

The Enforcement of Patent Rights in Germany, Japan and the U.S.

Research Project

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Abstract:

A patent confers on its holder (the patentee) the privilege to exclude a non-authorized party from using the technology invented by the patentee and protected by the patent. That said, a patent is only valuable if it is enforceable. Germany, Japan and the U.S. are the most important and arguably the most advanced jurisdictions, when it comes to patent right protections. Given the long industrial history of these nations who were the largest economies during the latter half of the twentieth century, a tendency to recognize a strong need for protection of innovations and inventions seems only logical. Germany, Japan and the U.S. have made substantial efforts to develop an efficient system of patent enforcement. While various treaties make it comparatively easy to register patents in a variety of jurisdictions, the enforcement of patent rights remains to be a national matter, during which the national rules of those countries in which the patent has been infringed and in which the patent should be enforced are determining the outcome of the infringement action. A thorough understanding of the different national regulations is therefore of crucial importance. Currently, Germany, Japan and the U.S. are the most significant venues for patent enforcement in the world.

This research will provide an in-depth examination and analysis of the current state of enforcement-related measures and remedies available to patentees in these three jurisdictions. In particular, this research will focus on local and international jurisdiction rules, standing requirements and the key elements of civil procedure such as evidence collection, border measures, warning letters, preliminary injunction proceedings and declaratory judgment actions. A detailed remedy section will analyze the current stage of permanent injunctive relief and the requirements for, as well as the computation of, damages awards, and will cover additional remedies available in the different jurisdictions.