+ 18-24 months
Post-Trial and Appeal	+12-18 months after final judgment

VERY FEW U.S. PATENT CASES GO TO TRIAL 判決に至るケースは稀です



- Less than 3% of all civil cases filed in the United States result in a trial

DISCUSSION OF PATENT LITIGATION PHASES 特許訴訟の各段階について

- Must be based on thorough pre-suit investigation and good-faith belief of infringement
- Contains high-level description of the infringing product and infringing activity
- Must identify the type of infringement (direct, indirect) and the remedy sought (damages, injunction, enhanced damages/fees)
- Does not need to contain specific evidence of infringement or amount of damages

- Usually due 21 days after service of the complaint (often extended 30 days or more)
- Admits or denies allegations in the complaint
- Asserts defenses and counterclaims (e.g., invalidity, inequitable conduct)

- Direct and Indirect Infringement 直接・間接侵害
 - Direct – the accused party makes, sells, uses the accused product or performs all steps of a claimed method
 - Indirect – the accused party causes others to perform the claimed method or contributes to the infringing by a third party by providing components of the claimed apparatus without non-infringing use
- Literal infringement and the doctrine of equivalents 文言侵害と均等論
 - Literal – accused product or method meets every word of the claim
 - Equivalents – accused product or method has an element that performs the same function, in the same way and achieves the same result as any missing claim limitation

- Basis for Invalidity Position
 - Inappropriate Subject Matter (Section 101)
 - Defect in Specification or Claims (Section 112)
 - Prior Art – Printed Publications and Use/Sales (Section 102/103)
 - Others – Improper Inventorship
- IPR Estoppel – Limits to Invalidity Assertions in District Court
 - Applies to grounds that a party “raised or reasonably could have raised” during the subject IPR
 - No IPR Estoppel for Non-Instituted IPR Petitions

- Process by which the court interprets the terms of the claims and provides definitions that will govern the case
- Claim construction basics:
 - terms generally given their ordinary meaning to someone of skill in the art in light of the patent specification
 - terms can vary from ordinary meaning if special meaning provided in the patent specification or prosecution history
 - meaning of a term can come from patent documents (intrinsic evidence) or from dictionaries, books, treatises, articles and expert testimony (extrinsic evidence)
- Timing – usually before or during fact discovery, but can be after expert discovery in rare cases

- Process through which parties in litigation can request and obtain relevant documents and testimony
- Discoverable materials include:
 - paper documents
 - electronic records
 - e-mails
 - other records (for example, databases)
- Failure to follow discovery rules can result in penalties, including:
 - monetary fines
 - loss of rights
 - adverse rulings

- Requests for Production 提供要求
 - Written requests for documents, electronically stored information, tangible objects, or inspection of physical locations
- Interrogatories 質問状
 - Written questions requiring written answers
- Requests for Admission 自認要求
 - Written statements asking a party to admit that each statement is true
- Depositions 証言録取
 - Out-of-court proceedings during which a witness responds under oath to questions presented by an attorney

- Experts
 - Paid witnesses hired by each party to explain opinions based on the facts of the case to the jury and their expertise concerning the issues that the jury must decide
- Technical Expert
 - Engineers or scientists with expertise in technical field (e.g., mechanical engineering)
 - Will testify about noninfringement and invalidity issues
- Damages Expert
 - Typically economists or accountants
 - Calculate lost profits and reasonable royalty rates

- Can dispose of a single issue or entire case without a trial if:
 - Moving party entitled to judgment based on undisputed facts
- Usually filed after close of fact discovery
- Frequently denied if other party can show a dispute of a fact material to the issue
- Typical examples:
 - Summary judgment of non-infringement possible if no dispute over the operation of the accused products
 - Summary judgment of invalidity possible if no dispute over the disclosure of the prior art

PRE-TRIAL プリトリアル (公判前準備手続)

- Court resolves objections to the admissibility of evidence:
 - Objections to witnesses
 - Objections to exhibits and demonstratives
 - Limits on expert testimony
- Court also issues (*in limine*) rulings regarding the admissibility of evidence or conduct at trial
- Examples:
 - Patentee cannot compare its product to the accused product to show infringement
 - Defendant not permitted to call patentee a “troll”
 - Patentee may not refer to total sales of the defendant

TRIAL トライアル（公判）

- Jury (members of public decide) or Bench Trial (judge decides)
- Jury selection – process of choosing jurors to decide facts
- Opening statement: lead counsel discusses evidence and shows how they intend to prove their case
- Presentation of evidence: exhibits, witnesses, deposition testimony
- Closing argument: lead counsel argues why the jury/judge should find in their favor based on the evidence presented
- Verdict – decision of jury/judge on issues presented

- May raise the following issues on appeal:
 - Legal errors (claim construction)
 - Fact errors (infringement, validity, damages)
 - Equitable and procedural errors (inequitable conduct, evidentiary rulings)
- Three standards of review on appeal:

○ Legal issues:	de novo
○ Fact issues decided by the court:	clear error
○ Fact issues decided by the jury:	substantial evidence
○ Equitable issues decided by the court:	abuse of discretion

REMEDIES 救済

- Possibilities in patent cases:
 - Lost profits - profits patent owner would have received absent infringement
 - Reasonable Royalty – amount reasonable patent owner and infringer would have agreed to if negotiated prior to infringement
 - Injunction – court order halting continued sales of the infringing product
 - Lost profits and injunction generally not available to NPEs

- U.S. rule – attorney’s fees are not automatic to prevailing party
- Available only in “exceptional cases” involving willful infringement or other egregious conduct (e.g., litigation misconduct or frivolous allegations)
- Available to plaintiff or defendant
- If court finds case exceptional it may increase damages 3x and/or award attorney fees to the prevailing party

INJUNCTIONS 差し止め

- Court order to stop selling infringing products
- Only available to parties that can show:
 1. that they have suffered an irreparable injury
 2. monetary damages, are inadequate to compensate for that injury
 3. the balance of hardships between the plaintiff and defendant favor an injunction
 4. the public interest furthered by a permanent injunction
- NPEs are rarely able to make above showing

FEES AND COSTS 費用

MEDIAN FEES OF PATENT LITIGATION THROUGH TRIAL AND APPEAL

判決及び控訴に至るまでの特許訴訟費用の概算値

<u>AMOUNT AT STAKE</u>	<u>MEAN FEES</u>
\$1-10M	\$1.9M
\$10-25M	\$3.1M
>\$25M	\$5.2M

<u>AMOUNT AT STAKE</u>	<u>75% - THIRD QUARTILE</u>
\$1-10M	\$3.5M
\$10-25M	\$6.0M
>\$25M	\$9.0M

- Varies greatly on district court
- Varies greatly on litigation conduct of parties