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PATENT INFRINGEMENT IN JAPAN IN THE AGE OF GLOBALIZATION: REVISITING THE PRINCIPLE OF TERRITORIALITY AND CROSS-BORDER INFRINGEMENT

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SPEAKER:
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ABSTRACT:

With globalization, the number of cases involving cross-border patent infringement has been increasing. In Japan, there have been court rulings that strictly applied the principle of territoriality, concluding that cross-border actions do not constitute patent infringement. However, recent rulings have recognized actions as constituting the implementation of patented inventions, even if part of the actions cross borders.

Strict application of the principle of territoriality can lead to unjust outcomes, resulting in insufficient protection of patent rights in Japan. On the other hand, a more flexible interpretation that recognizes patent infringement can significantly harm the predictability for companies and potentially hinder industrial development, as it may also involve criminal penalties.

This lecture will introduce the recent Supreme Court ruling in Japan regarding the "Comment Distribution System Case" (Second Petty Bench of the Supreme Court, 3 March 2025), reaffirm the significance of the principle of territoriality, and discuss how to approach the determination of cross-border patent infringement in the future.

SPEAKER BIO:

Makiko Takabe is Of-Counsel at Nishimura & Asahi, Japan's largest law firm. She also serves as a Visiting Professor at Waseda University Faculty of Law, chairs the Policy Promotion Council of the Japan Patent Office, and is a member of the Cultural Affairs Council. Previously, she held the positions of Chief Judge at the Intellectual Property High Court and President of the Takamatsu High Court, retiring in 2021. With over 40 years of judicial experience, she has handled a wide range of civil cases, including more than 22 years specializing in intellectual property law. Some of the notable cases she has presided over include the Tokyo District Court's Roman Holiday Case (11 July 2006), the Intellectual Property High Court's Grand Panel Cases such as Carbon Dioxide-Containing Viscous Composition Case (7 June 2019) and Beauty Device Case (28 February 2020), and the Supreme Court's Kirby Case (11 April 2000, as the Supreme Court's Judicial Research Official).

