



Statistical Information on Japanese Patent Trends and Patent Infringement Litigations in District Court in Japan

Presented by Tomoyuki Serizawa

JP patent attorney

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Shin-Ei
Patent Firm

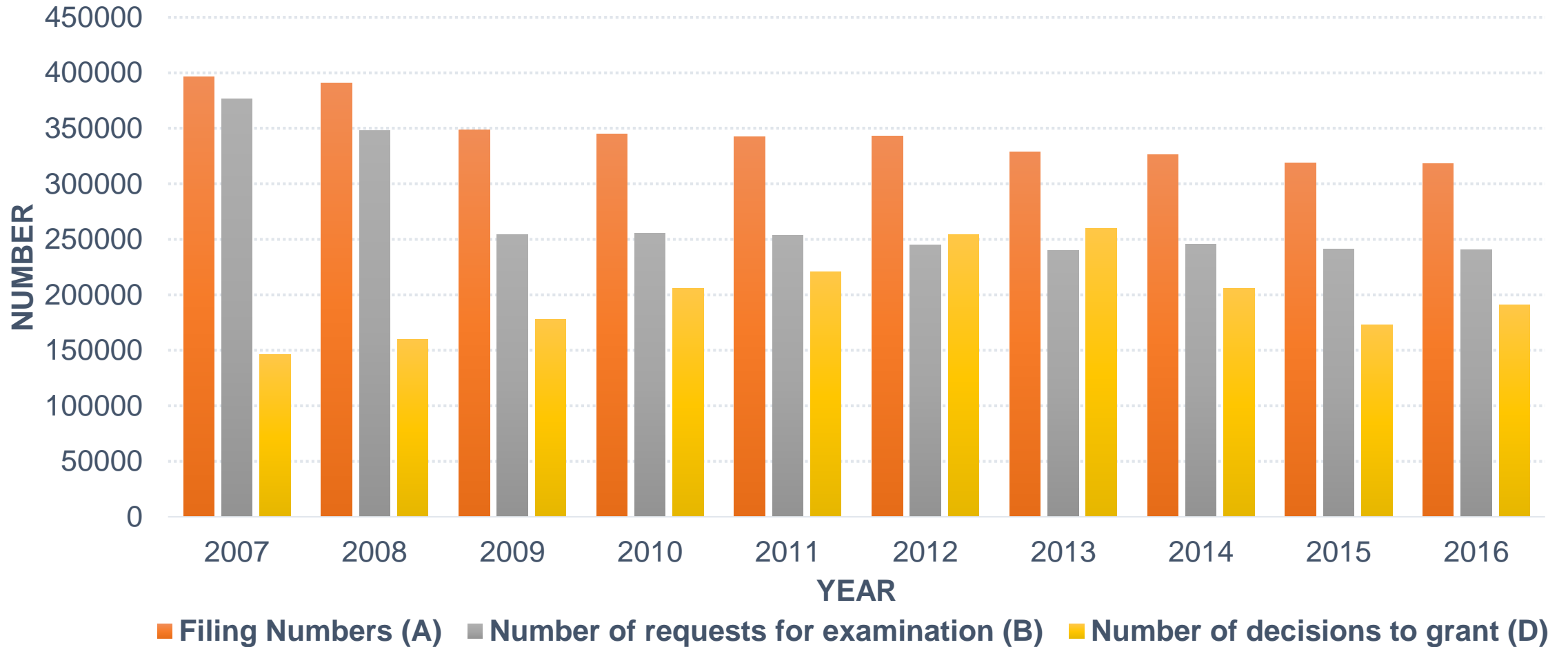
PATENT AND TRADEMARK ATTORNEYS

8F TORANOMON EAST BUILDING, 7-13, NISHI-SHIMBASHI 1-CHOME, MINATO-KU, TOKYO 105-0003, JAPAN | TEL +81-03-6203-9580 | SHIN-EI-PATENT.GR.JP

Statistical Information on Japanese Patent Trends

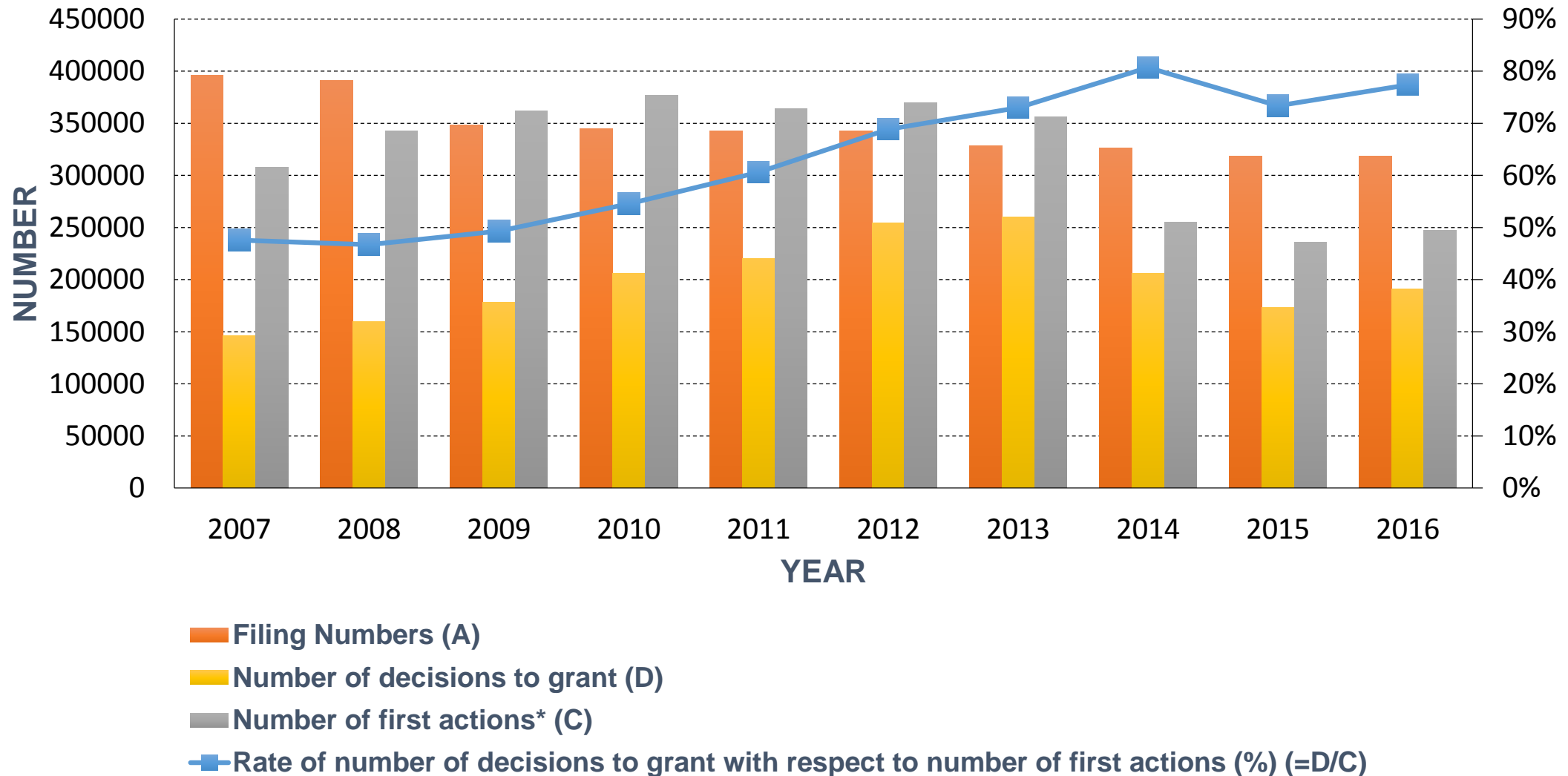
*This statistics information is supported by the patent administrative annual report: https://www.jpo.go.jp/shiryuu/toushin/nenji/nenpou2017_index.htm

1. Newly-filed patent applications



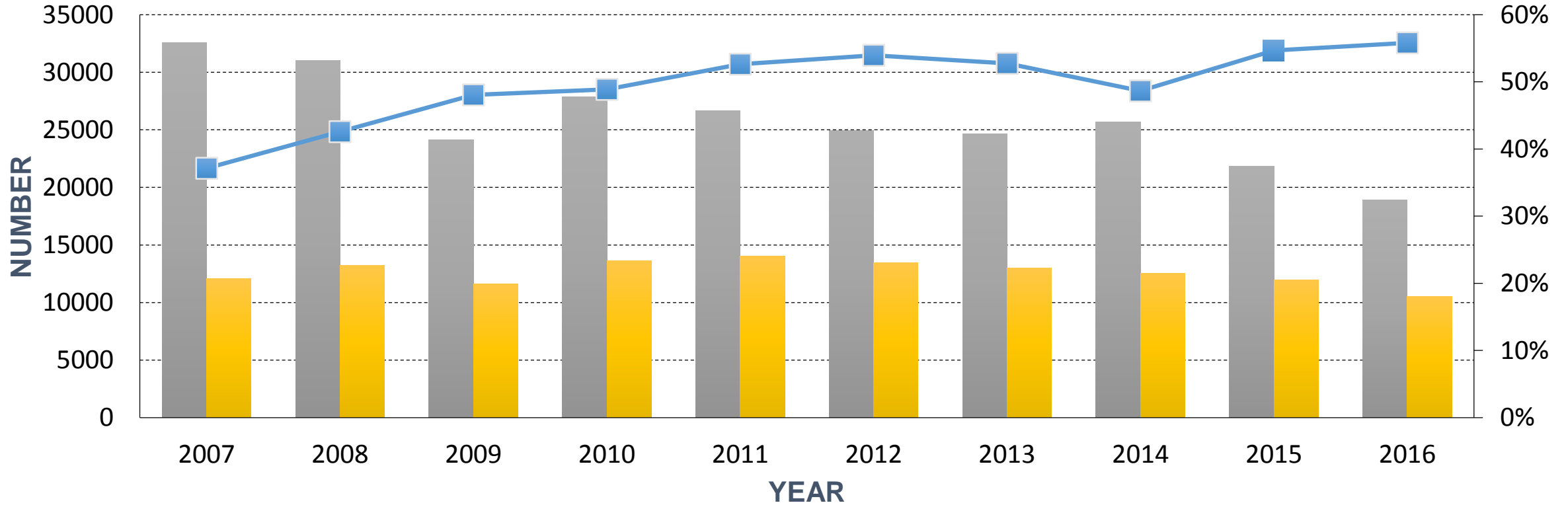
- The number of newly filed patent applications have gradually decreased year by year. Meanwhile, in recent periods (FY2015 and 2016), the number of newly-filed patent applications has been stable at around 320,000.

2. Grant rate of patent applications



- The rate of the number of decisions to grant with respect to the number of first actions have increased year by year. In FY2016, the rate of the number of decisions to grant reached about 77%, while the rate of the number of decisions to grant was about 48% in FY2007. *First action indicates all first actions from the JPO, including a first office action and a notice of allowance.

3. Number of decisions to grant in pre-trial examination



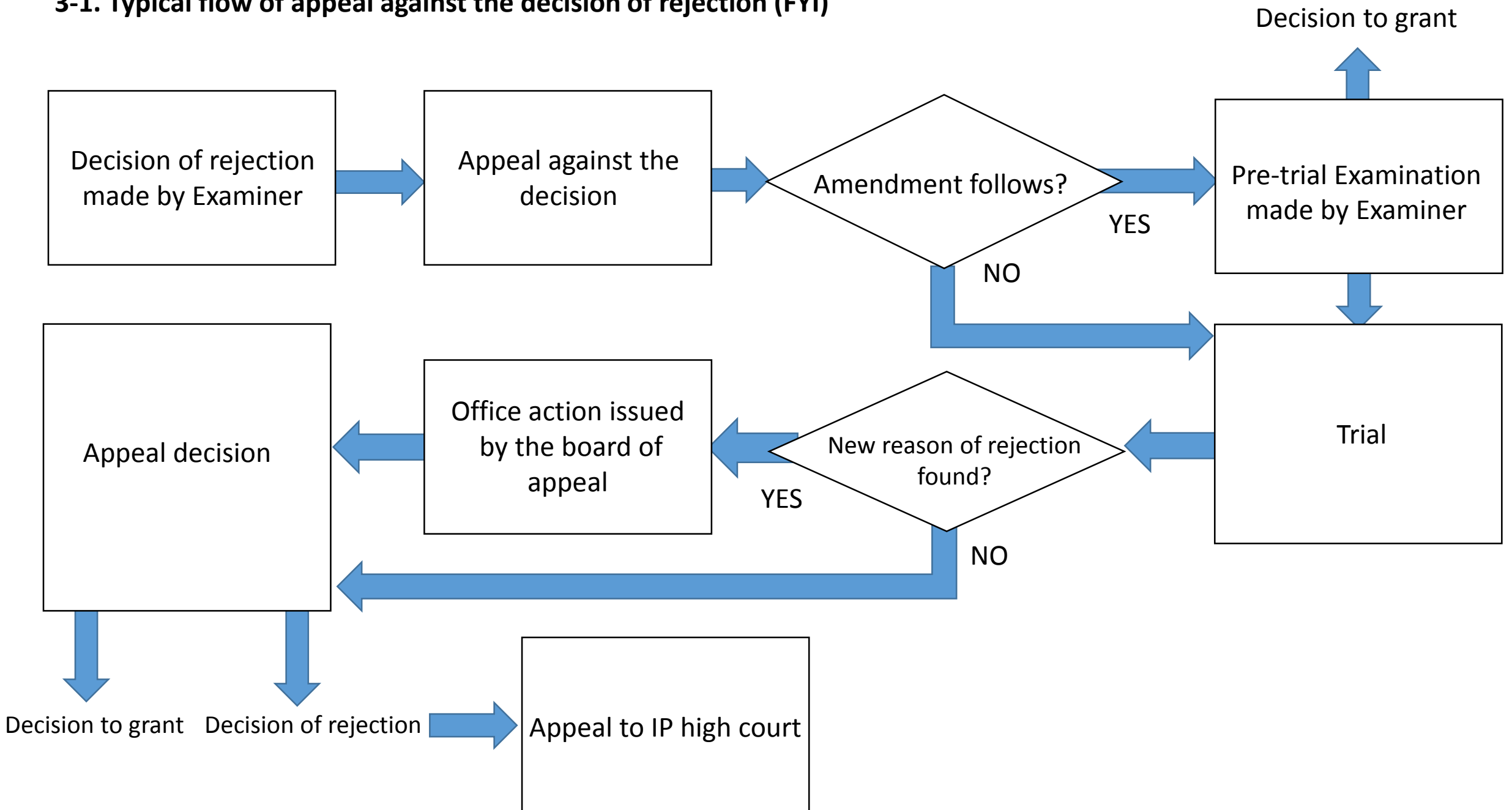
■ Number of requests for appeal (A)

■ Number of decisions to grant in pre-trial examination (B)

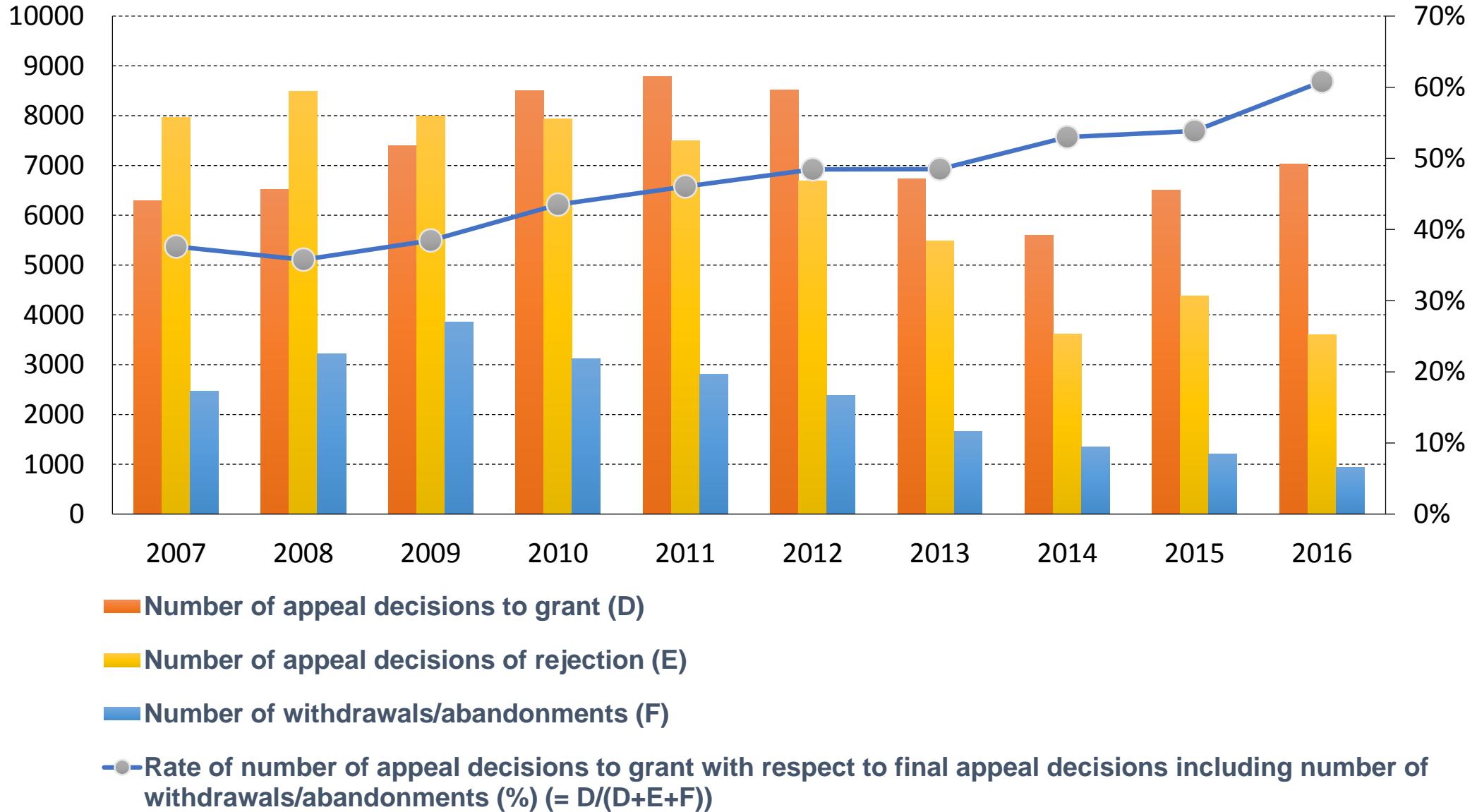
■ Rate of number of decisions to grant in pre-trial examination with respect to number of requests for appeal (%) (= B/A)

- With the decrease in the number of newly-filed patent applications, the number of requests for appeal against the decision of rejection has decreased year by year. On the other hand, the rate of the number of decisions to grant in pre-trial examination with respect to the number of requests for appeal has increased (For example, the rate was 56% in FY2016, while the rate was 37% in FY2007).

3-1. Typical flow of appeal against the decision of rejection (FYI)

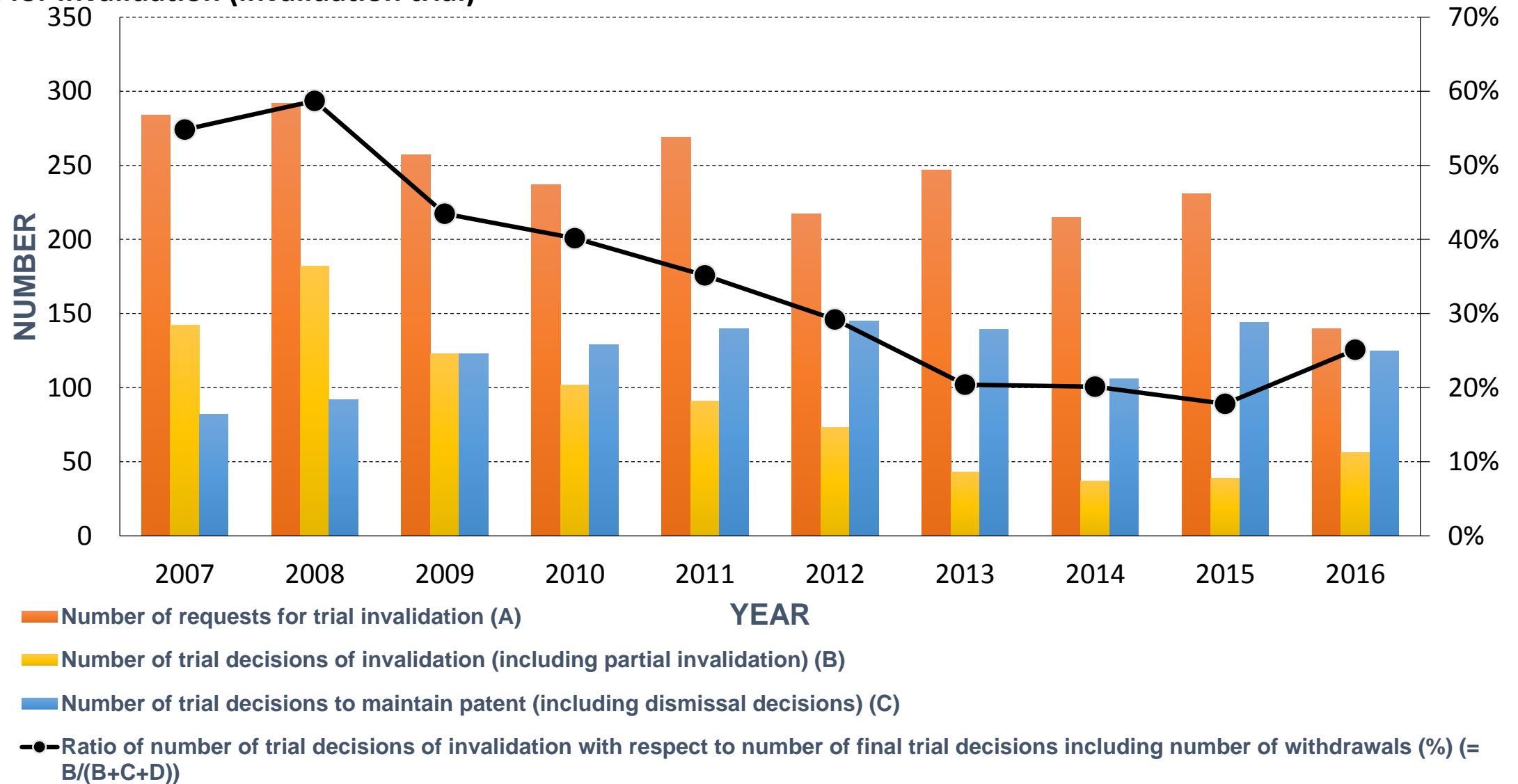


4. Number of decisions to grant in final appeal decisions



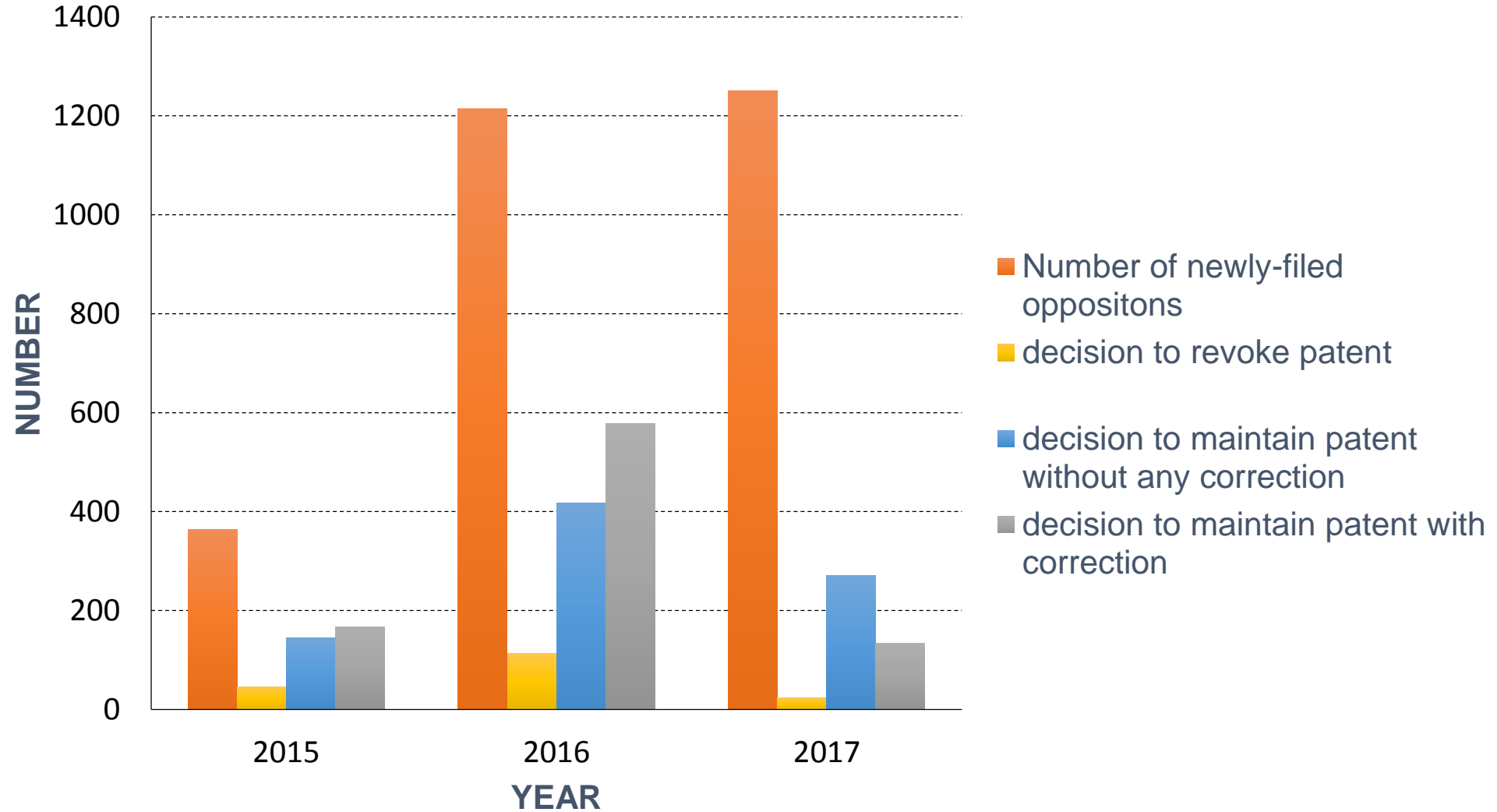
- The rate of the number of decisions to grant with respect to the total number of final appeal decisions has increased (For example, the rate was 61% in FY2016, while the rate was 38% in FY2007).

5.Trial for invalidation (invalidation trial)



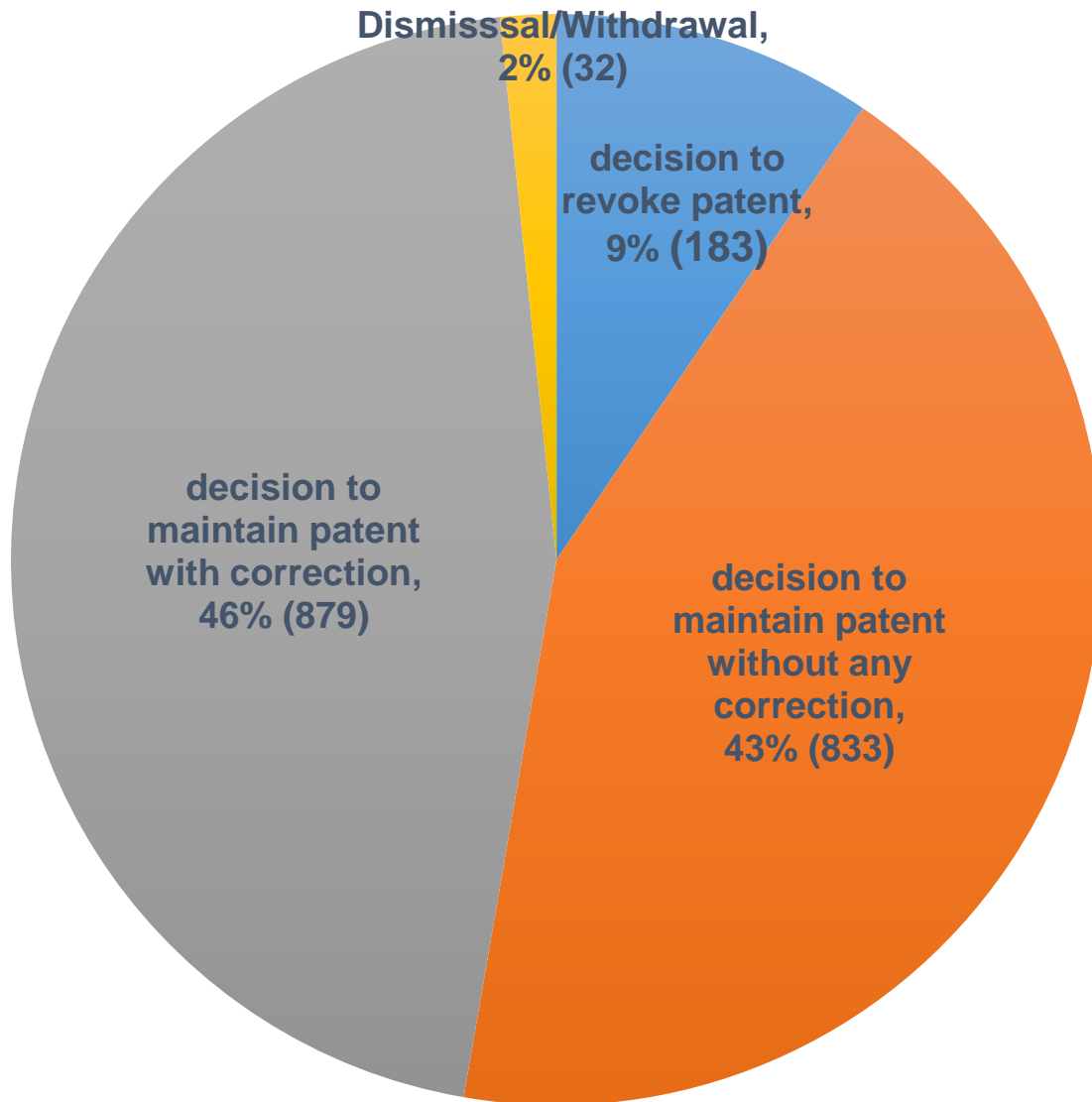
- The number of invalidation trials were stable in a range of 200 to 300 during the periods of FY2007 to FY2015, but the number was decreased in FY2016. It is considered that the decrease in the number of requests in FY2016 might be affected by new opposition effective from April 2015. The success rate of the invalidation trial is around 20%, while it was around 60% in FY2008. This indicates that it has become considerably more difficult to invalidate a patent in an invalidation trial.

6. Number of newly-filed Oppositions



- New opposition system came into effect from April 2015. The number of newly-filed oppositions were around 1200 in FY2016 and 2017. It is expected that this trend of the number of oppositions (about 1200) will continue in the future.

7. The breakdown of decisions in Oppositions (FY2015 to FY2017)



- In the periods from FY2015 to FY2017, The number of decisions to revoke patent was 183 (about 9%); the number of decisions to maintain patent without any correction was 833 (about 43%); the number of decisions to maintain patent with correction was 879 (about 46%); and the number of dismissals or withdrawals was 32 (about 2%).
- This result shows that it has become considerably more difficult to revoke a patent in new opposition system. Meanwhile, this result shows that a patentee needed to amend patented claim(s) in order to overcome revocation reason in 55% (= 46% + 9%) of the total number of decisions. That is, it can be said that it has become considerably more difficult to revoke a patent, while this new opposition system may be beneficial to make the technical scope of patented claim(s) narrower than the original one. As a result, requester's products may not fall within the technical scope of the patented claim(s).

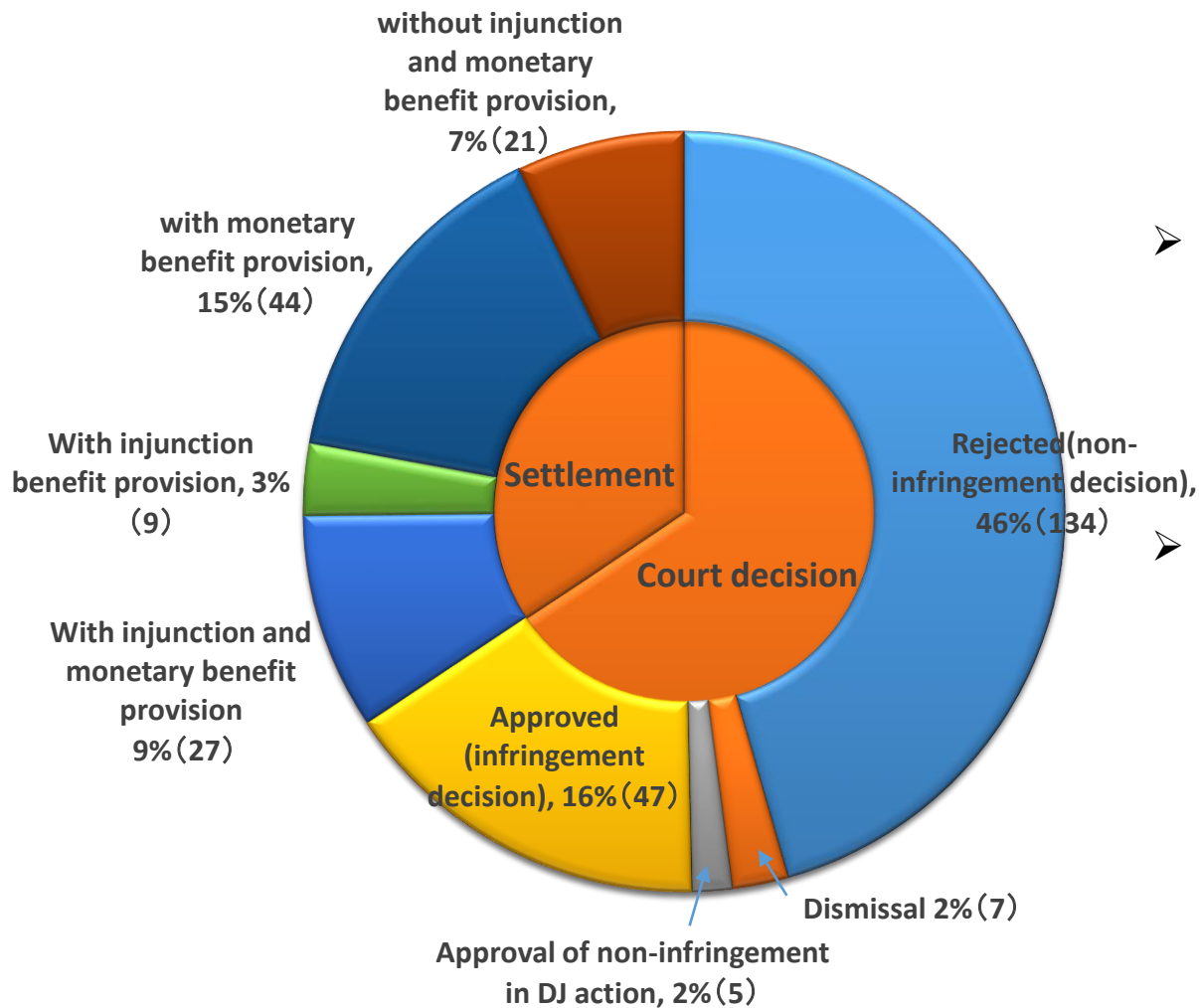
7-1. Comparison between trial for invalidation and opposition (FYI)

	Opposition	Trial for invalidation	EPO Opposition
WHEN?	within 6 months from the publication date of the patent	At any time	within 9 months of the publication of the mention that the patent has been granted
WHO?	Any person (straw man admissible)	Only interested person	Any person
OFFICIAL FEES?	¥16,500 + ¥2,400/each claim	¥49,500 + ¥5,500/each claim	EUR 775
GROUND?	Novelty, Inventive step, clarity, new matter amendment and so on...	In addition to the grounds for opposition, usurped application, ex-post ground and so on...	Novelty, Inventive step, new matter amendment and sufficient disclosure, and so on...
AMENDMENT?	Possible, but must not extend the technical scope of patented claim.	Possible, but must not extend the technical scope of patented claim.	Possible, but cannot extend the scope of claim (Art. 123(3)).
ORAL PROCEEDING?	No	YES	YES
Duration?	About 5.8 months in FY2016	About 10.5 months in FY2016	about 24 months in FY2012
APPEAL?	Possible in case the patent is revoked. Appeal to IP high court.	Possible in both cases of decision to maintain and decision to revoke. Appeal to IP high court.	Possible in both cases of decision to maintain and decision to revoke

Statistical Information on Court Decisions and Settlements of Patent infringement Litigations in Tokyo District Court and Osaka District Court (FY2014 to 2016)

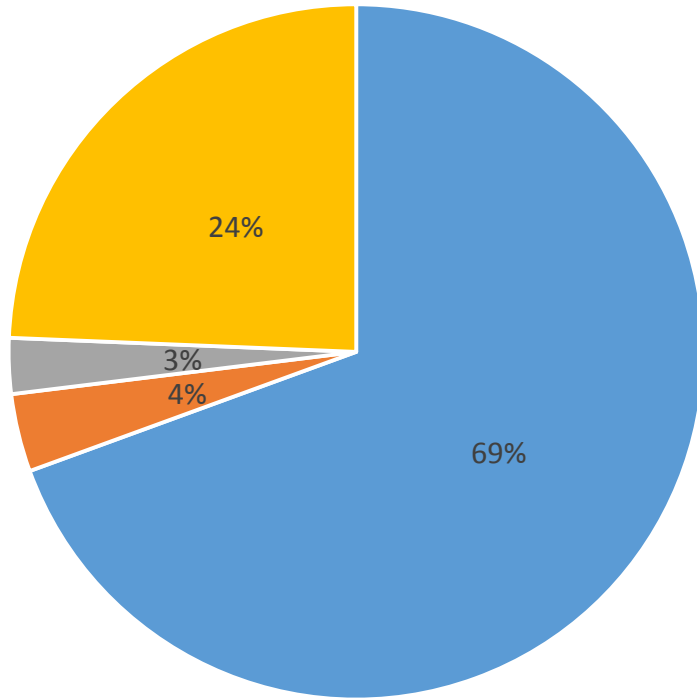
*Litigation data are supported by the web page of IP high court
<http://www.ip.courts.go.jp/documents/statistics/index.html>

1. Court decisions and settlements (FY2014 to FY2016)



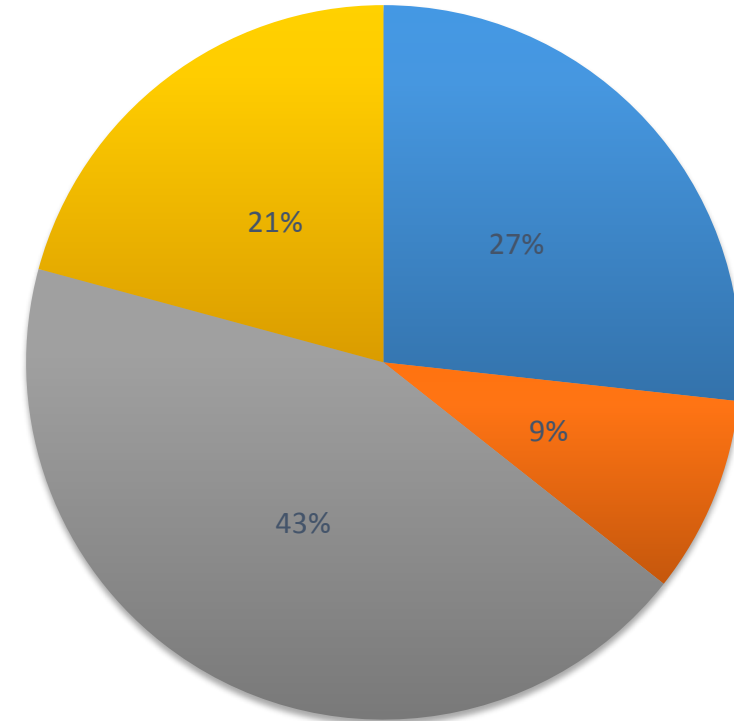
- According to the final results of patent infringement litigations in Tokyo and Osaka district courts during the periods of FY2014 to FY2016, 66% of all cases were concluded with court decision, while 34% of all cases were concluded with settlement.
- It is difficult for the Plaintiff to obtain a positive infringement decision (approval decision)(16%) in Japan as a final result of a patent infringement litigation, but the winning rate of plaintiffs is substantially higher at about 43% in consideration of the number of settlements that are also advantageous to plaintiff.

2. Trend of Court decisions (FY2014 to FY2016)



■ rejected ■ dismissal ■ approval of obligation absence ■ approval

3. Trend of Settlements (FY2014 to FY2016)

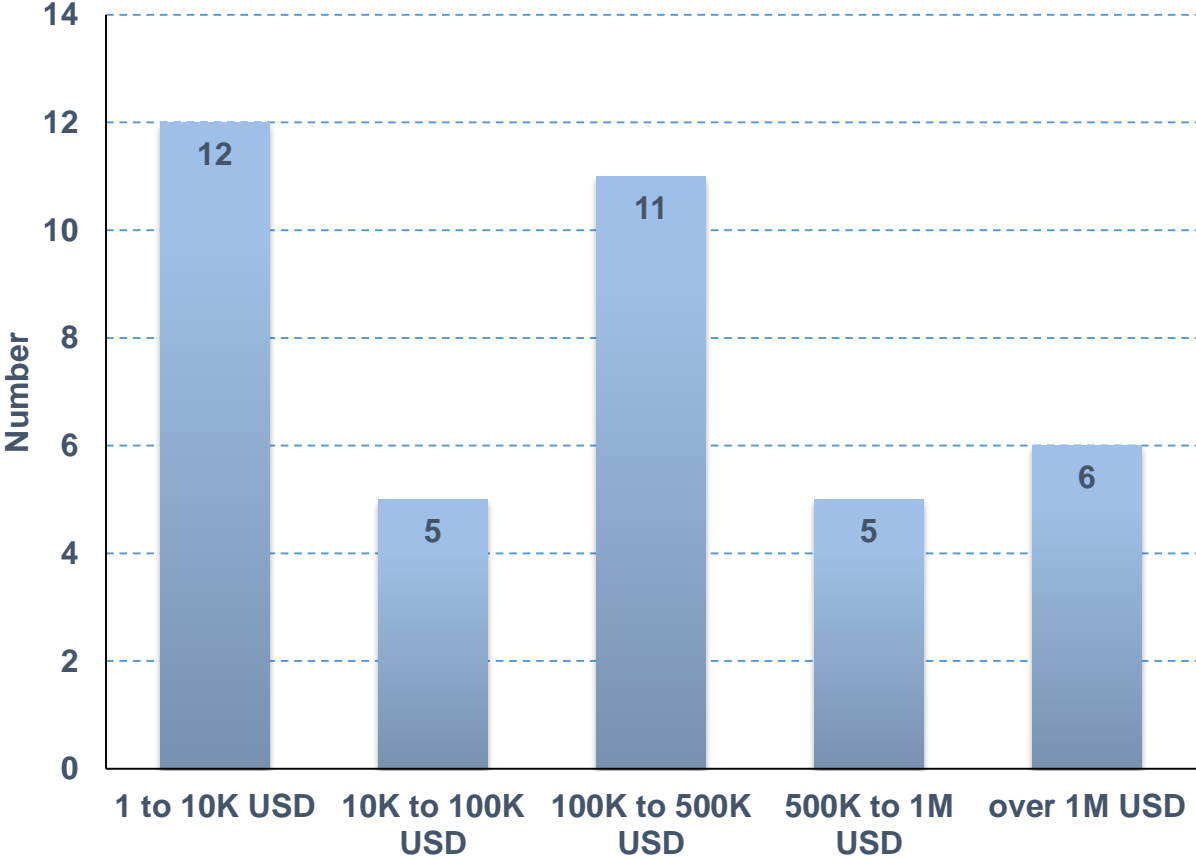


■ with injunction and monetary benefit provision ■ with injunction benefit provision
■ with monetary benefit provision ■ without injunction and monetary benefit provision

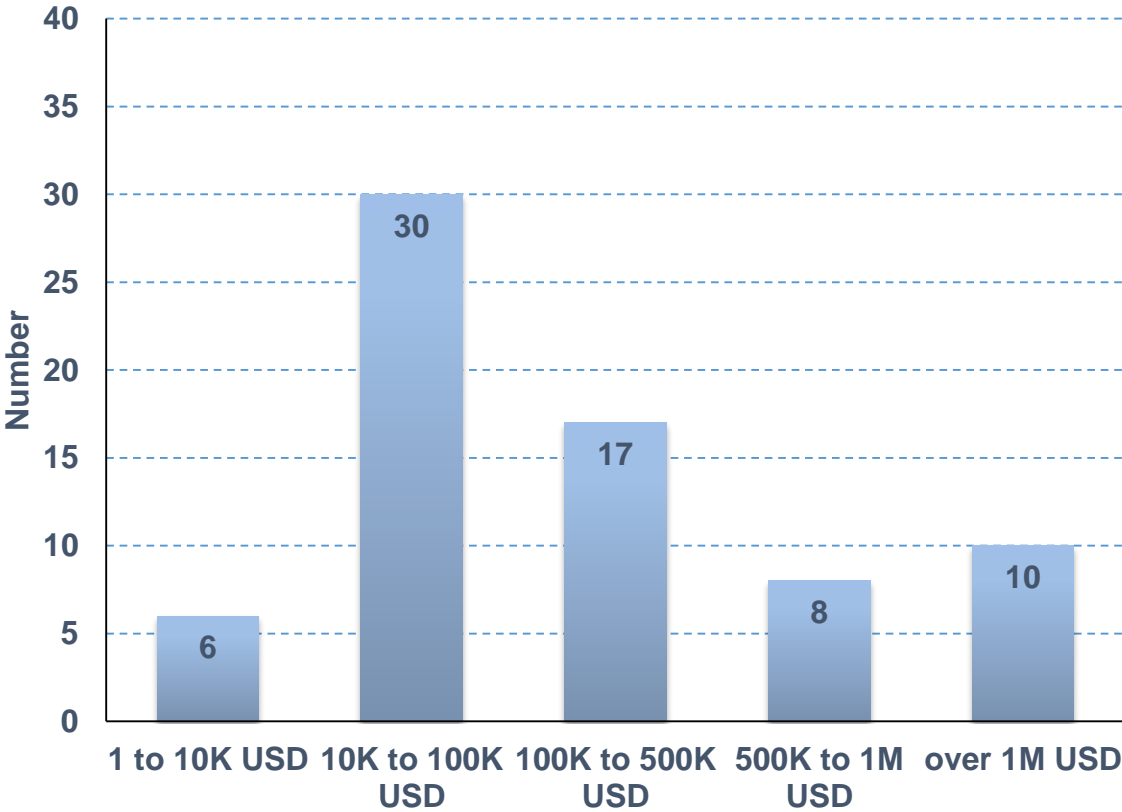
➤ According to the contents of court decisions, the rate of rejected decisions (non-infringement decisions) is about 69% while the rate of approved decisions (infringement decisions) is about 24%.

➤ According to the contents of settlement agreements, the rate of settlements advantageous to plaintiff is about 79%, which indicates that the case is likely to be concluded with settlement if the case proceeds in favor of plaintiff.

4. Distribution of damages awarded by Court decision (FY2014 to FY2016)

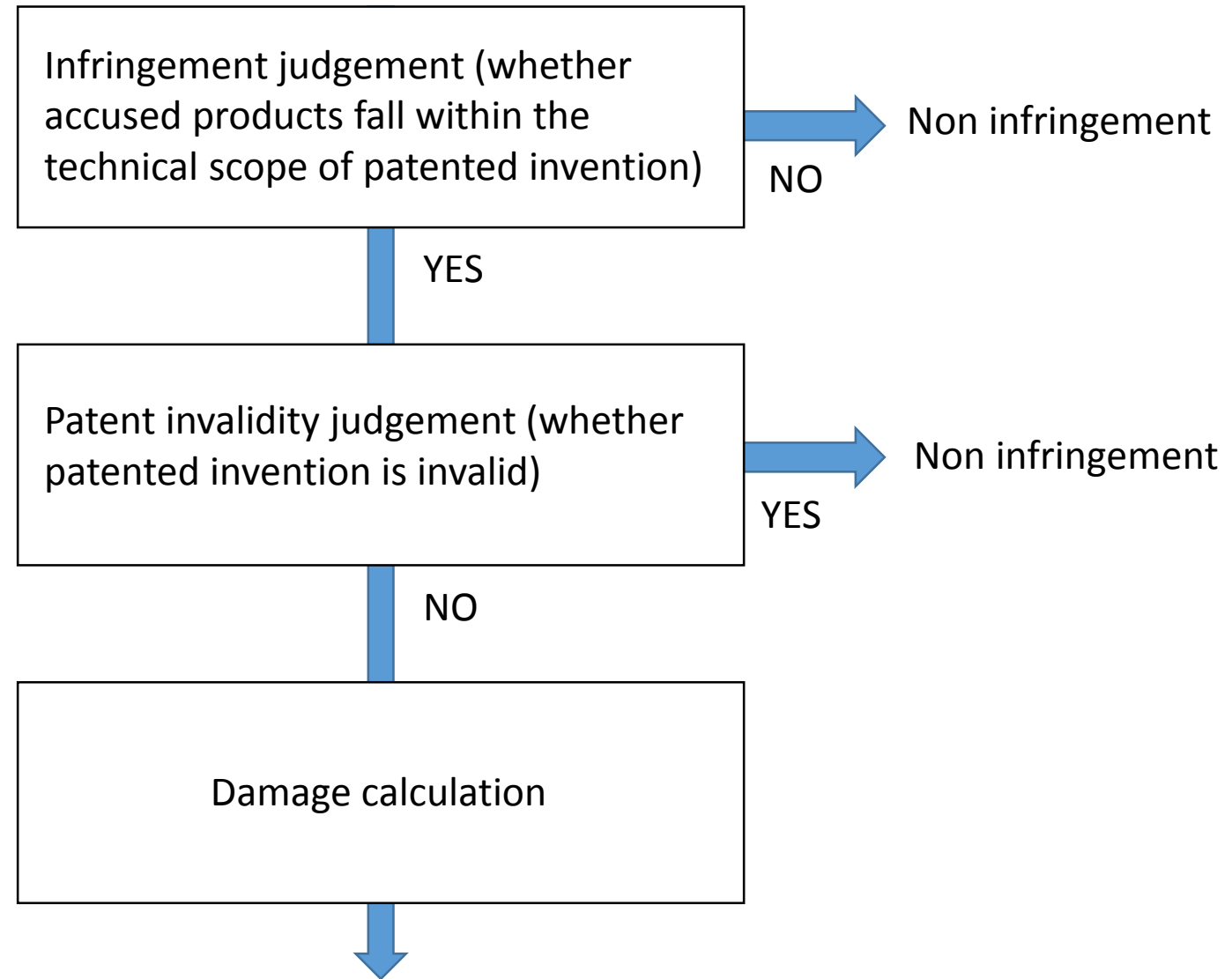
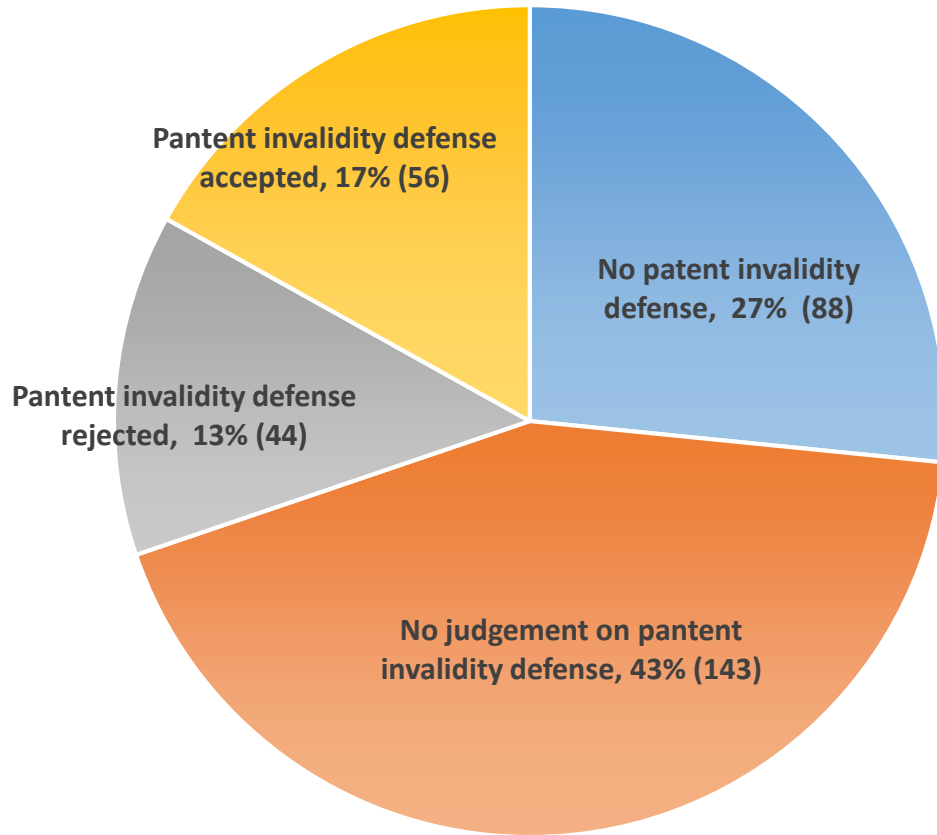


5. Distribution of damages awarded by Settlement (FY2014 to FY2016)



➤ An award of damages in a range of 1 to 10K USD is the most common outcome in a court decision, while damages in a range of 10K to 100K USD is the most common outcome in a settlement agreement. More than 1M USD in damages has been awarded 6 times in court decision, and 10 times in settlement agreements.

6. Patent Invalidation Defense (FY2014 to FY2016)



- Defendants usually assert the invalidity of patent in patent infringement litigations (about 72%).
- However, the success rate of this patent invalidity defense is not so high. In this regard, normally, the judges decide whether a patent is invalid or not only if accused products fall within the technical scope of the patented invention. Accordingly, no judgement on patent invalidation defense is done (about 43%) unless the accused products fall within the technical scope of the patented invention.

Summary

In Japan,

- The grant rate of patent applications is high (about 77% in FY2016).
- The success rates of trials for invalidation and oppositions are very low (about 20% in trials for invalidation and about 9% in oppositions) That is, it is very difficult to revoke a patent.
- It is difficult to obtain a positive decision in patent infringement litigations, but the winning rate of plaintiffs is substantially higher at about 43% in consideration of advantageous settlements.