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A Japanese version Amicus Brief system will be introduced in spring 2022

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On 14 September 2021, the Japan Patent Office (JPO) announced that most of the amendments to the Patent Act and other intellectual property laws, which were promulgated on 21 May 2021, will come into force on 1 April 2022. The amendments cover various matters such as the introduction of online oral hearings at the trial board of the JPO, which will come into force on 1 October 2021, and the prohibition of acts in relation to third parties bringing into Japan from abroad goods infringing trademark or design rights. This new provision in effect makes counterfeits sent in small lots from overseas to Japanese residents infringing goods. Regarding patent infringement litigation, the amendment introduces a new system to widely gather opinions from the third parties, which is called a Japanese version Amicus Brief system.

This new system provides that, upon a request from one party and hearing the other party's opinion, the Tokyo or Osaka District Court handling patent infringement litigation and the IP High court handling appeal cases may invite opinions regarding an issue of the case from the public. The subject of the opinion may be a legal issue or a factual matter, which the court thinks necessary. Each party can select among the gathered opinions those they think useful or supportive to their position and submit copies of the selected opinions as documentary evidence.

It is expected that this public opinion gathering will be used in important or influential cases involving SEP and FRAND issues, AI and IoT related inventions, and other issues where comments and opinions from the relevant industries need to be listened to. In fact, even before this amendment, the court widely gathered opinions from the public in a way similar to this amendment in *Apple vs. Samsung*, the IP High Court Case No. H25 (2013) (Ne) 10043. This amendment is based on the experiment in the *Apple vs. Samsung* case with some modifications and improvements.

This Japanese version Amicus Brief system intends to gather opinions not only from Japanese companies and industrial organizations, but also from relevant entities and institutions in other countries. If you are a member of an organization or a counsel at a company in a business related

in particular to SEP and FRAND, you may need to add Japanese patent litigation to your watch list. Practitioners are waiting for the first case in which this new opinion gathering system will be used.

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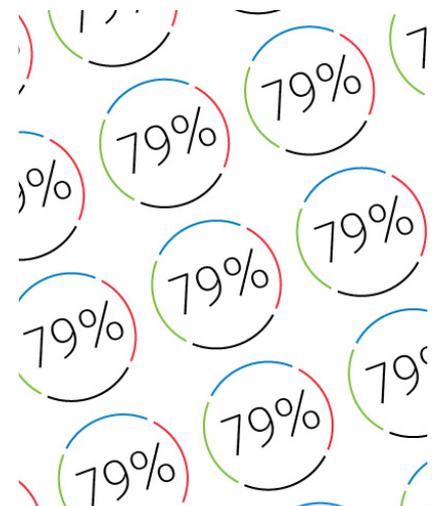
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