



Trends of Industrial Property Rights



Circumstances of Application and Registration and Current Status of Examination and Appeals/Trials at Home and Abroad

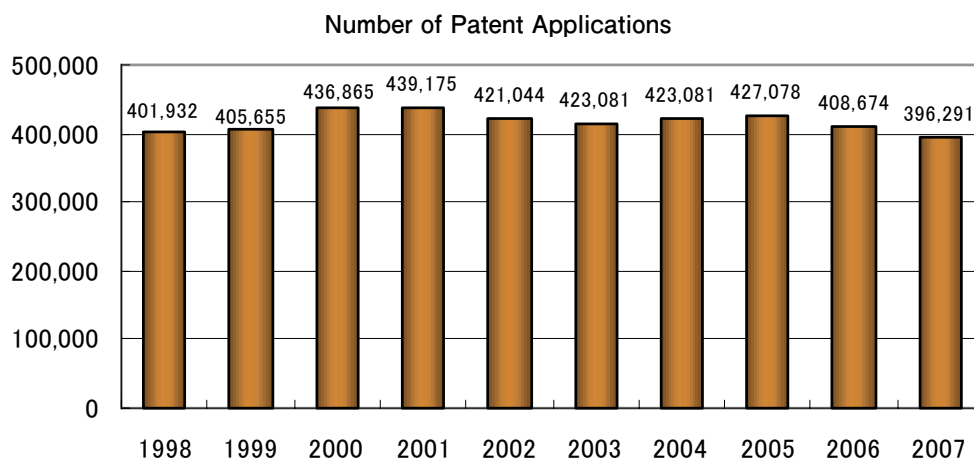
1. Patent

(1) Changes in the number of Patent Applications and Requests for Examination, and Current Status of Patent Examination in Japan

1) Patent Application shifted toward Acquisition of Beneficial and High-quality Patent Right and Increasing PCT Applications

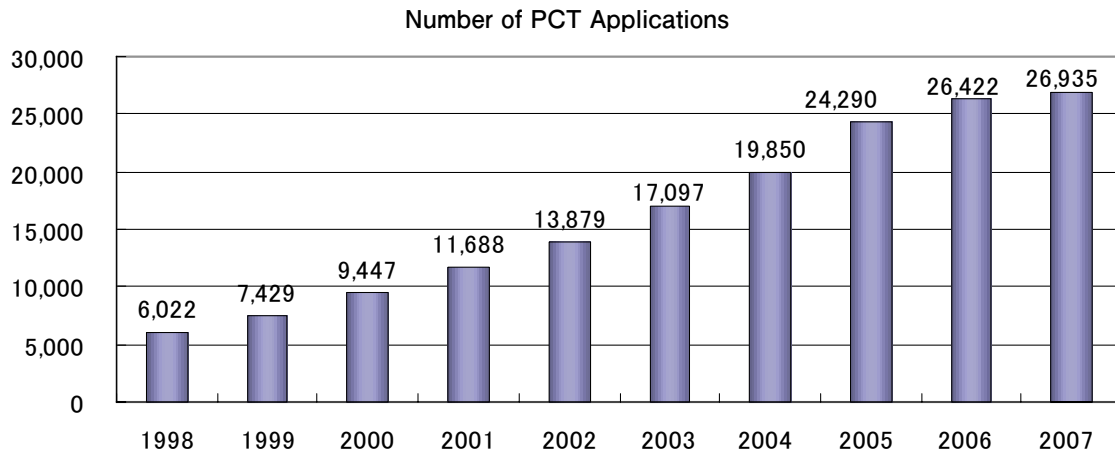
Although the annual number of patent applications filed in Japan has remained high at more than 400,000 since 1998, it declined by 3% from the previous year to 396,291 in 2007. One factor behind the decrease is that many Japanese companies are changing their strategy for intellectual property from aiming at acquisition of a large volume of patents, mainly for the purpose of the protection of improved manufacturing technology and support of product development to follow competitors, to the acquisition of beneficial and high-quality patents when carrying on their core business, and another factor behind the decrease is that more and more Japanese applicants have become aware of valuing application abroad with a global-filing strategy while carefully selecting domestic applications.

Meanwhile, due to progress in the globalization of business activities, the number of international applications filed with the JPO under the Patent Cooperation Treaty (hereinafter referred to as the "PCT applications") in 2007 was 26,935¹. This was an increase of 2% over the 26,422 applications filed in 2006, continuing to indicate the tendency to rise though the growth is becoming slower. As a result, Japan came second in the world for five years



¹ Number of international applications filed in the JPO as the receiving office.

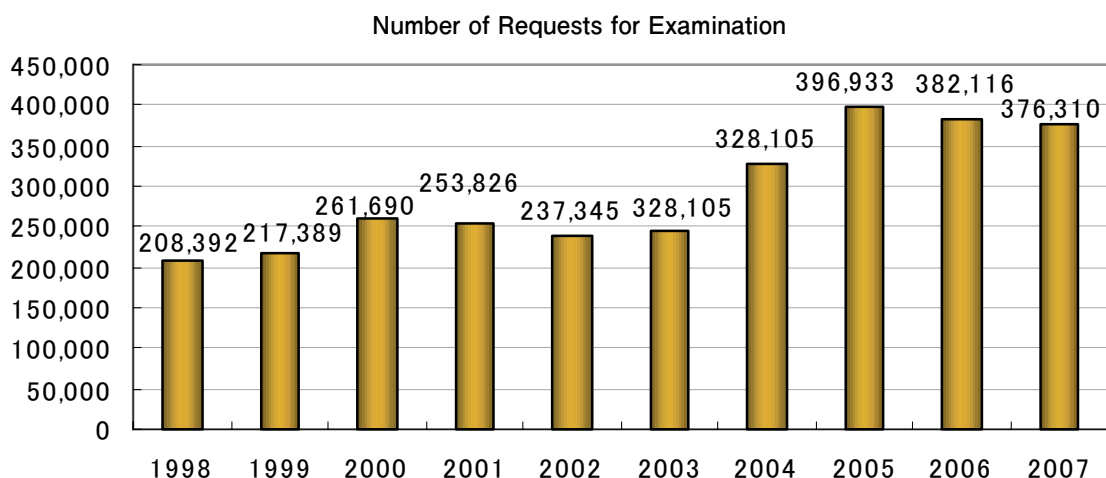
in a row in terms of the number of PCT applications filed.



2) Change to Decrease in the Number of Requests for Examination

The period² of requests for examination has been changed from seven years to three years for the applications filed in and after October 2001, and the applications subject to a three-year request period began to reach the time limit for examination for making the request for examination from October 2004 onward, so that the requests for examination for these applications in order to determine the necessity of obtainment of a patent were concentrated on the final year of the period. This dramatically increased the number of requests for examination, and together with the requests for examination, and together with the request period, gave rise to a temporary surge, or "bump", in the number of requests for examination. As a result, the number of requests for examination in Japan rose to 328,105 in 2004 (a 35% increase over the 2003 level), and further to 396,933 in 2005 (a 21% increase over the 2004 level). Another factor is the increase in the rate of requests for examination. While the rate³ of requests for examination for applications with a seven-year request period had shifted between 50% and 60%, the rate for the applications filed in 2002 to 2004, with a three-year request period, remained from 65% to 70%.

However, the number of requests for examination decreased slightly to 382,116 in 2006 (a 4% decrease over the 2005 level), as well as decreased continuously to 376,310 (a 1.5% decrease over the 2006 level in 2007).

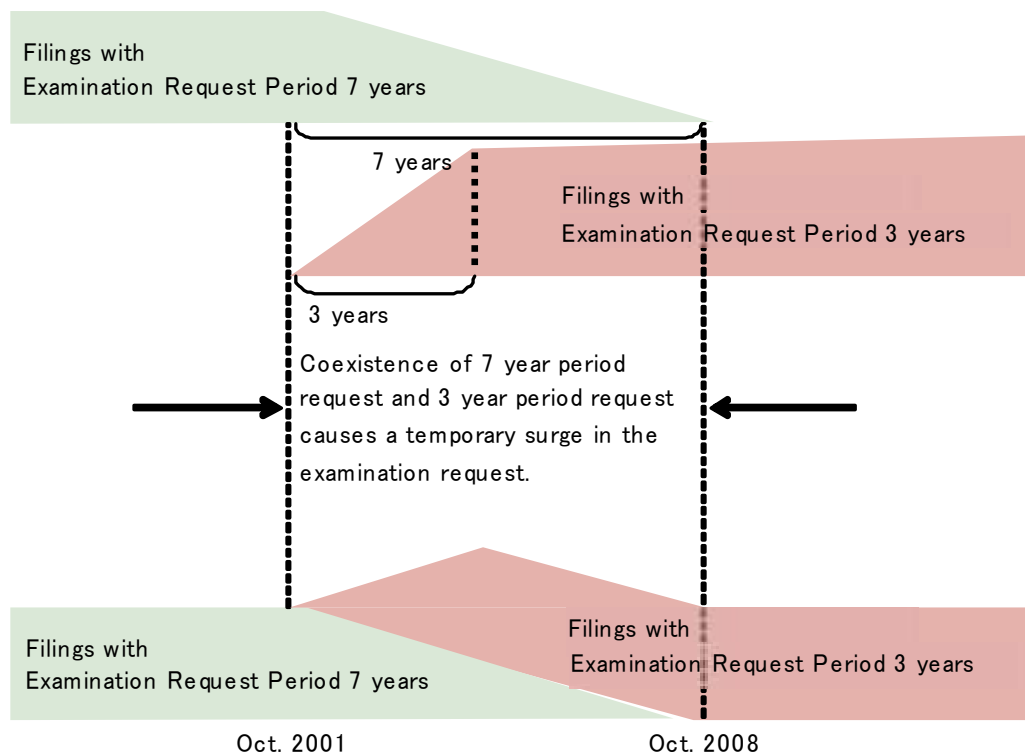


² In the EPO, it is ascribed that the request for examination should be performed within the period in which 6 months expire after the date of announcement of the publication of the European search report published after 18 months have passed from the date of filing. On the other hand, the USPTO has no examination request system and all applications are the object of examination.

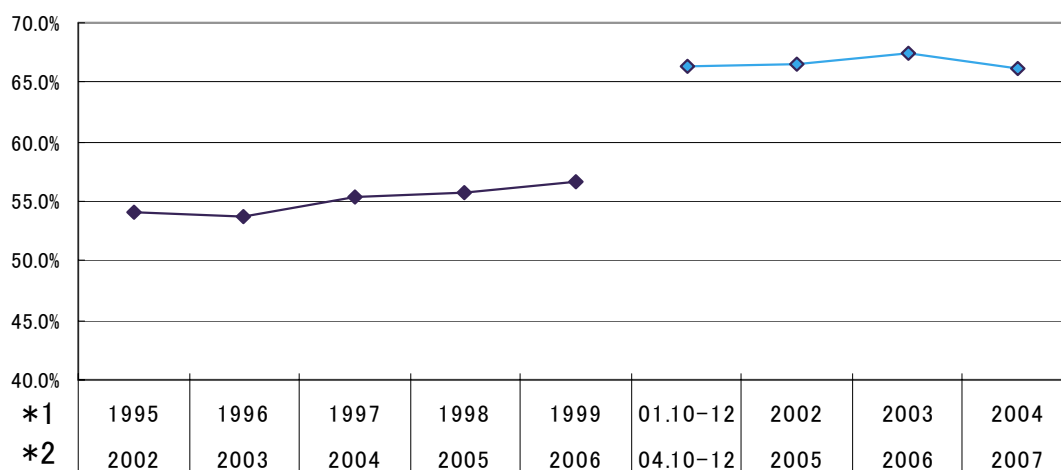
³ the rate of the applications for which the request for examination has been performed before the time limit for making the requests for examination in the patent applications filed within the predetermined period.

Thus, the "bump in requests" seems to have passed its peak, as well as all applications with a seven-year request period reach the time limit for making the requests for examination before the end of September 2008, so that the number of the requests for examination in 2008 is expected to take largely downward turn.

Rapid Increase in the Examination Request Due to Coexistence of New and Old Examination request Systems



Rate of Requests for Examination



*1: The year when the application was filed

*2: The final year to file the request for examination

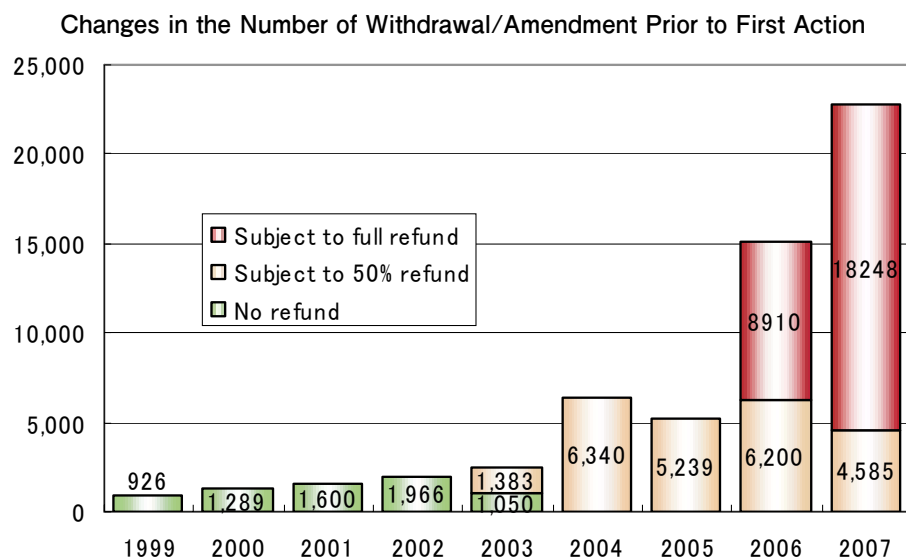
Note:

As for applications filed in and after October 2001, in order to select only the applications subject to a three-year request period, the filing date of an international application designating Japan is looked on as its international filing date. For other applications, the filing date of an international application designating Japan is regarded as on the date received by the JPO.

3) Surge in the Number of Withdrawals/Abandonment Prior to the First Action after Having Requested Examination

In April 2004, a new system of refunding the examination request fee went into effect. Under the new system, if an applicant withdraws or abandons the application (in and after October 2003) prior⁴ to the first action after having requested an examination, and requests a refund of the examination request fee within six months from the withdrawal or abandonment, a part (50%) of the fee is refunded to the applicant. In August 9, 2006, a system of refunding the full amount of the examination request fee, which stays in effect for one year only, was introduced. In this implementation period, there were about 27,000 withdrawals/abandonment of applications.

As a result, the number of withdrawals/abandonment of applications after requesting examination and before the first action has been increasing since August 2006, reaching about 23,000 in 2007, about 1.5 times as many as that of the previous year. In the system for the refund of the examination fee, the introduction of the full-refund system is considered to have provided an incentive to the applicants to reconsider⁵ the need for acquiring patent after requesting an examination.



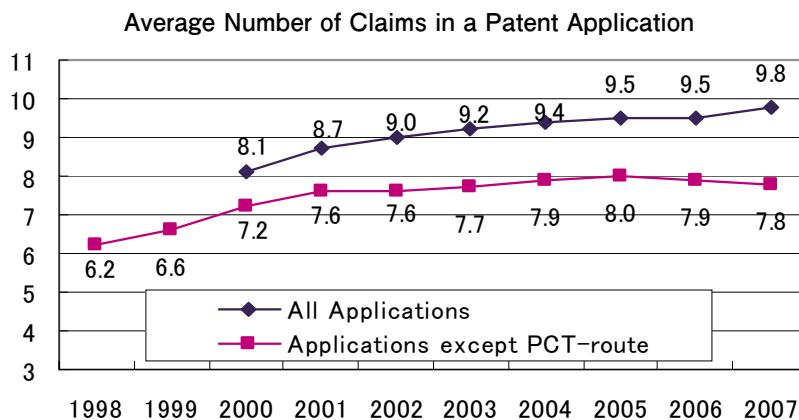
4) National Patent Applications Becoming More Complex and Advanced in Content

The content of patent applications is becoming more complex and advanced in line with the innovative progress in technology fields centering on such cutting-edge fields as biotechnology and nanotechnology and with the enhancement of the added values in order to differentiate products of manufacturers from competitive products in mature technology fields. Additionally, in the backdrop of globally expanding investment on R&D and the globalization of world economies, also in the JPO, the rate of applications from overseas and applications which are the basis for priority are increasing. These applications generally have a "large number of inventions (claims) per one application", so that the average number of claims in patent applications in the JPO are continuing to increase steadily.

Under such circumstances, the burden on examination (workload) per one application is increasing year by year and such a tendency is considered to continue also in the future.

⁴ before the delivery of the documents for the patent examination such as Notification of Reasons for Refusal etc. to the applicant.

⁵ By utilizing "Inquiry for the prospect of the examination start time", the timing for reconsidering the necessity to protect the right before the first action becomes apparent.



5) Increase in the Number of International Search Reports⁶ of PCT Applications

In line with the increase in the number of PCT applications, as shown in (I) 1) above, the number of international search reports has increased from 25,556 in 2006 to 26,033 in 2007, increasing by 2% over the previous year. Moreover, due to the adoption of the Enhanced International Search System, where a written opinion⁷ (similar to the one that used to be prepared at the international preliminary examination phase) have to be prepared at the same time as the international report, the international search workload for a single PCT application has increased. Meanwhile, since the adoption of the Enhanced International Search System in 2004, the number of international preliminary examination reports⁸ has been decreasing along with a decrease in the number of demands for an international preliminary examination report.



6) Increase in the Number of First Actions⁹ and Shortening of First Action Pendency

As mentioned above, the patent examination burden has increased every year due to (1) the more complex and sophisticated content of applications, (2) the increase in the number of international search reports to be

⁶ When a PCT application is filed and the Japan Patent Office (JPO) is selected as the international searching authority, an examiner searches relevant prior art and creates an international search report.

⁷ When a demand for international preliminary examination is made for a PCT application after the creation of the international search report, if the invention is found not to meet the prescribed requirements (novelty, inventive step, and industrial applicability) before creating the international preliminary examination report, the applicant is notified of the examiner's opinion through this written opinion.

⁸ The examiner creates an international preliminary examination report to indicate his/her final decision in the international preliminary examination.

⁹ First action is an examination performed at first following the request for the examination by the applicant.

prepared within the time limit set by the treaty, and (3) the increase in the examination workload per PCT application with the introduction of the Enhanced International Search System. In order to conduct timely and high quality patent examinations under these circumstances, the Japan Patent Office (JPO) is strengthening its examination framework and improving the efficiency of its examination work by steadily implementing various measures, including hiring fixed-term examiners who are about 500 persons in five years from FY2004 to FY2008 and increasing the outsourcing of prior art searches which has also increased in FY2007 by 8.1% over the previous fiscal year. As a result, the annual number of first actions gradually increased over the past several years (increasing by 36% from 226,420 in 2003 to 307,665 in 2007).

However, since the number of requests for examination has surged mainly due to the impact of the "bump in requests," constantly exceeding the number of first actions, particularly from 2004 on ward, the number of applications awaiting the first action has also increased.

In line with this increase in the number of applications awaiting the first action, the first action pendency has been lengthened from 25 months in 2003 to 27 month in 2007. However as described in the above (1) 2), all applications with a seven-year request period reach the time limit for making the requests for examination before the end of September 2008, so that the number of the requests for examination is expected to take largely downward turn in 2008. As a result, the number of applications awaiting the first action and the first action pendency are also expected to take a downward turn gradually.

The JPO has made various efforts¹⁰ to achieve expeditious and efficient patent examinations. As a result, in 2007, the number of subsequent examinations¹¹ also reached more than 115% of that in 2006. In line with an increasing number of examinations, the number of decisions to grant a patent came to almost 150,000. On the other hand, the rate of decisions to grant a patent lowered by 1.6% from 2003 to 2007.

Changes in Record on Examinations

Record	2003	2004	2005	2006	2007	Year-on-year
Number of First Actions	226,420	234,109	243,548	292,756	307,665	105%
Number of Subsequent Examinations	165,564	173,830	179,760	226,815	264,776	117%
Number of International Search Reports of PCT	15,356	18,025	23,587	25,556	26,033	102%
Number of International Preliminary Examination Reports of PCT	7,147	5,748	3,328	3,023	2,741	91%
Number of Reconsiderations by Examiner before Appeal Proceedings	18,186	19,888	19,491	22,289	27,432	123%
Number of Reports of Expert Opinion on Registrability of the Utility Model	1,286	1,014	1,261	1,052	1,116	106%
Total	440,097	469,995	495,240	571,491	629,763	110%

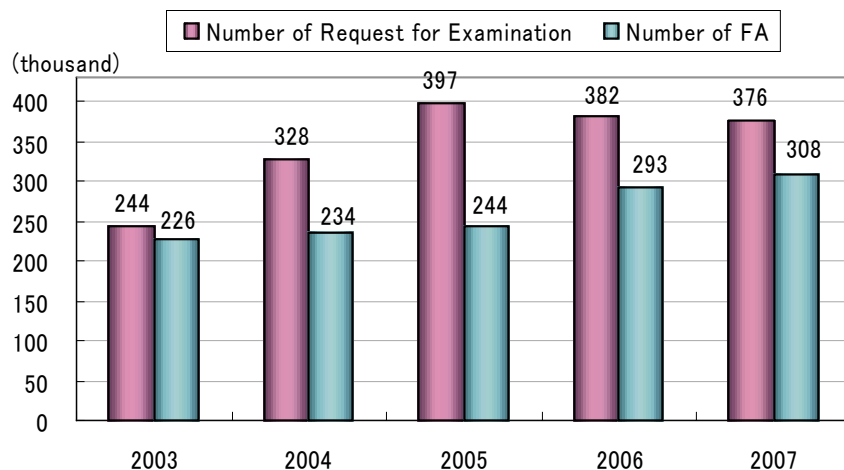
Notes:

1. The "year-on-year" column is a comparison between 2007 and 2006.
2. The "number of reconsiderations by examiner before appeal proceedings" is the total number of decisions to grant a patent in the procedure, reconsideration reports made to the JPO Commissioner, and notifications of reasons for refusal made in the procedure (see Part1, Chapter1, 5.(1)a for "reconsiderations by examiner before appeal proceedings").

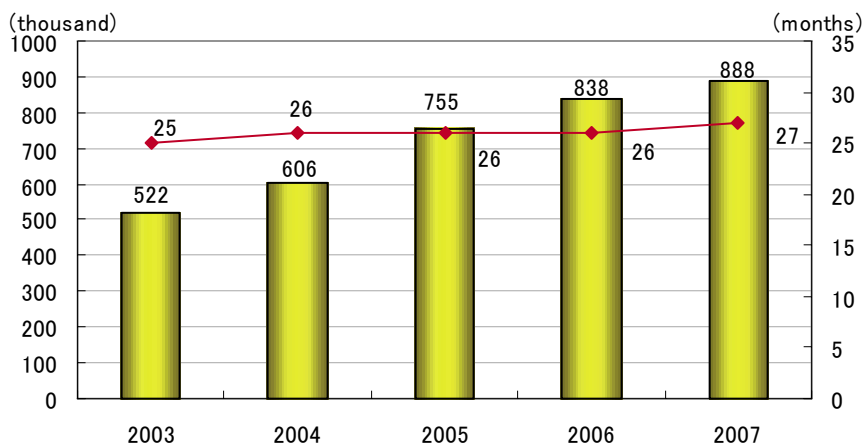
¹⁰ See Part 2, Chapter 2.

¹¹ Examinations conducted in response to a written opinion or written amendment submitted by the applicant following the first action.

Number of Requests for Examination and Number of First Actions



Number of Applications Awaiting the First Action and First Action Pendency

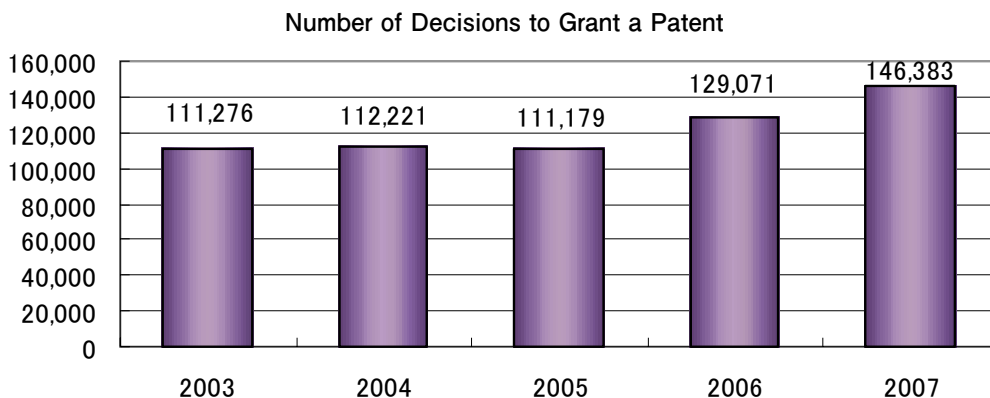


Status of Examination

Performance	2003	2004	2005	2006	2007	Year-on-year
Number of Decisions to Grant a Patent	111,276	112,221	111,179	129,071	146,383	113%
Number of Decisions of Refusal	106,024	110,630	109,149	129,400	147,678	114%
(Of which number of decisions of refusal without a dissenting response from the applicant)	60,129	62,013	61,328	68,879	78,246	114%
Withdrawals/Abandonment After the First Action	3,050	3,930	6,266	7,915	5,567	70%
Rate of Decisions to Grant a Patent	50.5%	49.5%	49.1%	48.5%	48.9%	-
Rate of Decisions of Refusal	49.5%	50.5%	50.9%	51.5%	51.1%	-

Notes:

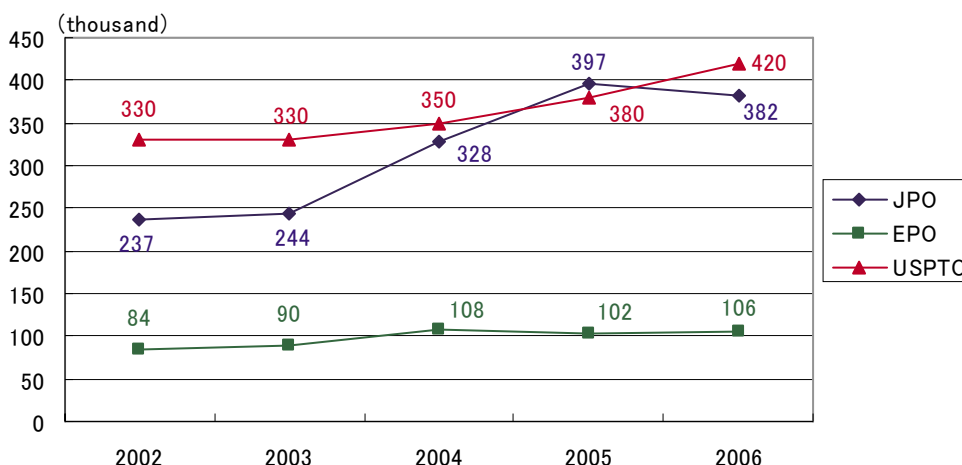
1. "Number of decisions of refusal without a dissenting response of the applicant" is the number of decisions of refusal without a dissenting response of the applicant from the notice of reason for refusal issued by the examiner.
2. "Withdrawals/abandonment after the first action" is withdrawals/abandonment of applications after the first action.
3. "Rate of decisions to grant a patent" is the number of decisions to grant a patent divided by the number of decisions to grant a patent plus the number of decisions of refusal plus the number of withdrawals/abandonment after the first action.
4. "Rate of decisions of refusal" is the number of decisions of refusal plus the number of withdrawals/abandonment after the first action, divided by the number of decisions to grant a patent plus the number of decisions of refusal plus the number of withdrawals/abandonment after the first action.



The issue of a prolongation of the first action pendency is not specific to Japan; it is also being faced by Europe and the United States. In recent years, the number of requests for examination has increased in Europe and the number of patent applications has increased in the United States. This trend has caused an increase in the patent examination workload and a prolongation of both the first action pendency and the total pendency. In response to this situation, the European Patent Office (EPO) and the United States Patent and Trademark Office (USPTO) have dramatically increased the number of examiners, with both offices increasing the number of examiners by about 2,000 persons during ten years from 1997 to 2006. Specifically, the USPTO has the plan¹² of employing more than 9,000 new examiners during eight years from 2005 to 2012, and under this plan the USPTO employed 1,215 examiners in FY2007 (from October 2006 to September 2007) (an increase of 597 from the FY2006 level at the end of September 2007).

Similarly, the JPO has employed fixed-term examiners since 2004, and during ten years from 1999 to 2008, it has increased the combined numbers of regular and fixed-term examiners by 597.

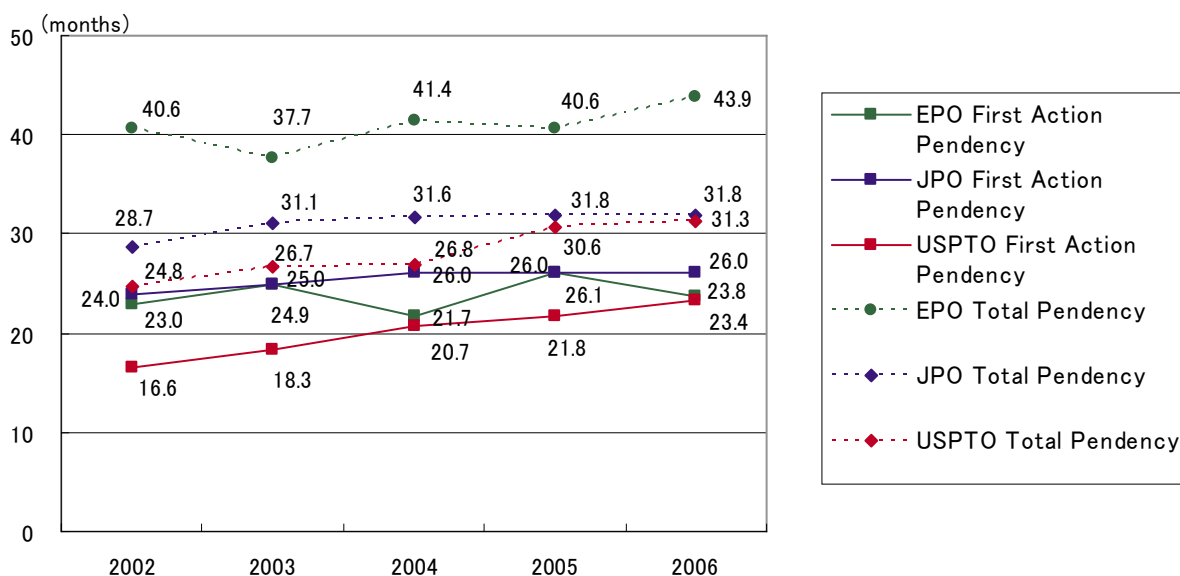
Number of Requests for Patent Examination Filed with the JPO and EPO and Number of Patent Applications Filed with the USPTO



Sources:
EPO—Annual Report
USPTO—Annual Report

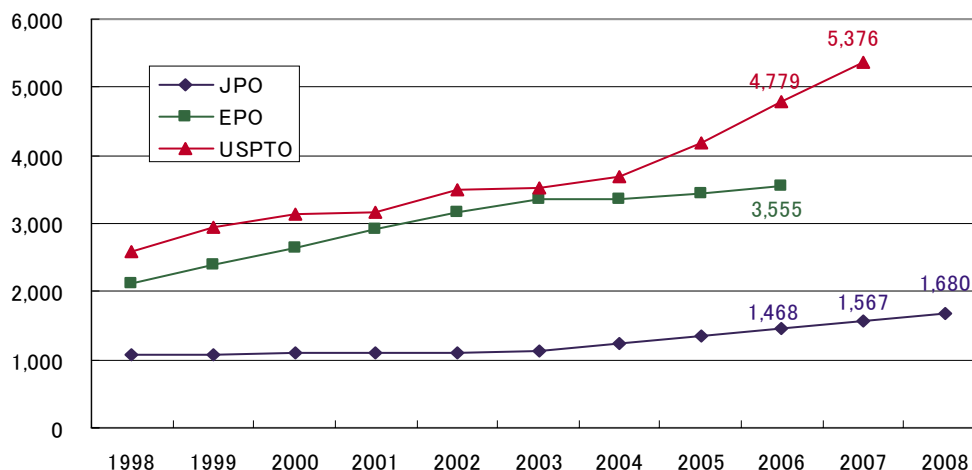
¹² USPTO Strategy Plan URL : <http://www.uspto.gov/web/offices/com/strat2007/>

First Action Pendency and Total Pendency at Trilateral Offices



Source: Trilateral Statistical Report

Changes in the Number of Examiners in Trilateral Offices



Source: Trilateral Statistical Report, USPTO Performance and Accountability Report

2. Utility Model

(1) Increasing the Appeal of the Utility Model System through Amendment of the System

The number of utility model applications has decreased since 1994 shift to the new utility model system, which adopts the non-substantive examination principle. The number declined below 10,000 in 2000, and has continued to fall. In such a situation, a discussion, increasing a talk on possible abolishment of the system, was held in January 2004 on the significance and idea of the new utility model system at the Utility Model System Working Group in the Patent System Subcommittee, Intellectual Property Policy Committee, Industrial Structure Council, JPO. The Working Group concluded that the new utility model system should be maintained to meet the demand to protect technology that requires early exploitation, and that efforts should be made to increase the appeal of the system. In

response, the utility model system was amended at the ordinary session of the Diet in 2004 as part of the Act to Expedite Patent Examination, and the amended utility model system entered into force in April 2005.

<Outline of the Amended Utility Model System>

- Extension of the term of utility model right (Article 15 of the Utility Model Act)

The term was extended from "six years from the filing" to "ten years from the filing."

- Reduction in the annual fee for utility model right (Article 31 of the Utility Model Act)
- Expansion of the allowable scope of correction (Article 14-2 of the Utility Model Act)

Before the amendment only deletions of claims were allowed. However, it is now possible to make corrections for the following purposes only once:

- narrowing the scope of claims of a utility model;
- correcting errors in the description; and
- clarifying an ambiguous description.

- Ability to file a patent application based on a utility model registration (Article 46-2 of the Patent Act)

Even after a utility model right has been registered, it is now possible to file a patent application based on the utility model registration within three years from the filing of the utility model application.

With the enforcement of the amended utility model system, the number of utility model applications came to 11,386 in 2005, increasing by about 40% from the 2004 level. The numbers of utility model applications in 2006 and 2007 were 10,965 and 10,315 respectively, and it can be mentioned that for a technology for which it can be considered that before the right infringement has become an issue, the validity of the patent right is not necessary to be challenged or for a technology for which the counterfeiting thereof can be blocked by the registration, the simple present system is a system having a certain appeal for the applicants.

Number of Applications Filed under the New Utility Model System

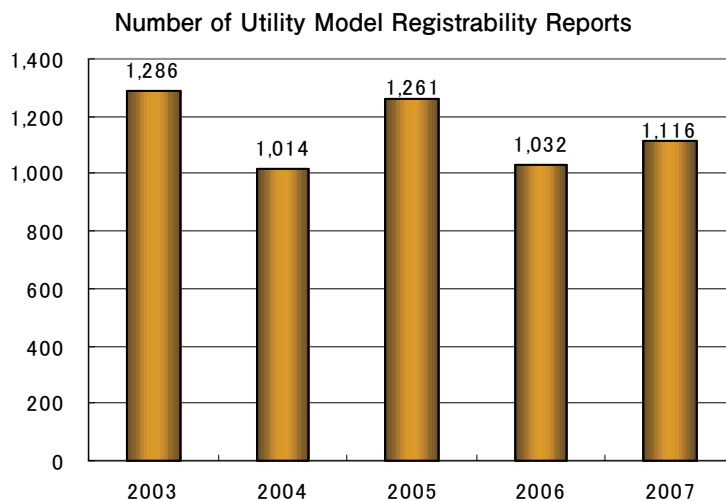
	2001	2002	2003	2004	2005	2006	2007
New Utility Model Applications	8,778	8,587	8,155	7,983	11,386	10,965	10,315

Meanwhile, the number of patent applications based on utility model registrations that were filed following the introduction of the system in April 2005 came to 151 as of April 2008.

(2) Status of Utility Model Registrability Reports

Under the new utility model system, which adopts the non-substantive examination principle, the owner of a utility model right first needs to give a warning by presenting a utility model registrability report when enforcing the right (Article 29-2 of the Utility Model Act). The registrability report is a report that a JPO examiner creates by evaluating the novelty and inventive step of the filed device based on the relevant prior art documents. It is provided upon request, as material for determining the validity of the right (Articles 12 and 13 of the Utility Model Act).

The number of the prepared utility model registrability report is shifting around about 1,100 per year.

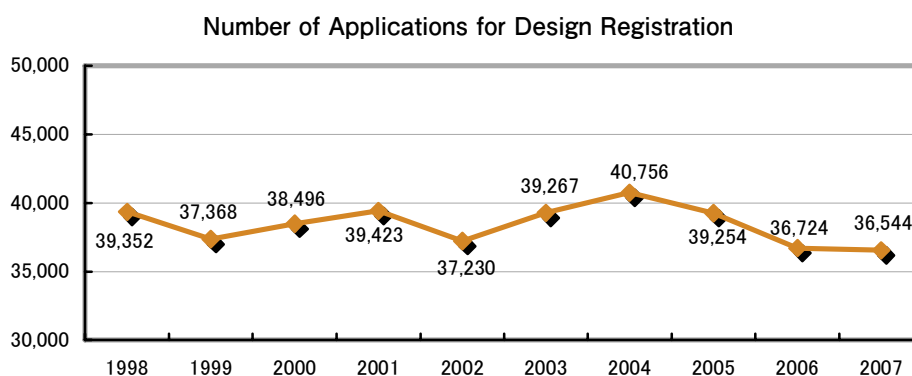


3. Design

(1) Status of Design Application and Examination in JPO

- Trends in Applications for Design Registration

Though in the past ten years, the number of applications has remained at around 40,000, in recent years, the number of applications tends to slightly decline. As a cause thereof, it can be considered that also more and more design registration applicants have become aware of valuing application abroad, for example to China, and the domestic applications are more carefully selected by utilizing the partial design system, etc.

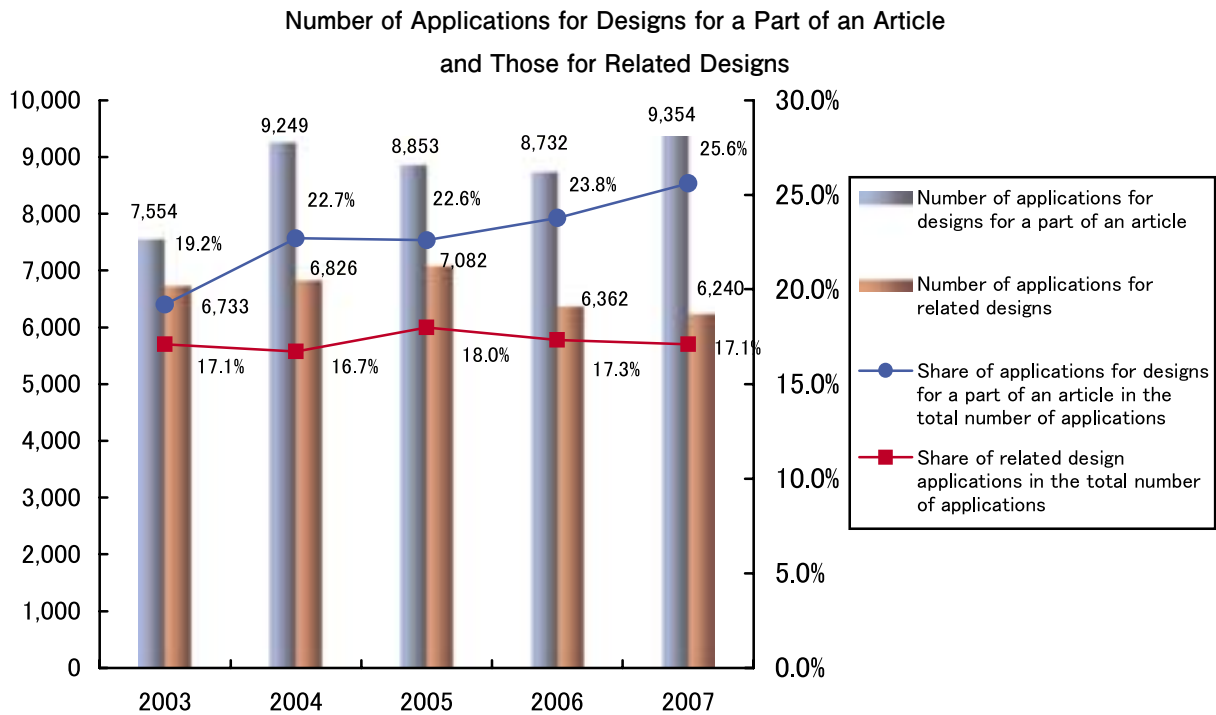


Since the introduction of the partial design system¹³ in 1999, the ratio of applications for partial designs has been increasing each year, reaching about 25% of the total number of applications for design registration in 2007.

The usage ratio of the related design system¹⁴, introduced in the same year, has remained at a little less than 20% of the total number of applications for design registration for the last five years.

¹³ Design of a part of an article. Since the amended Design Act entered into force in 1999, it became possible to register designs of a part that cannot be physically separated from the entire article.

¹⁴ The related design system enables enforcement of the design rights for designs similar to the principal design, and it was introduced in 1999.



(2) Status of Design Examination and Accelerated Examination for Responding to Anti-counterfeit Measures

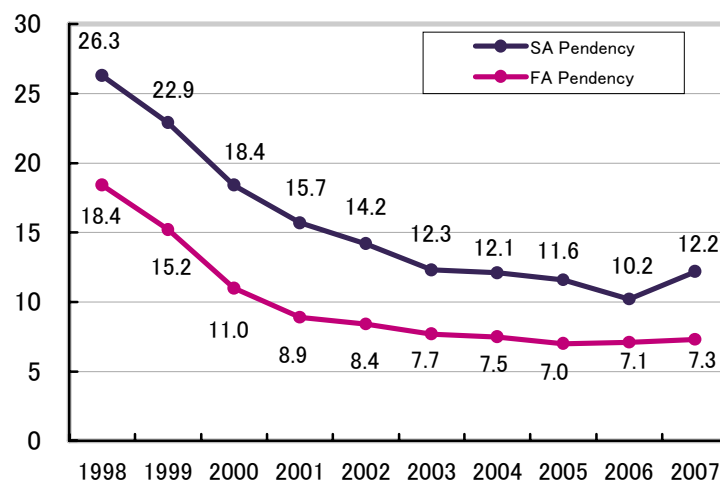
In 2007, the number of first office actions on applications for design registration fell from 37,013 in 2006 to 35,548, however, almost of all applications are examined. While the average first office action pendency for applications for design registration was at almost the same level as that of the previous year (7.3 months), the average second office action pendency, which is the period from the filing date until the dispatch of the decision following the first office action, was slightly lengthened due to the decrease of the number of immediate registrations to 12.2 in 2007. Meanwhile, the average number of design registrations has remained at around 30,000 for the last five years.

In 2007, the "accelerated examination for responding to the anti-counterfeit measures" program, introduced in April 2005, received 14 requests in 2007. The average time from the request until the first office action was 0.5 months (about two weeks).

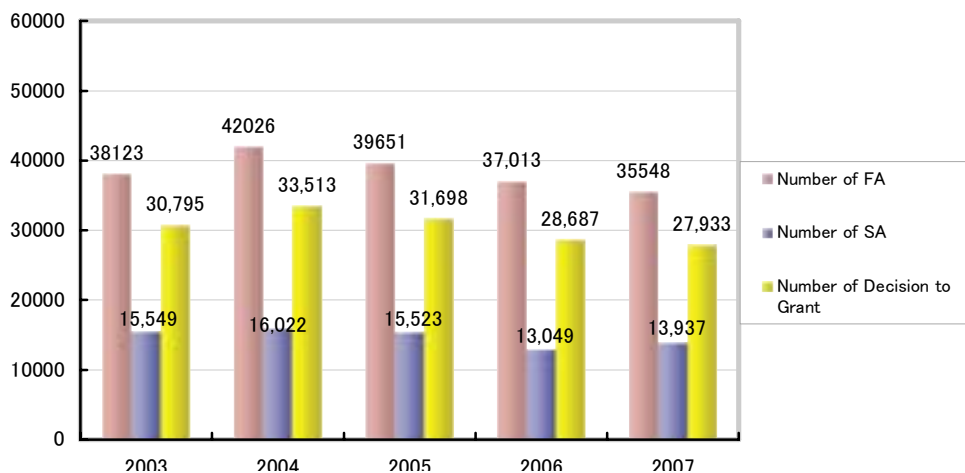
As for accelerated examination for other reasons, 53 requests were made and the average time from the request until the first action was 2.1 months.

Changes in the Average First and Second Office Action Pendency of Design Application

(months)



Changes in the Number of First Office Actions, Second Office Actions, and Registrations



Notes:

1. First office action pendency: Period from the filing date to the date when the first notice of examination is dispatched
2. Second office action pendency: Period from the filing date to the date when the decision following the first action is dispatched
3. The number of registrations is the total number of decisions of registration as the first office action and those as the second office action

4. Trademark - Increased trademark applications -

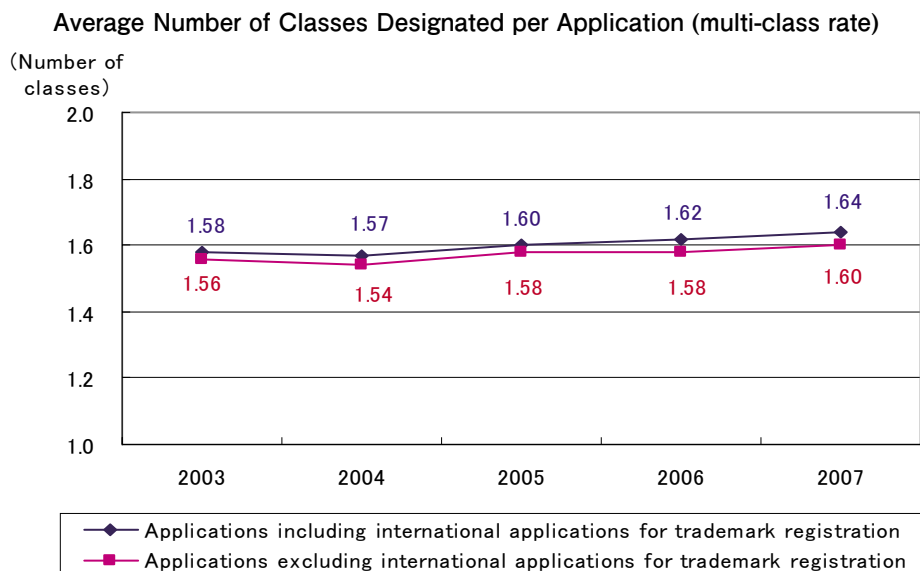
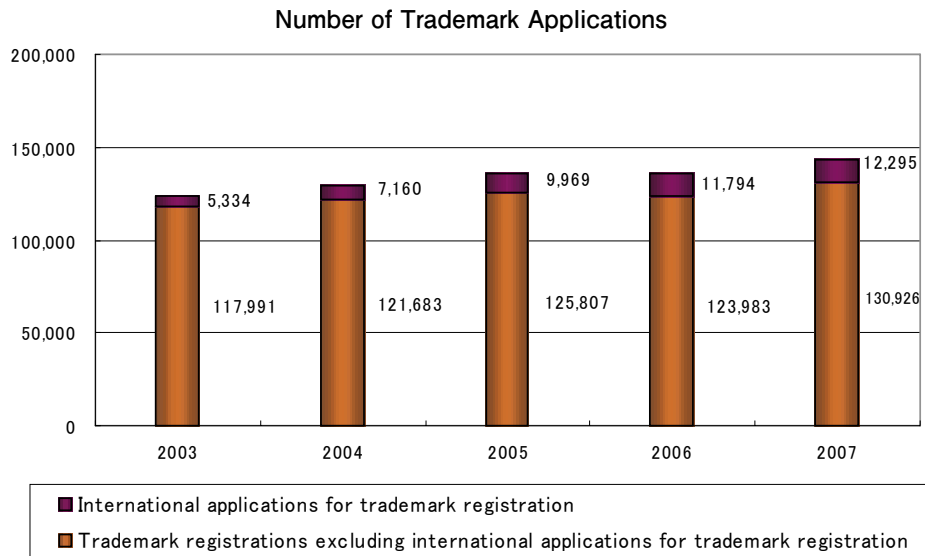
(1) Trends in trademark applications

The number of trademark applications in 2007 has increased to 143,221, increasing by 5.5% over the previous year. This is considered to be due to the influence of the trademark system for retail and wholesale services¹⁵

¹⁵ The trademark system for retail and wholesale services was introduced for the purpose of enhancing the convenience of the undertaker or of harmonizing the international system, and a mark that used for retail and wholesale services can be registered as a service mark. See Part 2, Chapter 4 (3).

introduced in April 2007. Also the number of international applications for trademark registration¹⁶ has increased in 2007 to 12,295, increasing by 4.4% over the previous year, and has been still on the rise.

The average number of classes¹⁷ per trademark application (the multiple class rate) in 2007 stayed at around the same level as that in 2006, at 1.60.



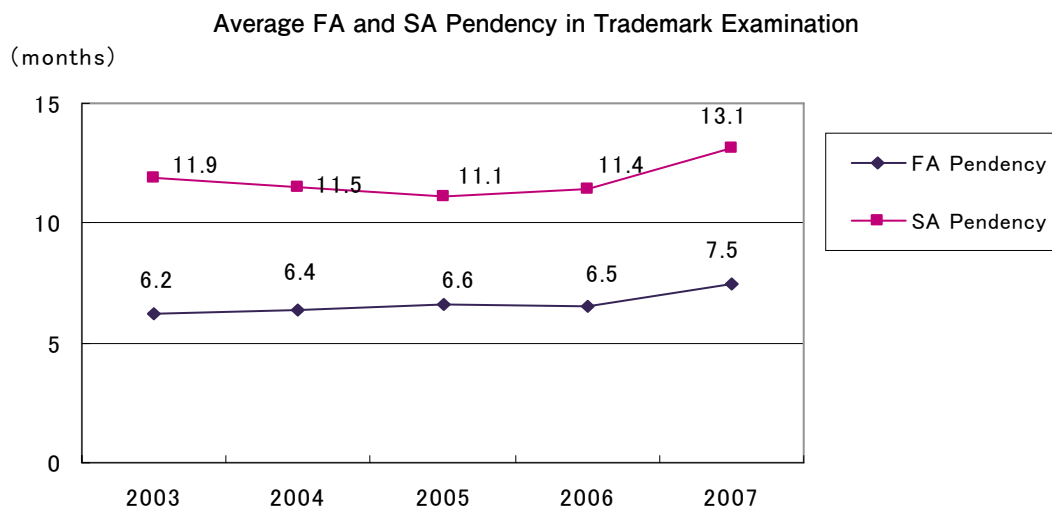
(2) Status of Trademark Examination

Hitherto, efforts are being made to shorten the trademark-examination period by improving examination efficiency through further automation of the examination process and use of private-sector capacity, and in 2007, the trademark system for retail and wholesale services has been newly introduced, etc., which has become a changeful year.

¹⁶ International applications under the Madrid Protocol designating the JPO (See Article 68-10 of the Trademark Act of Japan)

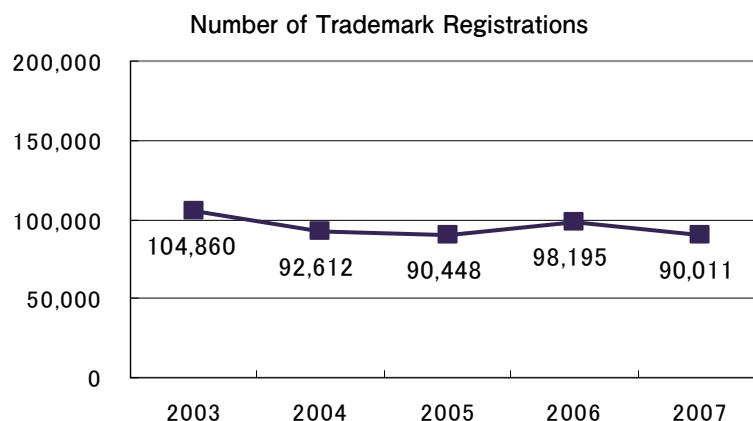
¹⁷ When filing a trademark application, the application must designate one or two or more goods (services) to which the trademark should be applied, and describe their corresponding classes in the request. Goods and services are classified into 45 classes.

Also on the status of the trademark examination, the system concerned has influenced, and the average first action pendency which has remained at less than seven months since 2003 marked 7.5 months in 2007. The number of registrations has decreased in 2007 to 90,011, decreasing by 8.3% over the previous year.



Notes:

1. FA Pendency: Period from the filing date to the date when the first notice of examination is dispatched.
2. SA Pendency: Period from the filing date to the date when the decision following the first action is dispatched.



Note:

Figures do not include the number of international applications for trademark registration designating the JPO.

5. Appeals and Trials

(1) Status of Appeals and Trials

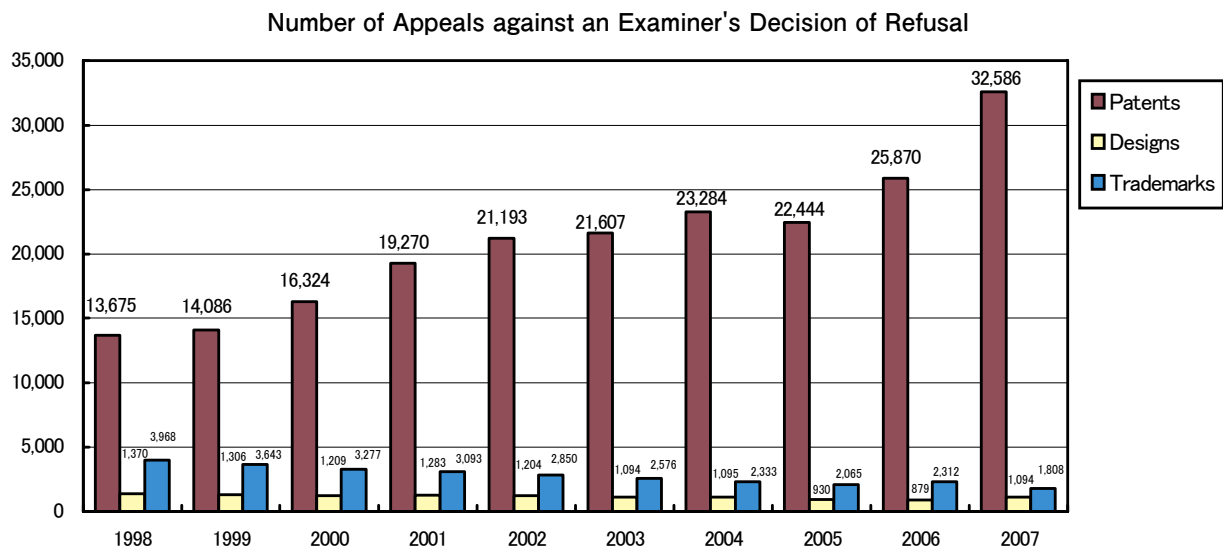
1) Trends in Appeals and requests for Trials

The system of appeals and trials has two functions. One is to review the examiner's decision and the other is to settle disputes on the validity of patents or other industrial property rights. The trends of the former pre-grant appeals (including appeals against an examiner's decision of refusal) are closely related to the trends of examination, while the trends of the latter post-grant trials (including invalidation trials) are closely related to the trends of disputes concerning industrial property rights, such as infringement lawsuits.

a. Trends in Appeals against an Examiner's Decision of Refusal

The number of appeals against an examiner's decision of refusal for patent applications has been increasing. However, the appeal rate, which is the percentage of the number of appeals out of the number of decisions of refusal, has stayed at substantially the same level for the past several years¹⁸, indicating that the number of appeals against an examiner's decision of refusal is generally linked to the number of decisions of refusal. The number of appeals against an examiner's decision of refusal in 2007 increased by 26% from the 2006 level in response to an increase in the number of decisions of refusal¹⁹ by patent examiners. While the number of appeals for design has stayed at the same level for the past several years and the number of appeals for trademark has taken a downward turn. The appeal rates with respect to designs²⁰ and trademarks²¹ have stayed at the same level for the past several years like in the case of the patent.

Looking at the results of reconsideration by an examiner²² before appeal proceedings for patent applications in the past several years, the number of applications for which the original decision was cancelled and a decision to grant a patent was given (the number of applications patented in the reconsideration procedure) has been smaller compared to the number of applications for which the original decision was maintained (the number of reconsideration reports²³). However, both these two numbers have approached to substantially the same number in 2007 and the rate of the applications patented in the reconsideration procedure in the reconsideration by an examiner tends to rise in recent years. The Appeals Department will continue to promote²⁴ an acquisition of right at the stage of examination and reconsideration by an examiner, in order to reduce the burden of both the applicant and the JPO.



¹⁸ The recent appeal rates with respect to patents have been 20% in 2003, 21% in 2004, 21% in 2005, 20% in 2006, and 22% in 2007.

¹⁹ See Part 1, Chapter 1, I.(1) 6)

²⁰ The recent appeal rates with respect to designs have been 14% in 2003, 14% in 2004, 12% in 2005, 11% in 2006, and 15% in 2007.

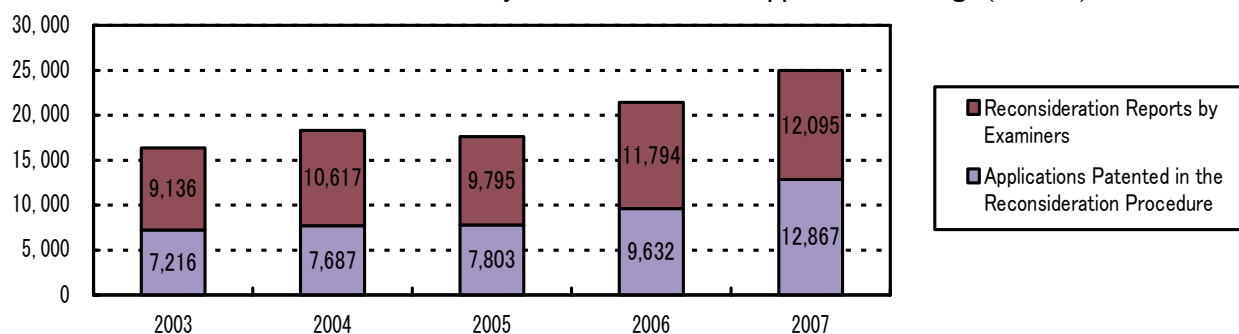
²¹ The recent appeal rates with respect to trademarks have been 9% in 2003, 9% in 2004, 8% in 2005, 8% in 2006, and 8% in 2007.

²² If the scope of claims or other parts of the specification or drawings have been amended within 30 days of an appeal against a decision of refusal, the examiner first examines the amendment pursuant to Article 162 of the Patent Act. This procedure is called reconsideration by an examiner before appeal proceedings.

²³ In the reconsideration procedure, the examiner decides to grant a patent where he decides to cancel the decision of refusal in consideration of amendments made to the claims. If the examiner decides to maintain the decision of refusal even after the amendments, the examiner reports the results of the examination to the JPO Commissioner. After this, an appeal examination is conducted by a collegial body of appeal examiners.

²⁴ See Part 2, Chapter 5, 3.

Results of Reconsideration by an Examiner before Appeal Proceedings (Patents)

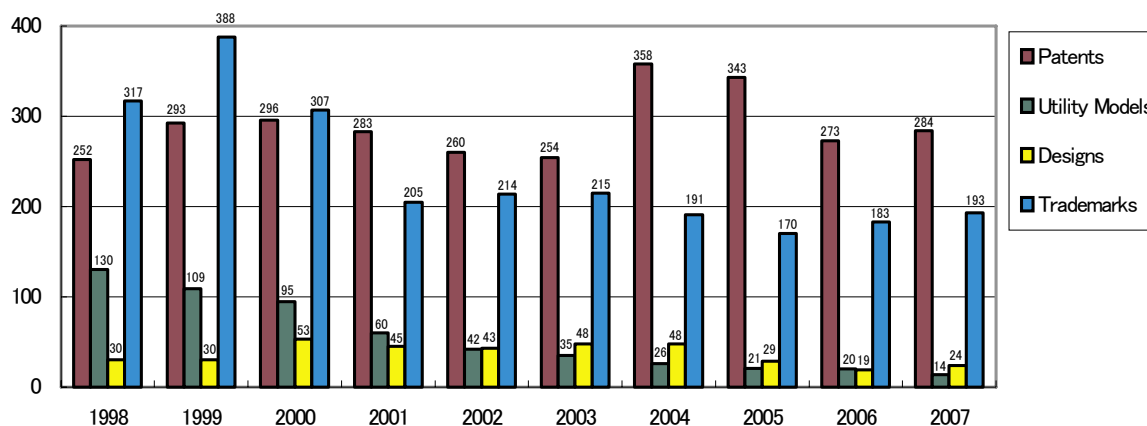


b. Trials for Invalidation of a patent

Due to the 2003 revision of law, the system of opposition to the grant of a patent was integrated into the system of trial for invalidation of a patent. This prompted the number of demands for trials for invalidation of patents to increase in 2004, showing a decline thereafter.

While the numbers of demands for trials for invalidation of a utility model and design registration have been on a declining trend, that for invalidation of a trademark registration has remained at the same level since 2001.

Number of Demands for Trials for Invalidation

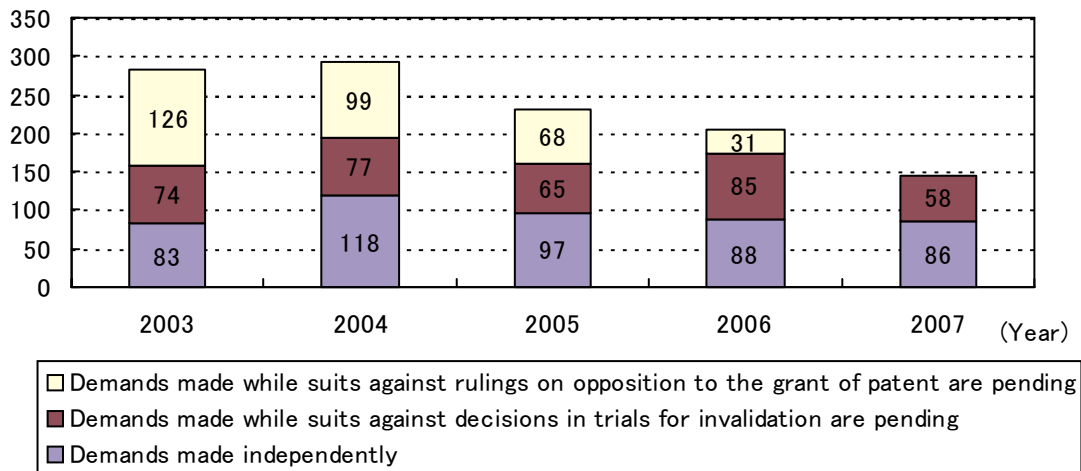


c. Decline in the Numbers of Demands for Trials for Correction of Patents and Utility Models

The numbers of demands for trials for correction of patents and utility models have been decreasing since 2005. This seems to be attributable to a decline in the number of demands filed during the pendency of lawsuits against decisions on opposition to the grant of a patent, which account for a certain number of demands for trials for correction. The major reason was that, with the 2003 revision of law, due to abolishment of the system of opposition to the grant of a patent, there was a decrease in the number of lawsuits against decisions on opposition to the grant of a patent.

Number of Demands for Trials for Correction (Patents and Utility Models Combined)

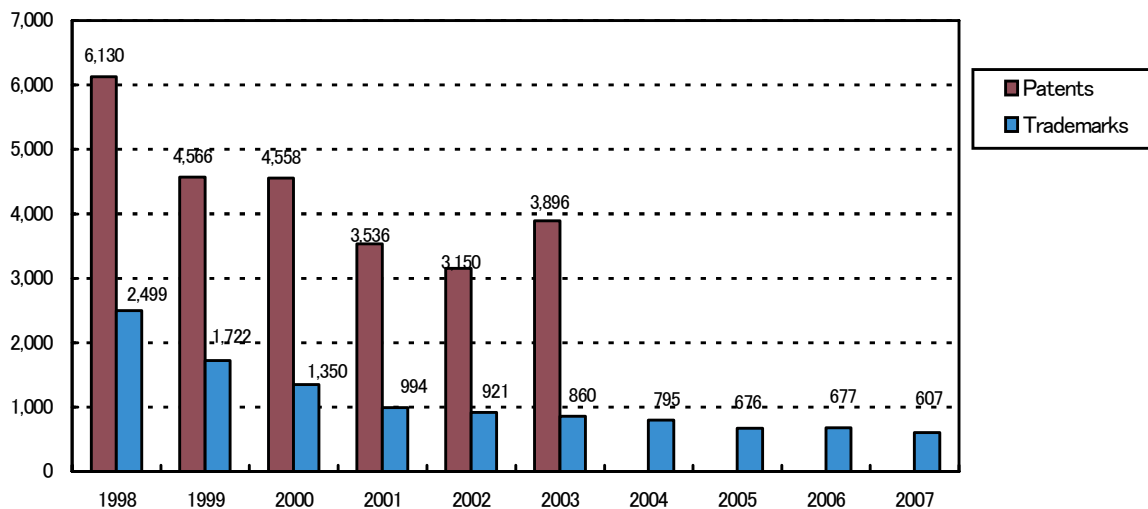
(Number of demands)



d. Gradually Declining Oppositions to Trademark Registration

The number of oppositions to trademark registration has been gradually declining after peaking in 1998.

Number of Rights Subjected to Opposition



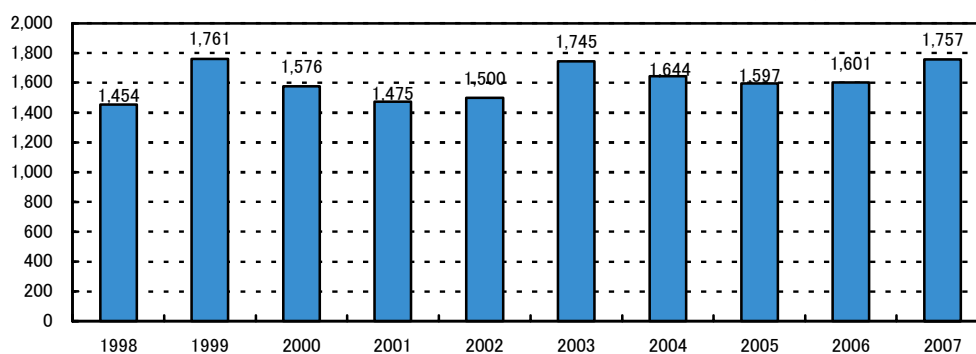
Notes:

1. There was a shift from a pre-grant to a post-grant opposition system in January 1996 for patents and in April 1997 for trademarks.
2. The system of opposition to the grant of a patent was abolished with the 2003 revision of law and was integrated into the system of trial for invalidation on January 1, 2004.
3. Due to reasons including the timing of publication of official gazettes and the opposition periods, the post-grant oppositions came to be filed in full fledge from the end of the year of transition, and trial examinations on post-grant oppositions started in the year following the year of transition.

e. Changes in the Number of Demands for Trials for Cancellation of Trademark Registration

The number of demands for trials for cancellation of trademark registration has stayed at the same level.

Number of Demands for Trials for Cancellation of Trademark Registration



2) Trends of Examination by the JPO Appeals Department

a. Patent and Utility Model

While the number of appeals against an examiner's decision of refusal has been increasing in recent years, the average first action pendency in 2007 was 26 months. The average first action pendency could be lengthened with the increase in the number of appeals against examiner's decision of refusal in line with the increase in the number of examinations conducted by the Examination Departments. Therefore, in order to shorten the appeal pendency, the Appeals Department takes various measures including use of appeal researchers, conducting questioning using the reconsideration reports²⁵, and implementing a consolidated appeal examination of related cases.

Looking at the appeal examination results related to patent applications, the quality and strictness of examination have evidently increased over the past several years. Among the decisions in appeals against an examiner's decision of refusal, the percentage of decisions that denied the appeal (appeal denial rate²⁶) tends to dramatically increase from about 22% in 1998 to about 56% in 2007. The increase in the appeal denial rate in appeals against an examiner's decision of refusal indicates an increase in cases where inventions that were not patented in the examination phase were also not patented in the appeal phase.

With regard to trials for invalidation, trial examinations are conducted on a preferential basis in order to contribute to early settlement of disputes over rights. In 2007, the average pendency in trials for invalidation was 9 months which has been shortened by 2 months from that in 2006. Oral proceedings were actively used in the trials for invalidation of a patent/utility model in order to raise the quality of the trial examination and the number of the oral proceedings has increased from 147 in 2006 to 194 in 2007.

With respect to trials for correction, efforts were made for quick trial examinations because the trials were often demanded in connection with infringement lawsuits. As a result, the average trial pendency in 2007 was 3 months.

The processing of all oppositions that had been filed was completed in March 2006, except for those that could not be processed substantially.

b. Design

Appeal examinations against an examiner's decision of refusal have become more efficient in recent years, allowing the first action pendency to be shorter year by year. The average first action pendency in 2007 was 7

²⁵ Through the questioning procedure, the appellant is notified of the opinion the examiner has formed in the reconsideration procedure, and is given the opportunity to procedure a counterargument. This allows the collegial body of appeal examiners to conduct an examination by also taking into account the appellant's counterargument to the examiner's opinion, and at the same time, confirm the appellant's intention to continue with the appeal proceedings after receiving the reconsideration results. Consequently, the system contributes to further raising the quality of appeal examinations and improving the processing efficiency of the entire JPO.

²⁶ The appeal denial rate indicates the percentage of the Appeals Department's decisions holding the appeal invalid and decisions/rulings to dismiss the appeal to the total number of its decisions and rulings.

months which have been shortened by 4 months from that in the last year.

With regard to trials for invalidation, trial examinations are conducted on a preferential basis in order to contribute to early settlement of disputes over rights. In 2007, the average trial pendency was 9 months.

c. Trademark

Appeal examinations against an examiner's decision of refusal have become more efficient in recent years, allowing the first action pendency to be shorter year by year. The average first action pendency in 2007 was 14 months which have been shortened by 5 months from that in the last year.

With regard to trials for invalidation, trial examinations are conducted on a preferential basis in order to contribute to early settlement of disputes over rights. In 2007, the average trial pendency was 11 months.

The trial pendency for oppositions in 2007 was 9 months and that for trials for cancellation was 6 months.

Status of Appeal and Trial Examination in 2007

	Appeals against an examiner's decision of refusal		Trials for invalidation		Trials for correction		Oppositions		Trials for cancellation	
	No. of first actions ^{*1}	Average first action pendency (months) ^{*2}	No. of cases processed ^{*3}	Average trial pendency (months) ^{*4}	No. of cases processed ^{*3}	Average trial pendency (months) ^{*4}	No. of cases processed ^{*3}	Average trial pendency (months) ^{*4}	No. of cases processed ^{*3}	Average trial pendency (months) ^{*4}
Patent/ Utility model	15,355	26	276	9	163	3				
Design	1,086	7	21	9						
Trademark	3,004	14	165	11			706	9	1,650	6

Notes:

1. Number of cases in which the first examination results were notified
2. Average period from the date of appeal until the date the notification of the first examination results is dispatched
3. Including withdrawals
4. Average period from the date of demand for the trial until the date of the final disposition (decision or ruling)

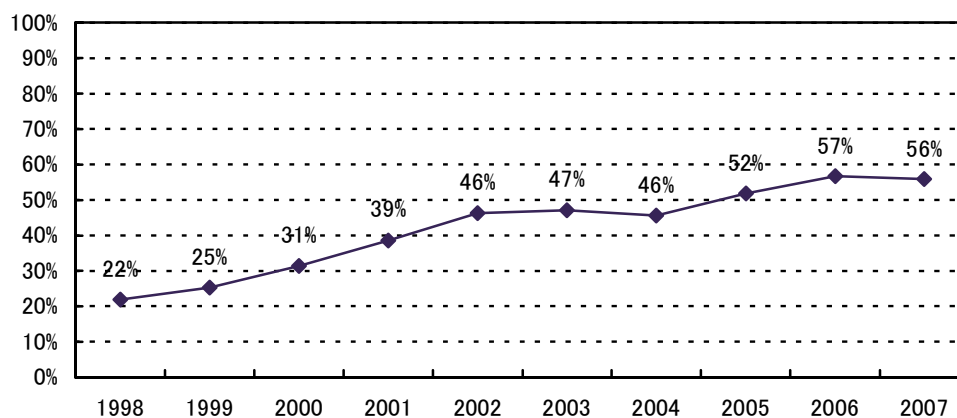
Appeal and Trial Examination Results^{*1} in 2007

	Ex-parte appeals ^{*2}		Inter-partes trials ^{*3}		Oppositions	
	Appeal accepted	Appeal denied ^{*4}	Appeal accepted	Appeal denied ^{*4}	Appeal accepted ^{*5}	Appeal denied ^{*6}
Patent/Utility model	6,355	8,001	152	88		
Design	634	456	13	5		
Trademark	2,364	563	1,415	219	118	554

Notes:

1. Only those for which final appeal/trial decision has been made
2. Appeals against an examiner's decision of refusal, appeals against an examiner's decision to dismiss amendment, and trials for correction
3. Trials for invalidation and trials for cancellation
4. Including dismissals
5. Including partial revoke
6. Including withdrawals

Changes in Appeal Denial Rate in Appeals against an Examiner's Decision of Refusal



(2) Status of Actions against the JPO Appeals department's Decisions

1) Trends of Actions Filed

Looking at the number of actions against the JPO Appeals Department's decisions in 2007, it is clear that the number of ex-parte appeals has decreased for all fields, compared to that in 2006.

With respect to lawsuits against ex-parte appeal decisions related to patents and utility models in 2007, the number of appeal cases in which the Appeals Department denied the appeal was 8,001 and the number of actions filed against such decisions was 191. The action rate²⁷ was 2.4%, so that both the number of actions filed against such decisions and the action rate have been lowered respectively from the number of actions filed against such decisions (217) and action rate (2.6%) in 2006.

Meanwhile, the number of actions filed against decisions on opposition to the grant of a patent/utility model has dropped due to a decrease in the number of oppositions processed following the abolishment of the system.

Number of Actions in 2007

	Patent/Utility model		Design		Trademark	
	2006	2007	2006	2007	2006	2007
Ex-parte appeals* ¹	218	192	27	13	31	19
Inter-partes trials* ²	176	140	7	2	66	61
Oppositions	33	1			7	4

Notes:

1: Appeals against an examiner's decision of refusal, appeals against an examiner's ruling to dismiss amendment, and trials for correction

2: Trials for invalidation and trials for cancellation

(2) Rate of Cancellation of the JPO Appeals Department's Decisions Remaining at a Low Level

Looking at the status of lawsuits against the Appeal Department's ex-parte appeal decisions related to patents and utility models, the rate of cancellation of the decisions was slightly down from 14.2% in 2006 to 13.2% in 2007. It remains at a low level compared to the peak in the last ten years at 36.3% in 1999. The JPO will continue to make efforts to reduce the rate of cancellation of the decisions by further raising the quality of appeal/trial examinations

²⁷ The proportion of appeal decisions and rulings against which an action has been filed to the total number of appeal decisions and rulings.

through reviewing of court decisions.

Number of Court Decisions in 2007*³

	Patent/Utility model		Design		Trademark	
	Claim dismissed	Appeal Department's decision cancelled	Claim dismissed	Appeal Department's decision cancelled	Claim dismissed	Appeal Department's decision cancelled
Ex-parte appeals* ¹	163	25	14	5	16	4
Appeal decision cancellation rate	13.2%		26.3%		20.0%	
Inter-partes trials* ²	79	29	0	0	31	13
Trial decision cancellation rate	26.9%				29.5%	
Oppositions	16	1			1	2
Ruling cancellation rate	5.9%				66.7%	

Notes:

- 1: Appeals against an examiner's decision of refusal, appeals against an examiner's ruling to dismiss amendment, and trials for correction
- 2: Trials for invalidation and trials for cancellation
- 3: Excluding the court ruling to cancel the Appeal Department's decision pursuant to Article 181(2) of the Patent Act and the court decision that due to a correction becoming final and conclusive during the pendency of the case.