

THE JAPANESE TECHNICAL INVESTIGATOR SYSTEM'S REFERENCE MEANING TO CHINA

Written by Chonghan Hu

Professor, Guangdong University of Foreign Studies, China

ABSTRACT

China has established a system of technical transfer officers to participate in litigation since 2014 and is still in its infancy. Japan's technical adjustment system is for a longer period of time, the various aspects of the system are more mature. Therefore, Japan's transfer officer system for China's technical investigator system has a strong reference significance. By drawing on the relevant system and of Japanese technical transfer officers, and combining it with the actual situation of our country, we can effectively avoid all kinds of problems in our country's technical investigator system.

Keywords: Japan Technical Survey Officer System Reference Meaning

INTRODUCTION

In December 2014, the Supreme People's Court of China issued the Interim Provisions of the Supreme People's Court on certain issues related to the participation of intellectual property technology investigators in litigation activities (hereinafter referred to as the Interim Provisions), marking the formal establishment of a system of technical investigators in China.

The System of Technical Investigators of Japan was first established by the Tokyo High Court in April 1949 and has since been used by South Korea and Taiwan. By drawing on the implementation of the Japanese technical investigator system, and combined with the actual situation in China, we can effectively avoid all kinds of problems in the Chinese technical investigator system.

(1) Japan's technical official system

Japan has established technical investigators in the Osaka District Court, the Tokyo District Court and the Tokyo High Court, which specialize in intellectual property cases involving invention patents, utility models and computer software. According to the relevant provisions of Article 57 of the Law on Courts of Japan, the Technical Investigating Officer is appointed by the Court to be responsible for the hearing of the case and the relevant investigation required by the Court.

(2) Methods for selecting and Japanese technical transfer officers

In general, the range chosen by the Japanese Technical Investigators is as follows: experience in trial and trial operations in the Office of the Patent Office, technically proficient professionals, and usually experienced in the patent area of utility models. Under the current system, personnel who have been with experience as judges for 15-31 years in the Office are selected to perform in a full range of technical areas, leaving the Office at the time of dispatch for a term of three years and generally returning to the Office at the end of their terms of office. The technical investigating officer in charge of the case did not give his name. Also, unlike magistrates and court clerks, Japan's technical does not apply the rules of exclusion and avoidance.

(3) Technical adjustment report

Technical transfer officer has to provide the judge with the technical reference opinion of the case in writing or orally, therefore, the Japanese technical investigation officer should produce the technical investigation report according to the judge's instructions, but the investigation report is only a reference to the judge to understand and judge the facts of the case, in principle, cannot determine the facts of the case, at the same time, Japan's technical investigation report is also not made public.

(4) Technical transfer parallel mode between officials and professional members

Japanese courts introduced professional committees in April 2004 with the aim of achieving a high degree of specialization in IP trials. Most of the professional members are top experts and scholars in various fields of expertise, have been engaged in their field of research work, its professional and technical expertise, especially cutting-edge technology to understand and master better than technical investigators.

The introduction of the System of Professional Committees in Japan is significant: the financial and staffing constraints of specialized ipers are relatively loose when hiring professional members, so the number of experts in professional committees is relatively large, the scope of their technical areas will be wider, and a strong professional committee can handle the technical difficulties left behind by technical transfer officials. The system of technical investigators and the system of professional committees complement each other and coexist organically, forming Japan's technical investigator system has a long time to establish, the system is more mature, for China's technical investigator system has a greater reference value.

THE TECHNICAL TRANSFER THE ELECTION OF THE OFFICIAL

From the experience of the countries and regions implementing the system of technical, the selection of technical transfer officers has always been a difficult problem. Most of Japan's technical investigators are patent examiners in the Charter Office, but their terms of office are relatively short, their personnel stability is not strong and their mobility is large. Besides, although the Japan Charter Office's examiners are dispatched on a full-time basis, they will

return to their examiner positions after the dispatch to continue their work, which will inevitably affect the neutrality of the technical transfer officers. In China, in patent administrative litigation cases, the defendant is usually a patent review board, which is attached to the patent office. This more or less intersects with the identity of the examiner, which in turn may affect the neutrality of the technical investigator.

Besides, because China is still a developing country, the level of economic development, national education level and so on are still a certain gap with developed countries, which will also make the technical investigator system in China there are special problems. Technical adjusters give professional advice on the technical characteristics of patent cases. In general, patent cases that go to litigation have high technical complexity and cutting-edge technology. Moreover, patent cases are not only related to patent law, but also a large number of related laws such as contract law and tort liability law. Therefore, the position of technical investigator not only requires a high degree of scientific and technological knowledge but also needs to have legal knowledge. However, China's ongoing reform of the judicial system requires judges as the main body, in the pay of technical investigators also need to open the gap with judges, so the technical investigators will not be high pay, which further affects the selection of technical investigators.

Another important issue is that patent litigation usually involves a wide range of scientific and technological fields, such as semiconductors, computers, electricity, etc. in just one field of electricity. And a technical transfer officer's level of knowledge is difficult to deal with more areas, which also brings difficulties in the selection of technical transfer officers.

In summary analysis, we can see that the selection of technical investigators involves personnel qualitative, neutral, technical investigators pay, technical adjustment the technical field of the depth of coverage, breadth and many other issues. The solution to these problems is not overnight, and it is necessary to move forward in the exploration in the light of the actual situation.

Japan's current practice is well worthy of China's japan uses a parallel system of technical

investigators and professional committees. If, in a patent case, there is a general technical problem, the technical investigator system is activated. However, if there are problems that are too complex and difficult to exceed the capacity of the technical investigator, the professional committee system is activated. The author thinks that this system is very worthy of Reference by China. For example, Apple patent infringement cases, not only involved in the large but also involved in the technical content is very cutting-edge, very complex, which also brings many challenges to the technical ability of technical transfer officers. Such as the use of professional committee system, such as from the National Institute of Higher Education, Research Institute and other experts to form a technical committee to give advice and opinions on the technical issues involved in the case, not only to ensure that judges grasp the case more accurately, but also to make the parties involved more convinced.

THE POSITIONING OF OR OPINIONS OF THE TECHNICAL ADJUSTMENT SYSTEM

From the current technical transfer-officer system in China, the technical transfer-officer is as a judicial auxiliary, the technical transfer officer report or opinion is used as a reference for judges. The subsidiarity and reactivity of the technical adjustment officer determine that the technical adjustment report or technical adjustment opinion has limited influence on the court's decision.

Moreover, technical reports or opinions of technical transfer officers are usually not made public. This also brings some trouble to the technical investigation report or the legal status of the technical investigation report or opinion. Controversially, the technical adjustment officer's technical report or opinion should be made public and used as evidence.

The problem that comes with it is that evidence usually requires the prosecution and the defense to prove it. The technical transfer officer is used without any physical examination, which is inconsistent with the rules for the use of evidence. Moreover, although the technical investigation report or opinion of the technical investigator is issued by professionals, there

will inevitably be errors and omissions, without the prosecution and defense sides and professionals of the verification process, these omissions and errors are difficult to be unfamiliar with science and technology judges, which will inevitably affect the technical adjustment.

Another view was that technical adjustment reports or opinions of technical investigators were internal reference documents of the Court and should not be used directly as evidence and should not be made public. This is also the mainstream view of China's technical investigator system. However, if the judge refers more to the technical investigation report or opinion of the technical investigating officer, and even makes a decision on the case according to the report or opinion, it will inevitably bring the dispute of the technical investigation officer to the judicial power. And if the judge does not take the technical investigation report or opinion of the technical investigating officer, it will inevitably lead to the challenge of the losing party, and in the absence of the disclosure of these reports or opinions, it is not appropriate for the technical officer to comment in the face of these doubts the official is not suitable to comment based on the principle of confidentiality, and it is possible to place the technical investigating officer on the opposite side of the judge.

No matter what the point of view, there are pros and cons, the author suggests that the court, if necessary, can also appropriately disclose the technical investigation officer issued a letter of inquiry or opinion report, explain the basis of the case, for the prosecution and defense if the need to appeal, appeal for reference.

TECHNICAL ADJUSTMENT ACTIVITIES CARRIED OUT

Technical investigators usually need a certain amount of space and equipment to conduct technical investigation activities to form a more professional opinion. In some areas, these sites and equipment are very expensive. In the semiconductor field, for example, the cost of measuring the shape of a semiconductor's surface with an electric mirror is significant, which also presents a significant obstacle to the issuance of a report or opinion by a technical

investigator.

At this stage, the average award of patent infringement cases in China is relatively small, and it is easy to see that the cost of technical investigation is close to or exceeds the amount awarded, which also brings difficulties to the development of technical adjustment. While it is usually the courts that pay for technical investigations, this situation is relatively embarrassing for the courts, which would require significant funding and could even result in a significant waste of State finances if technical investigations were carried out. If it is not carried out, it will inevitably affect the fairness of patent cases.

The author believes that in dealing with such cases, we cannot rely solely on technical investigators. According to the provisions of China's current civil litigation law, it also includes special auxiliary personnel such as judicial identification, expert jurors and expert support persons. The existing laws and regulations do not provide for the intersection of the roles, rights and obligations of this auxiliary personnel and technical investigators. The author suggests that, according to the existing judicial practice, and in the light of the specific situation of our country, referring to the experience of Japan, Korea and other countries similar to the implementation of the technical adjustment official system, specify clear and clear rules to clarify the cross-cooperation between various roles, these disputes can be resolved to a great extent.

CONCLUSION

At present, China's technical adjustment official system is still in its infancy, in the specific practice of China's intellectual property technology investigator system, the relevant system outside the domain can only be used for reference, China's technical investigator system needs to further combine the actual situation in China to explore and move forward.