# Intellectual Property in the context of the Economic Partnership Agreement between the EU and Japan

Karl-Friedrich Lenz

# INTELLECTUAL PROPERTY

***By Karl-Friedrich Lenz***
Dr. Karl-Friedrich Lenz is a German national born 1958, Professor (German Law and EU Law) at Aoyama Gakuin University in Tokyo since 1995. His blog is at lenzblog.com and his Twitter handle is @Kf_Lenz. Communications to the author welcome there.

## I- INTRODUCTION

The Economic Partnership Agreement between the EU and Japan[1] has come into force in February 2019. I will refer to it with "EPA" in this post.

The EPA has many Articles written over hundreds of pages. One of the areas it is concerned with is intellectual property, in Chapter 14 of the EPA, in Articles 14-1 to 14-55, with over 9,500 words not counting relevant Annexes.

I will not say much about individual rules the parties agreed on. Everyone interested can read those in the English version already without knowing any Japanese or anything about Japanese law.

In contrast, people not familiar with Japan or the language may be interested in where Japanese law before the EPA was different from the EPA. And they may be interested in what Japan has done to implement the provisions of the EPA into Japanese law.

The situation in this respect is similar to the EU enacting a Directive and Member States needing to both implement the Directive and report to the EU Commission on the implementation. This article will try to give some information on what has changed in Japanese intellectual property law as a result of the EPA.

I will also compare the new rules to existing international treaties on intellectual property, with a focus on TRIPS.

The limits on the number of words in this blog post and the limits of my own time and qualifications require a focus on a subset of the rules agreed in the EPA. That requires some method for choosing.

One of the criteria should be if the rule in question is important in the practical application of intellectual property law in Japan.

Another one is if the standard in question is new. The principle that nobody should be discriminated against because of their nationality codified in Article 14.4 of the Agreement is a concept firmly recognized in international intellectual property law since the 19th Century Berne Convention[2]. So finding this concept as part of the general rules in the EPA is not much of a big surprise or new development. In contrast, having a copyright term of 70 years after the death of the author is new, exceeding the previous minimum standard of 50 years in the Berne Convention, so it needs more attention.

And the third one should be how much the EPA deviates from previous Japanese law, and especially how Japanese law was changed because of the EPA, or at least at about the same time.

## II- HISTORIC CONTEXT OF SECTION A "GENERAL PROVISIONS"

Chapter 14 on intellectual property consists of a Section A "General provisions" (Articles 14-1 to 14-7), a Section B "Standards concerning intellectual property" (Articles 14-8 to 14-39), a Section C "Enforcement" (Articles 14-40 to 14-51), and a Section D "Cooperation and institutional arrangements" (Articles 14-52 to 14-55). I think the section on enforcement is the most important point. The fact that the Chapter has a section dedicated to this reflects the Commission's point of view to try to strengthen enforcement in future international trade agreements expressed in the 2006 strategy I will mention later.

An earlier attempt to strengthen enforcement over the TRIPS standard was the Anti-Counterfeiting Trade Agreement, a multilateral agreement that Japan

1 Agreement between the European Union and Japan for an Economic Partnership, Official Journal of the European Union, L 330/3 of 27.12.2018, publications.europa.eu/resource/cellar/d40c8f20-09a4-11e9-81b4-01aa75ed71a1.0006.02/DOC_1.

2 Berne Convention for the Protection of Literary and Artistic Works, 1886, wipolex.wipo.int/en/text/283698, Article 3.

ratified, but the EU Parliament rejected in a 478 to 39 vote on July 4th 2012, the first time Parliament exercised its Lisbon Treaty power to reject international treaties.[3]

Article 14-2 EPA lists the following general principles:

"Having regard to the underlying public policy objectives of domestic systems, the Parties recognise the need to

(a) promote innovation and creativity;

(b) facilitate the diffusion of information, knowledge, technology, culture and the arts; and

(c) foster competition and open and efficient markets".

This list of principles shows some desire for balance between strong intellectual property rights and the interest of the public in free competition. But actually in Japan the balance is much in favor of strong intellectual property rights for about the last 20 years.

When addressing the "General provisions" section, it is necessary to be aware of the historic context in Japan. Japan has a very strong policy of expanding intellectual property protection for the last 20 years. It shares that general direction with the EU, but is even more strongly invested in a strong intellectual property system.

**A-CHIZAI RIKKOKU (FOUNDING THE COUNTRY ON INTELLECTUAL PROPERTY)**

Japan has chosen intellectual property as the economic foundation of the country for the 21st Century in 2002 under the Koizumi government.

The basic idea was that Japan was served well by producing and selling goods to the world for the 20th Century, scoring big growth numbers in the latter half of that century and joining the developed nations. That worked well.

However, now the Japanese are facing competition from China, with much lower labor cost. Under these circumstances, it does not make much sense to compete for the market in cheap goods. Instead the new strategy is to base the economy on intellectual property.

Intellectual property in all of its forms gives the owner monopoly rights. If you own the copyright on Pokemon games, like Nintendo does, you don't have to worry about the competition from China selling the same game for less. The Pokemon games alone have scored total revenue of $95 billion since 1996, making it the number one media franchise of the world (less known competition like Mickey Mouse and Star Wars are placed at rank 4 and 5).[4]

The strategy of "Founding the Country on Intellectual Property" is called Chizai Rikkoku in Japanese. It was adopted by a cabinet decision in Summer of 2002 and led to enacting the Basic Law on Intellectual Property[5] later that year. That law requires that a working group headed by the Prime Minister (Intellectual Property Policy Headquarters) pays attention to intellectual property issues, with an aim of improving intellectual property in three aspects.

The first one is to improve the creation of intellectual property. Encourage game developers so that someone comes up with the next Pokemon smash hit. Encourage inventors so they develop more technology and more patents. Encourage people to come up with good brand names and make them popular.

The second aspect is improving the use of existing intellectual property. A patent is not worth much if it is just a paper sitting in a nice frame decorating a wall. It is worth only as much as people are interested in actually using the technology and paying for the privilege. That in turn requires some selling effort.

And the third aspect is the one closest to law. Improve enforcement of intellectual property. A patent is not worth much if you had no way to enforce it. Take the theoretical case that someone is sued for patent infringement now, in 2020. A verdict at the district court level is expected for 2520. The defendant could of course completely ignore that patent and the lawsuit. The same would be true if the plaintiff could expect to collect 500,000 Euros in damages but pay double that to his lawyers (a more realistic example). The situation would be the same as if the patent owner had no intellectual property right in the first place.

That is a theoretical case, but it shows that enforcement of intellectual property is vital in order to actually realize any economic value from it. This aspect is also especially close to the EPA, since one of the ideas is to improve enforcement of intellectual property in an international setting.

3 Parliament press release, www.europarl.europa.eu/news/en/press-room/20120703IPR48247/european-parliament-rejects-acta.

4 Wikipedia, List of highest-grossing media franchises, en.wikipedia.org/wiki/List_of_highest-grossing_media_franchises.

5 Basic Law on Intellectual Property, Law No. 122 of 2002, Translation at the Prime Minister website: japan.kantei.go.jp/policy/titeki/hourei/021204kihon_e.pdf.

## INTELLECTUAL PROPERTY

The Basic Law on Intellectual Property requires in its Article 23 that the working group develop and publish regular plans on how to strengthen the intellectual property system. These plans are an important source when looking for what has happened and what is on the agenda for implementing the intellectual property chapter of the EPA.

In September 2019, the working group published a paper on the "Cool Japan" initiative.[6] That is an exercise in the branding of Japan that is going on for already about a decade and is aimed at improving Japan's image in the world. It has resulted in a large increase in tourism to Japan over the five years from 2012 to 2018, from 8.4 million to 31.2 million, by a factor of around 3.7.

The latest yearly plan from the working group, the first one after the EPA came into force, was published in June 2019.[7] It puts forward the vision of a "society designing new value", which is supposed to be realized over the mid-term (2025-2030) and is based on identifying and helping individuals with non-average abilities. For example, it wants to advance things like startup clubs at schools and universities or young inventor clubs. Noting that non-average talent often appears at young age, the report proposes making it easy for children to participate in this kind of activity (page 6). This new idea is an extension of the original idea of trying to make it easier to develop new intellectual property.

The 2019 yearly plan does not mention the EPA in any way. Having a whole chapter of the EPA devoted to intellectual property would seem to be a good reason to take some time in the 2019 plan to give some information about what changes in Japanese law the Japanese government thinks are necessary to comply with the EPA requirements. I could not find any such reference in that plan.

### B-EU STRATEGY

The EU is like Japan interested in strong intellectual property rights. And like Japan, it competes on the world market not with cheap goods built by cheap labor, but by high class products backed up by intellectual property.

When the EU Commission published their strategy for international trade agreements in 2006, they noted[8] that the EU share of international trade had been about constant over the ten years since the WTO was founded. The EU achieved that success by relying on high quality products. That in turn requires strong intellectual property protection.

At the time, reform of the multilateral WTO trade framework was stuck. That in turn meant a more important role for bilateral trade agreements. And the EU Commission said that it intended to have intellectual property as one of the elements of all bilateral trade agreements. Just as the WTO agreement is not only about tariffs, like the original GATT agreement it developed further, but also has a new intellectual property part in the TRIPS agreement, bilateral trade agreements in the future were supposed to have such an element as well.

They also mentioned specifically aiming for better enforcement of intellectual property.[9] That may be a reason why this EPA has a Section C on enforcement. And in my view, that is the most important aspect of this whole chapter, as enforcement is difficult in Japan because plaintiffs have to pay their own attorney costs (I will discuss this in more detail later).

Korea was almost a decade ahead of Japan in getting a trade agreement with the EU done.[10] And that trade agreement also contained a section on intellectual property, exactly like the 2005 EU Commission strategy said it would. It is Chapter 10 there, Articles 10.1 to 10.69.

That is just like the WTO, which also was expanded to contain rules on intellectual property.

### C-WTO

Why does the WTO have an intellectual property agreement, the TRIPS agreement? Does every country in the WTO (essentially all countries) share the interest of the EU and of Japan of having strong intellectual property rights?

No.

Developing countries like India would be much better

6 Chiteki Zaisan Senryaku Honbu (Working Group on Intellectual Property Strategy), Kuuru Jyapan Senryaku (Cool Japan Strategy), www.kantei.go.jp/jp/singi/titeki2/kettei/cj190903.pdf.
7 Chiteki Zaisan Senryaku Honbu (Working Group on Intellectual Property Strategy), Chiteki Zaisan Suishin Keikaku 2019 (2019 Plan for the Advancement of Intellectual Property), https://www.kantei.go.jp/jp/singi/titeki2/kettei/chizaikeikaku20190621.pdf.
8 EU Commission, GLOBAL EUROPE, COMPETING IN THE WORLD, A Contribution to the EU's Growth and Jobs Strategy, 4.10.2006, COM(2006) 567 final, eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0567:FIN:en:PDF, page 4.
9 Communication (previous note), page 10.
10 Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, OJ L 127/6 of 14.5.2011.

## INTELLECTUAL PROPERTY

off without the TRIPS agreement. India did not extend its patent system to drugs at the time of the TRIPS agreement. And it did not have any interest in doing so.

That's because Indian industry did not own a lot of patents for drugs. Recognizing patents means that the owner of the patent gets some extra profit at the expense of the consumers that buy drugs for the purpose of staying alive and healthy. Those owners of patents would be American, EU, and Japanese companies and shareholders. And the consumers needing to pay more would be the Indian citizens.

In that market, consumers don't have much of a choice. If you think that the latest Pokemon game is too expensive, you can just skip buying it and do something more useful with your time. If you think that some drug or other is expensive but vital for staying alive, you will still be buying it, if you can find the funds.

So it did not make much sense for India and other developing countries to agree to the TRIPS treaty. They only did so because developed nations agreed to stop putting import quotas on apparel trade in exchange.[11]

Anyway, in this conflict the positions of the EU and of Japan were aligned. EU and Japan both own lots of intellectual property, so they are interested in strong protection for those rights. And Article 14-52 of the EPA requires both Japan and the EU to cooperate by exchanging information about the intellectual property situation in third countries, helping each other out enforcing these rights, and cooperating "with regard to activities for improving the international intellectual property regulatory framework, including by encouraging further ratification of existing international agreements and by fostering international harmonisation, administration and enforcement of intellectual property rights and on activities in international organisations including the WTO and the WIPO"(Paragraph 3).

That in turn means that neither is going to go ahead and abolish the patent system any time soon. As far as this EPA goes, it is not really necessary to have obligations to have a patent system in the first place. It is somewhat like an obligation to wash your hands while there is a coronavirus panic going on. People are going to do that anyway.

### III- COPYRIGHT (SECTION B, SUB-SECTION 1, ARTICLES 14-8 TO 14-17)

The most significant change of Japanese intellectual property law in recent years related to this EPA was an extension of the copyright term to match that of the EU.

The EPA requires setting a copyright term of 70 years after the death of the author in Article 14-13 Paragraph 1, as opposed to the 50 years required as a minimum standard by the Berne Convention and the TRIPS Agreement.

That is aligned with the EU rules on copyright, which have set the copyright term to 70 years since the relevant 1993 Directive.[12] That term was already the standard of the EU-Korea free trade agreement, in Article 10.6 there.

So in this case the EPA extends this rule of EU copyright to the whole EPA area. The situation is similar to Japan joining the EU and then being obliged to implement the relevant Directive.

This in turn means an exception to the rule of Article 41 of the Japanese Constitution, which says that Parliament is the only legislative organ, with some exceptions. This rule change was not discussed and decided in Parliament, but by the public servants negotiating this Agreement behind closed doors.

On the other hand, the Japanese Parliament did ratify the EPA, so that concern is somewhat mitigated. If the Members of Parliament read and understood the hundreds of pages of the EPA before ratifying it, the requirement of restricting legislation to Parliament would still be met, at least in a formal view.

And in contrast to the situation in the EU, where secondary legislation can change the copyright rules even if all Members of Parliament of some Member State are opposed, any change to the EPA requires that the Japanese Parliament ratifies that change.

There has been ample discussion about the wisdom of extending copyright terms to 70 years after the death of the author. In the United States, this question was litigated up to the Supreme Court[13], when the United States extended their copyright term to align with EU rules. Some people were opposed to extending

11 Srinivasan, The TRIPS Agreement, A Comment Inspired by Frederick Abott's Presentation, 2002, www.researchgate.net/publication/2851811_The_TRIPS_Agreement_A_Comment_Inspired_by_Frederick_Abbott's_Presentation.

12 Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights, eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31993L0098.

13 *Eldred v. Ashcroft*, 537 U.S. 186 (2003).

copyright terms. They of course have a point, since every extension of every intellectual property right automatically restricts the freedom of everyone else.

I am not convinced that authors need to be paid for two generations after their death in the first place. No one else gets that kind of treatment. Everyone else is paid until they retire, which usually happens considerably before their death.

And the only authors where a copyright term longer than fifty years matters in the first place are those that sell a lot. They will become rich before their death in most cases anyway and then can just let their children and grandchildren inherit that wealth.

If you accept the idea that copyright should give two generations after the original author an income,[14] it does make sense to calculate two generations as seventy years and not as fifty, since average life expectations have gone up since the 19th Century when the Berne Convention adopted that term. And it does make sense to have a unified standard.

Japanese copyright was changed to extend the copyright term to 70 years after the death of the author already with a law taking effect at the end of 2018.[15] That change came before the EPA took effect. And it was made because the TPP treaty[16] coming into effect on 30.12.2018 required an extension to 70 years in its Article 18.63.

The EPA also requires Japan to comply with the Berne Convention and the TRIPS Agreement in Article 14-3 Paragraph 2. That is nothing new, but when noting this, it is an interesting opportunity to point out that Japan, even while as a general rule following a maximalist intellectual property policy to the point of saying they want to base the economy of the 21st Century on intellectual property, actually may be in violation of Article 5, Paragraph 2 of the Berne Convention, which states that "the enjoyment and the exercise of these rights shall not be subject to any formality."

Japan has introduced a limitation on copyright for the purpose of running a search engine in 2010.[17] That is worth noting since Japan was the first country introducing such a limitation, motivated by a desire to make it easier for Japanese startup companies to compete with Google. As far as needed for that purpose, Google may copy files on the Internet and transform them into their search engine, creating a derivative work in their search database. Authors can opt out of this limitation by modifying the "robots.txt" file on their website.

This latter opt-out option may constitute a "formality" in the sense of Article 5. The prohibition against any such formality is caused by the fact that asking authors to follow the copyright laws of many nations and jump through all the hoops to keep their rights places a large burden on them. In this case, the opt-out in question is not contained in the copyright law, but only in an administrative ordinance by the Ministry of Culture, making it difficult to access in the first place and close to impossible to access for foreign authors.

Anyway, I think it is remarkable that Japan grants such a limitation, without even requiring Google to pay a part of their massive advertising revenue derived from the collective effort of all the authors writing the files on the Internet to these authors. Google gets to use all those rights for free under that policy, which explains why it has become the world's largest media company.

## IV- TRADEMARKS (SUB-SECTION 2, ARTICLES 14-18 TO 14-21)

The sub-section on trademarks is brief, Articles 14-18 to 14-21. It does not address the issue of exhaustion. It does not address the question if you are allowed to register a trademark in Japan that is non-descriptive in a different language, like a common word in one of the languages of the EU. It does not address the issue of Internet domain name protection. All these questions are left for the parties to decide as they want.

## V- GEOGRAPHICAL INDICATIONS (SUB-SECTION 3, ARTICLES 14-22 TO 14-29)

Japan has adopted an Act for the Protection of the Names of Designated Agricultural, Forestry and Fishery Products and Foodstuffs in 2014.[18] That is in the time frame the EPA was negotiated, but before it came into force. For the very least that means that Japan already has fulfilled its obligation under the EPA to set up a protection scheme for geographical indications.

In contrast to other sub-sections of the Chapter on intellectual property, there is a seven year

14 Recital 5 of Directive 93/98/EEC.
15 Law No. 108 of 2018, www.bunka.go.jp/seisaku/chosakuken/hokaisei/kantaiheiyo_hokaisei/.
16 Trans-Pacific Partnership Agreement, www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/text-texte/toc-tdm.aspx?lang=eng.
17 Law No. 53 of 2010, www.bunka.go.jp/seisaku/chosakuken/hokaisei/h21_hokaisei/.
18 Law No. 84/2014, elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=426AC0000000084.See discussion by Van Uytsel, ZJapanR 42 (2016), 179.

transition period under Article 14-25 Paragraph 5. It concerns "operations comprised of grating, slicing and packaging"carried out in Japan for the Japanese market, which will stay legal. Under Paragraph 6 the Parties shall review this question with a view to reaching a mutually acceptable solution before the end of the transition period.

The protection of geographical indications is to be enforced by both parties ex officio, without the need for any individual to file a lawsuit against an infringing company. That is a unique approach to enforcement not found for other forms of intellectual property and also exceeding the level of protection already found in the TRIPS Agreement.

### VI- INDUSTRIAL DESIGNS (SUB-SECTION 4, ARTICLE 14.31)

The EPA requires the protection of industrial designs just like the TRIPS Agreement, but it sets the term of the protection to at least 20 years, which is double the ten years of the previous TRIPS standard.

### VII- UNREGISTERED APPEARANCE OF PRODUCTS (SUB-SECTION 5, ARTICLE 14.32)

This Article obliges Parties to provide protection for the appearance of products, even if not registered as trademark or industrial design.

There is no such obligation in the TRIPS Agreement, so this is another point where the EPA exceeds the existing international standard.

### VIII- PATENTS (SUB-SECTION 6, ARTICLES 14-33 TO 14-37)

The Sub-Section on patents does not bring much in the way of new rules compared to the already existing international standards.

But it is worth noting that Article 14.33 Paragraph 3 asks the parties to establish a unitary patent judicial system, reading:

> "The Parties recognise the importance of providing a unitary patent protection system including a unitary judicial system in their respective territory."

Japan has a unitary judicial system in place for patents. This is aimed at the EU, which is in the process of setting one up. Anyway, this is not a rule obliging both parties to get a unitary judicial system, since it only says "recognize the importance of". It only shows that Japan approves of the idea of changing the EU system in this regard.

### IX- ENFORCEMENT (SECTION C, ARTICLES 14-40 TO 14-51)

One of the most important differences between Japanese law and EU law is the treatment of attorney fees.

Under Japanese law, as a general rule of civil procedure, each party pays their own attorney. That in turn means that even if the plaintiff wins a case, he only collects whatever is left after paying his attorney out of the settlement. It also means that the defendant has a choice between giving up and paying the plaintiff and fighting and paying his own attorney.

In a case where the claim is well founded, the plaintiff will never receive full compensation. In a case where the claim is very dubious, the defendant will never get away completely without payment.

That in turn gives an incentive for the defendant to settle even in cases where the plaintiff does not have a valid claim. It also makes it harder for right holders to enforce their intellectual property rights. Attorney fees can be substantial. They may be a deterrent to actually enforcing intellectual property rights.

The EPA has a new rule on this in Article 14-48. It reads:

> "Costs
>
> Each Party shall provide its judicial authorities, where appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of intellectual property rights, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under its laws and regulations."

This is close to the wording of Article 45 Paragraph 2 of the TRIPS Agreement, which reads:

> "The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees, in appropriate cases."

Both TRIPS and the EPA do not require unconditionally that the losing party pay the other party's attorney fees. They only require that "where appropriate" (EPA) or "in appropriate cases" (TRIPS).

## INTELLECTUAL PROPERTY

That is a less restrictive standard than that of Article 14 of the Directive on Enforcement of Intellectual Property,[19] which says:

> "Member States shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity does not allow this."

The EU-Korea free trade agreement contains exactly the same rule as the Directive, in Article 10.51, so it is significant that the EU was not able to push that through unchanged in their negotiations with Japan. Japan has been reluctant to agree unconditionally with the idea of having the unsuccessful party pay.

While there have been discussions on changing the rule on who has to pay for attorney costs in the past in Japan, I am not aware of any proposal to change them now as a consequence of Article 14-48 of the EPA. As noted above, the latest plan on intellectual property does not mention the EPA at all, and it does not propose any change of civil procedure cost rules for intellectual property.

It would actually be somewhat open to doubt to change this point only for intellectual property lawsuits. If the model of having the unsuccessful party pay for both sides' attorney fees is the reasonable thing to do, what exactly is the difference to all other civil lawsuits that would justify a different model? If you start changing this, shouldn't it be changed in a uniform way for all areas of civil procedure, as opposed to only the lawsuits concerning intellectual property law? And shouldn't it be changed as a result of broad discussion in Parliament as opposed to as a result of trade deal negotiations with the EU behind closed doors?

Again, Article 14-48 is not much different in its wording from what the TRIPS Agreement already required in its Article 45. There certainly has not been any change in the treatment of attorney costs in Japanese intellectual property civil procedure law as a consequence of the TRIPS Agreement.

So maybe there will be none as well for implementing Article 14-48 of the EPA.

On the other hand, it may be possible to comply with this Article by changing precedent. While it is true that as a general rule each party has to pay their own lawyer in Japan, there is an exception for tort cases, where the plaintiff may be able to claim the legal cost as part of the damages.[20] One could imagine extending that exemption to this situation.

That solution would however only affect one of the possible outcomes. If the plaintiff wins, he may be able to charge the attorney cost as part of the damages. This does not work in the other case, when the defendant wins. And introducing a rule that only one party may be liable for the other party's cost if they lose departs from the general principle of civil procedure law giving both parties the same weapons to fight with.

Therefore, if going this route one would need to also extend the opposite case law[21] giving the defendant a claim based on torts when faced with the need to pay attorney costs to defend against a baseless claim.

19 Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02004L0048-20040430

20 Supreme Court 27.2.1971, www.courts.go.jp/app/hanrei_jp/detail2?id=55036.

21 Supreme Court 26.1.1988, www.courts.go.jp/app/hanrei_jp/detail2?id=52197.