



**LATEST IPR TREND IN JAPAN**

**Global IP Strategy Partner**

**IPStart Intellectual Property Law Firm**

On April 1, 2023, the criteria for the restoration of various procedures for patent, utility model, design, and trademark applications was changed from “due care” to “unintentional” criteria.

Even when Applicant fail to complete any one of the following procedures by the statutory deadline, the JPO will allow them to complete the procedure **if they can state that the failure to do it is unintentional.** Under the unintentional criteria, a request for restoration will be easily admitted by the JPO.

The following procedures can be restored with unintentional criteria.

- Submitting the Japanese translation of an application written in a foreign language (Art. 36-2(6) of the Patent Law)
- Submitting the Japanese translation of PCT documents for entry into JP national phase (Art. 184-4(4) of the Patent Law)
- Filing a patent application claiming a domestic priority from another patent application (Art. 41(1) of the Patent Law)
- **Filing a patent application claiming a Paris Convention priority from a foreign patent application** (Art.43-2(1) of the Patent Law)
- **Filing a request for examination** (Art. 48-3(5) of the Patent Law)
- Additional payment for the restoration of a patent right (Art. 112-2(1) of the Patent Law)
- Filing a document for appointment of Japanese patent agent (Art. 184-11(6) of the Patent Law, etc.)
- **Filing an application for the renewal registration of a trademark right** (Art. 21 of the Trademark Law)

## Additional Fees

- Patent applications: 212,100 JPY
- Utility model applications: 21,800 JPY
- Design applications: 24,500 JPY
- Trademark applications: 86,400 JPY

A request for the restoration of the above procedures other than the filing of a patent application claiming Paris Convention priority must be filed **not more than two months** after the date when the procedure becomes available or within one year after the statutory deadline (within six months after the statutory deadline in trademark cases), whichever is earlier.

Regarding a request for restoration of a priority right under the Paris Convention, a patent application claiming the priority must be filed not more than two months after the priority deadline.

# Amended IP laws (effective from Apr. 1, 2024)

## Introduction of a consent system in trademark applications

The consent system allows the registration of a trademark that is similar to a previously registered trademark owned by another person by the submission of a letter of consent, if there is less risk of confusion between the trademark and the previously registered trademark.

A trademark containing a name\* (well-known name) of another person can be registered under a certain condition without the consent of the other, provided that the name is largely relevant to the applicant, and the applicant does not file a trademark application with fraudulent intention.

\*Name is defined as containing family name and first name.

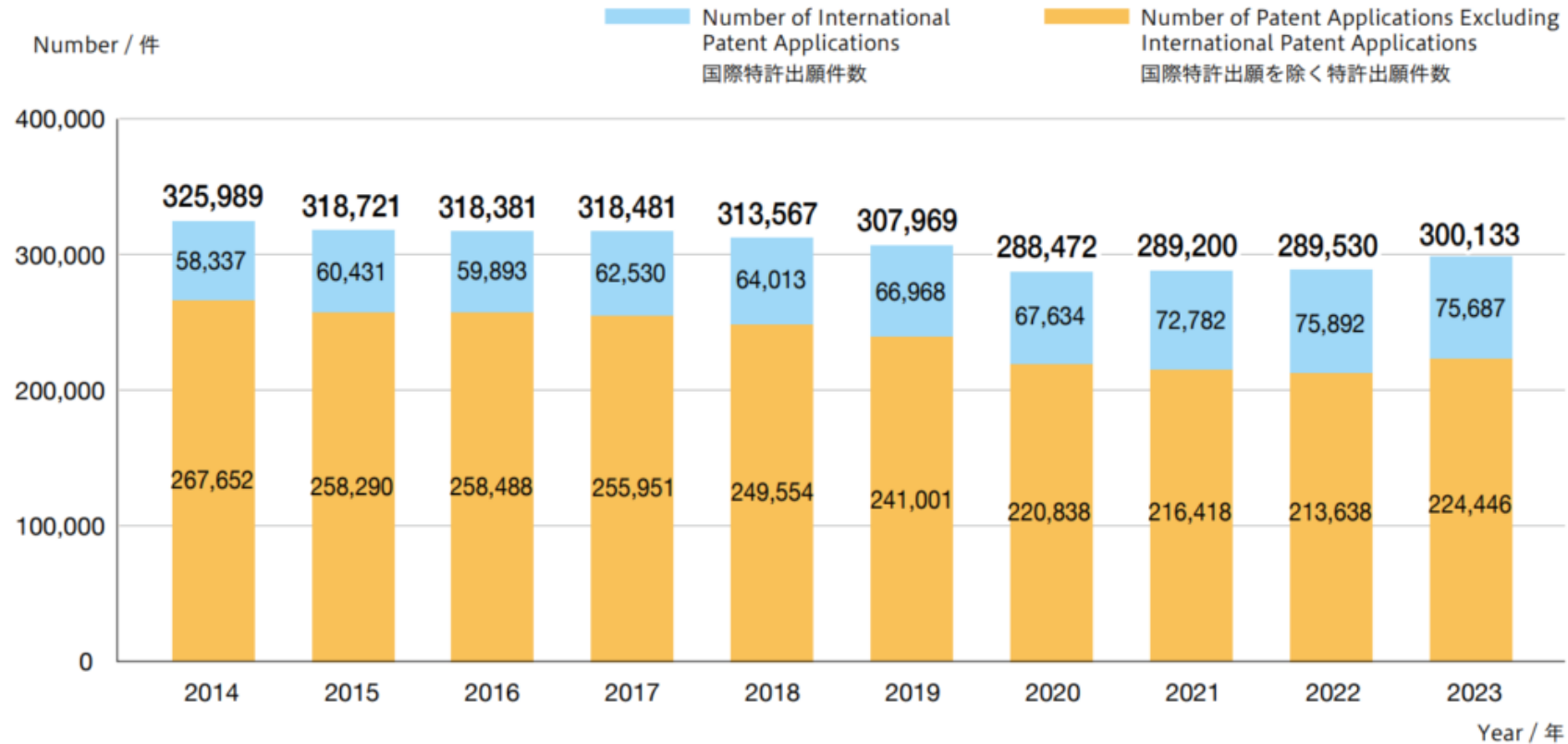
An electronic copy (scanned copy) of priority document can be submitted, instead of the original priority document (effective from Jan. 1, 2024).

Note that DAS code is still available between Japan and other countries.

# IP Statistics Report 2024

## Number of Patent Applications

Japanese IP Statistics Report 2024 issued from the JPO



Number of patent applications in 2023: 300,133

-Number of patent applications via PCT route: 75,687

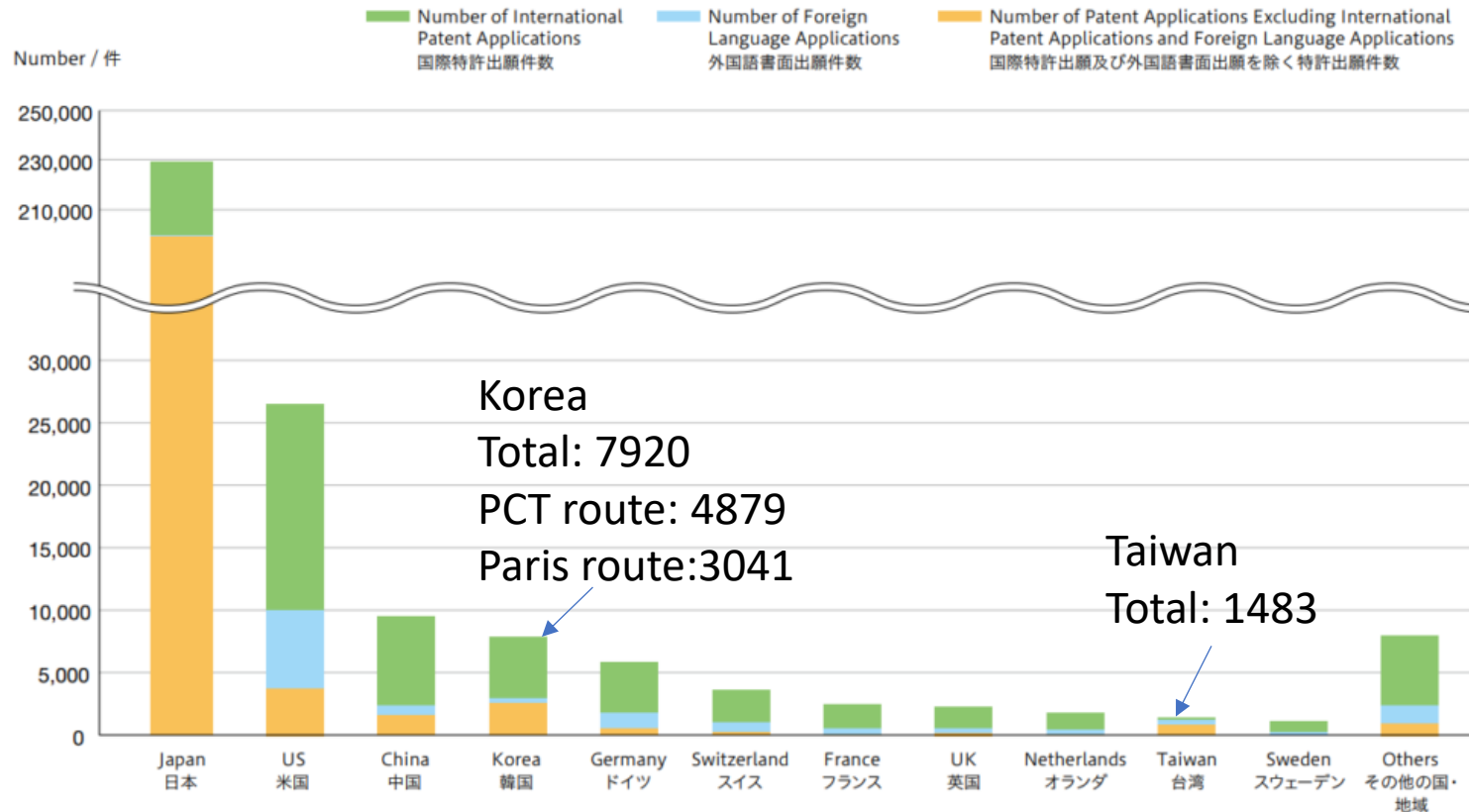
-Number of patent applications excluding the PCT route: 224,446

The number of patent applications in 2023 increased by 10K from 2022, returning to 300K level.

# IP Statistics Report 2024

## Trends in the nationalities of applicants

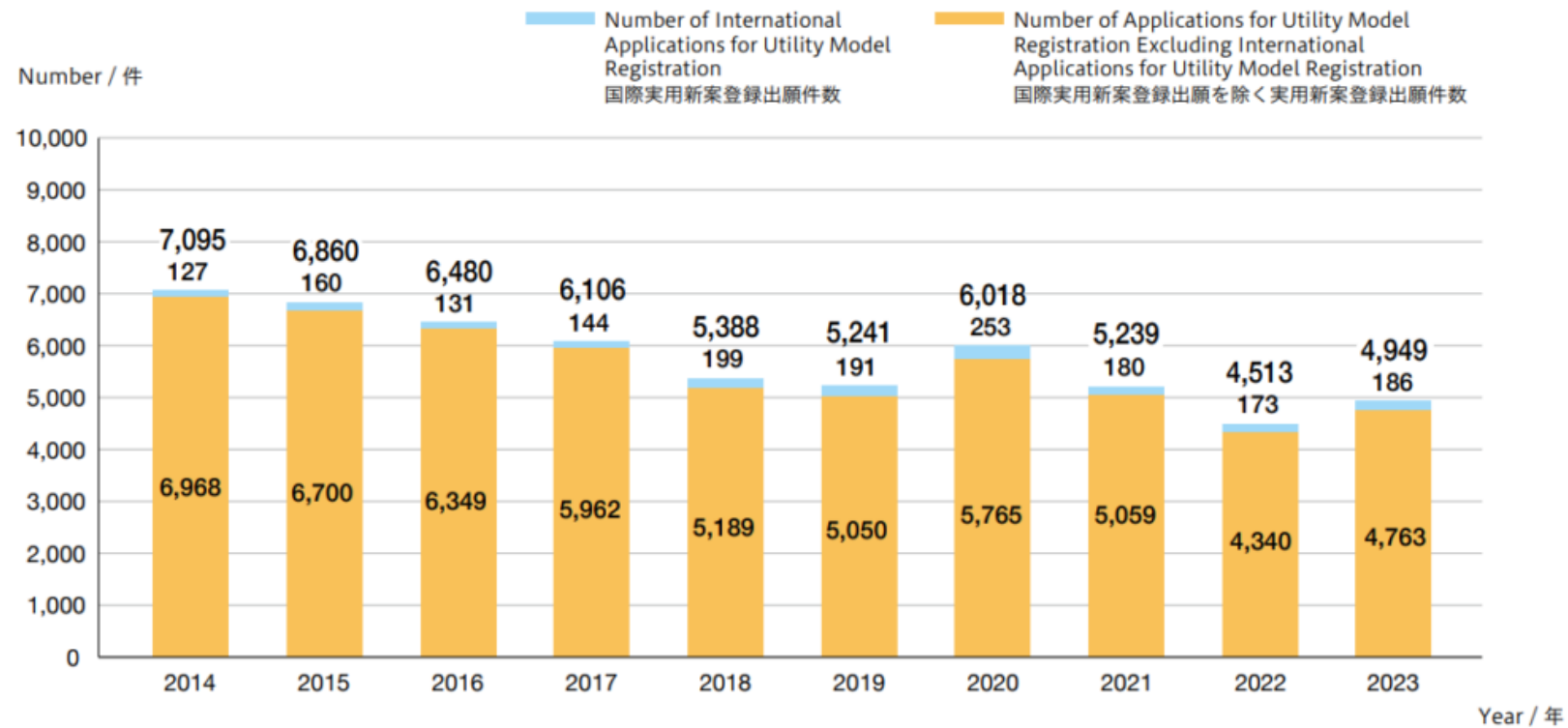
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Except for Japan, the number of patent applications filed in Japan was higher in the U.S., China, South Korea, and Germany, in that order. It can be seen that the majority of Japanese applications from foreign countries are filed via PCT route.

## Number of Utility Model Applications

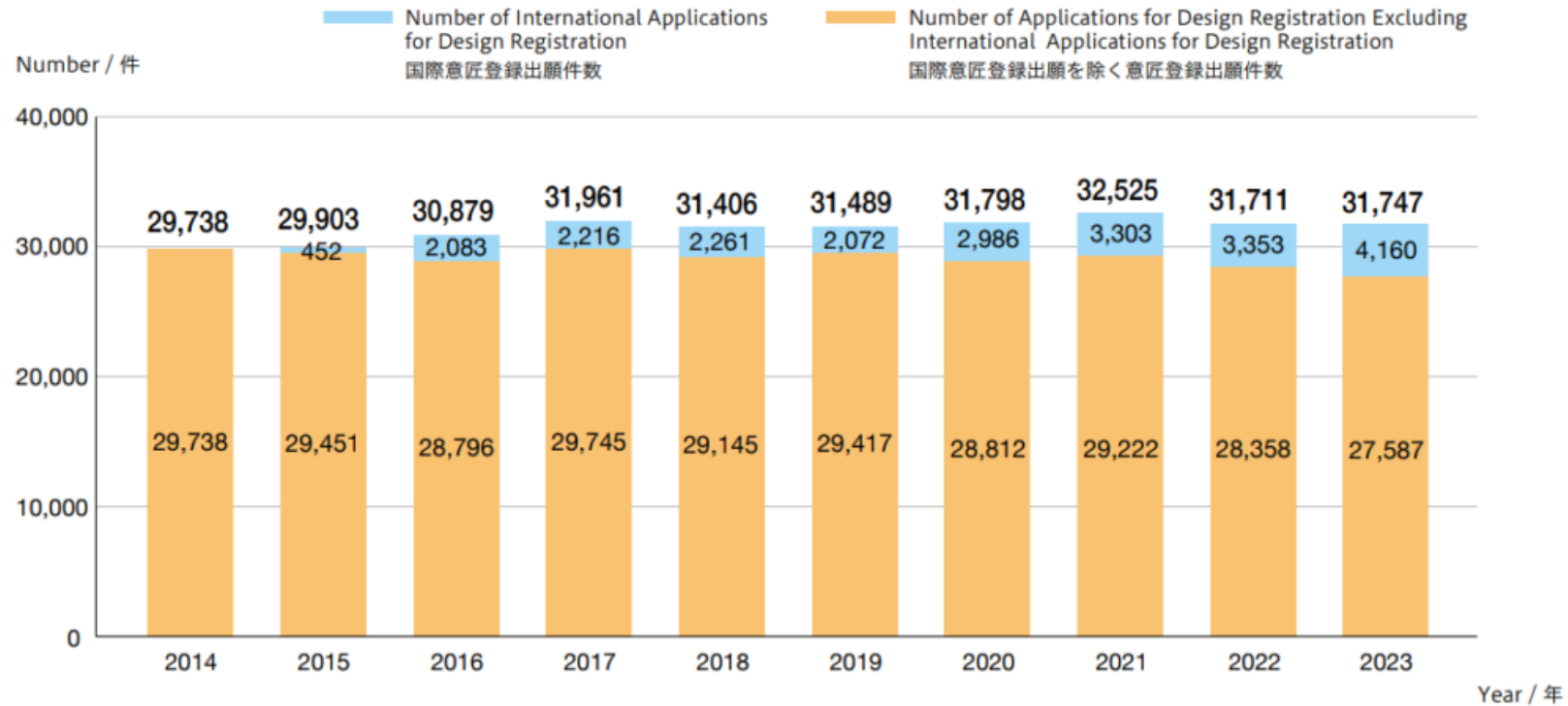
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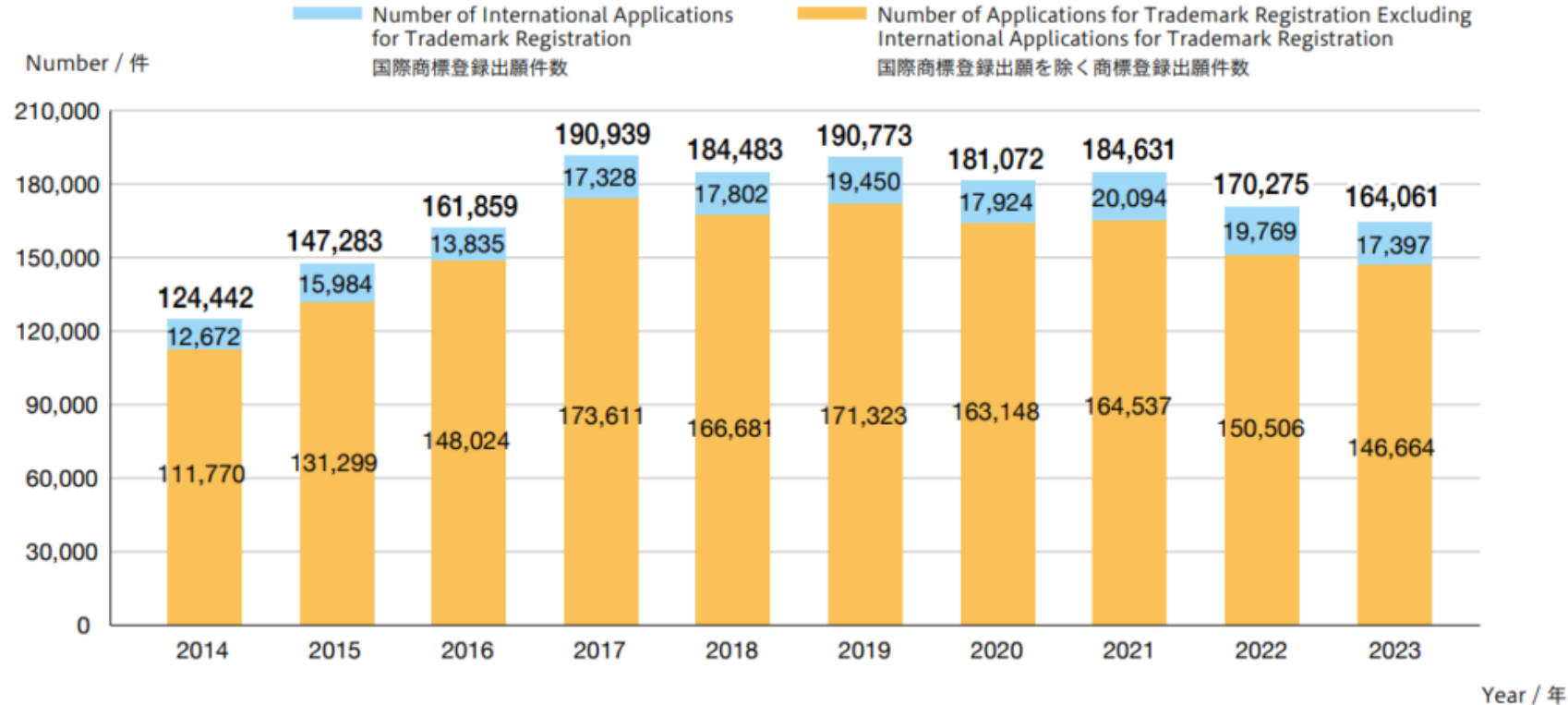
## Number of Design Patent Applications

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## Number of Trademark Applications

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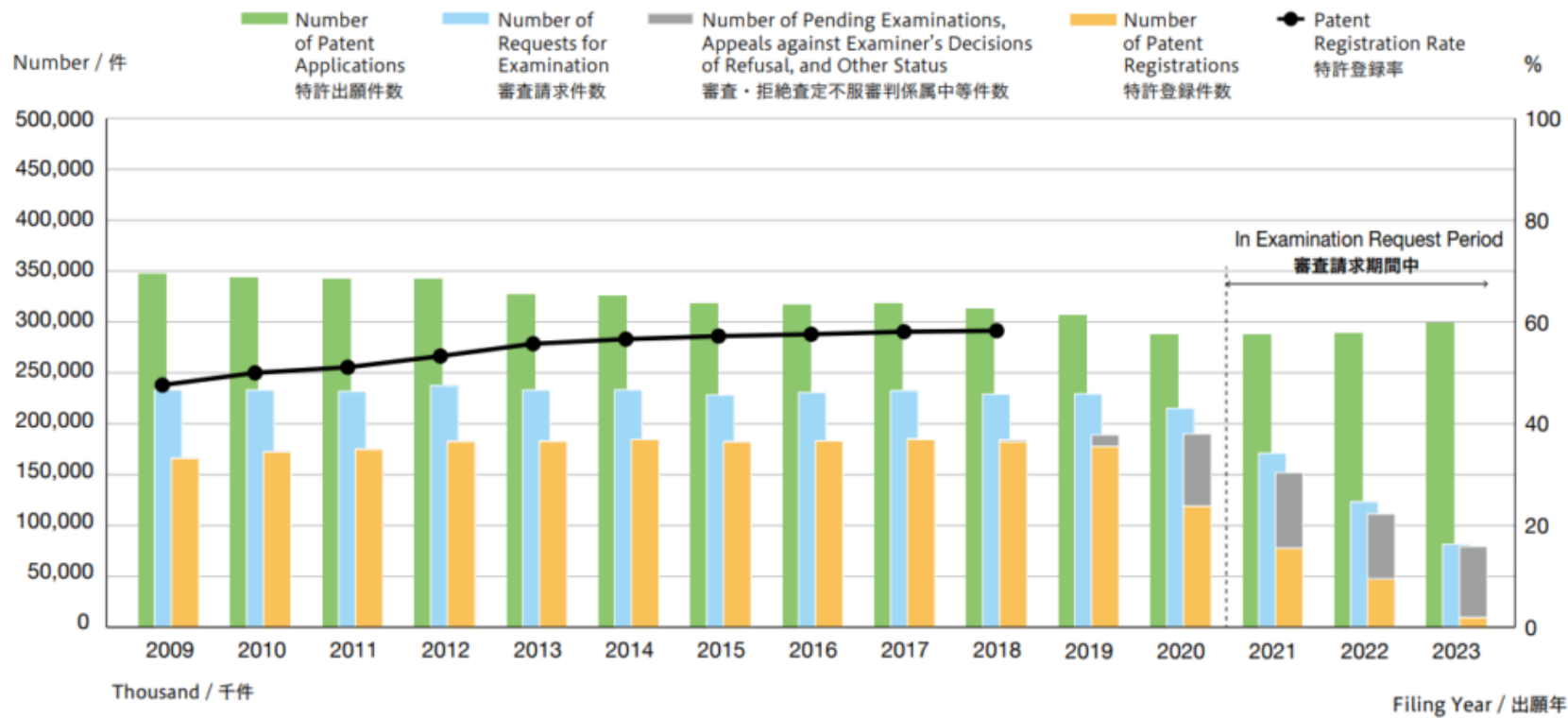
The number of trademark applications peaked in 2017 and has continued to decline. In particular, the number of trademark applications filed by Japanese SMEs has been declining since 2019.

## Trends in Examination results

Trends in the number of patent applications, the number of patent registrations, and the percentage of patent registrations are shown below (The horizontal axis indicates filing year).

The number of patent registrations is stable for each filing year. The patent registration rate is approximately 60% for patent applications filed in 2015-2018.

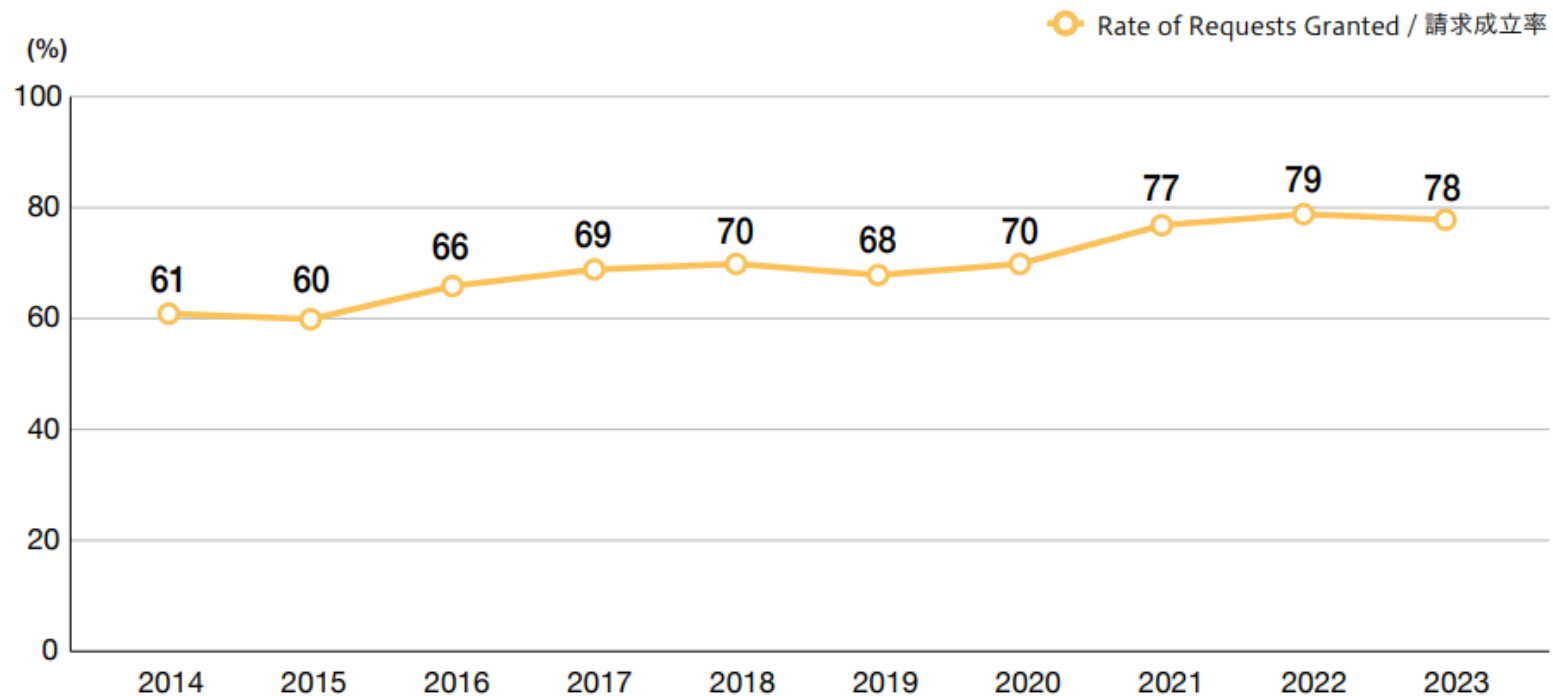
*Japanese IP Statistics Report 2024 issued from the JPO*



## Trends in Examination results

The success rate of appeals against examiner's decision of rejection (not including the number of registrations in pre-trial re-examination) was 78% in 2023. For the past several years, the success rate of appeals has been in the latter half of 70%.

The success rate of appeals is high in Japan. This may be due in part to the fact that the scope of claim(s) is narrowed by amendments made in response to an office action issued by the Board of Appeal.

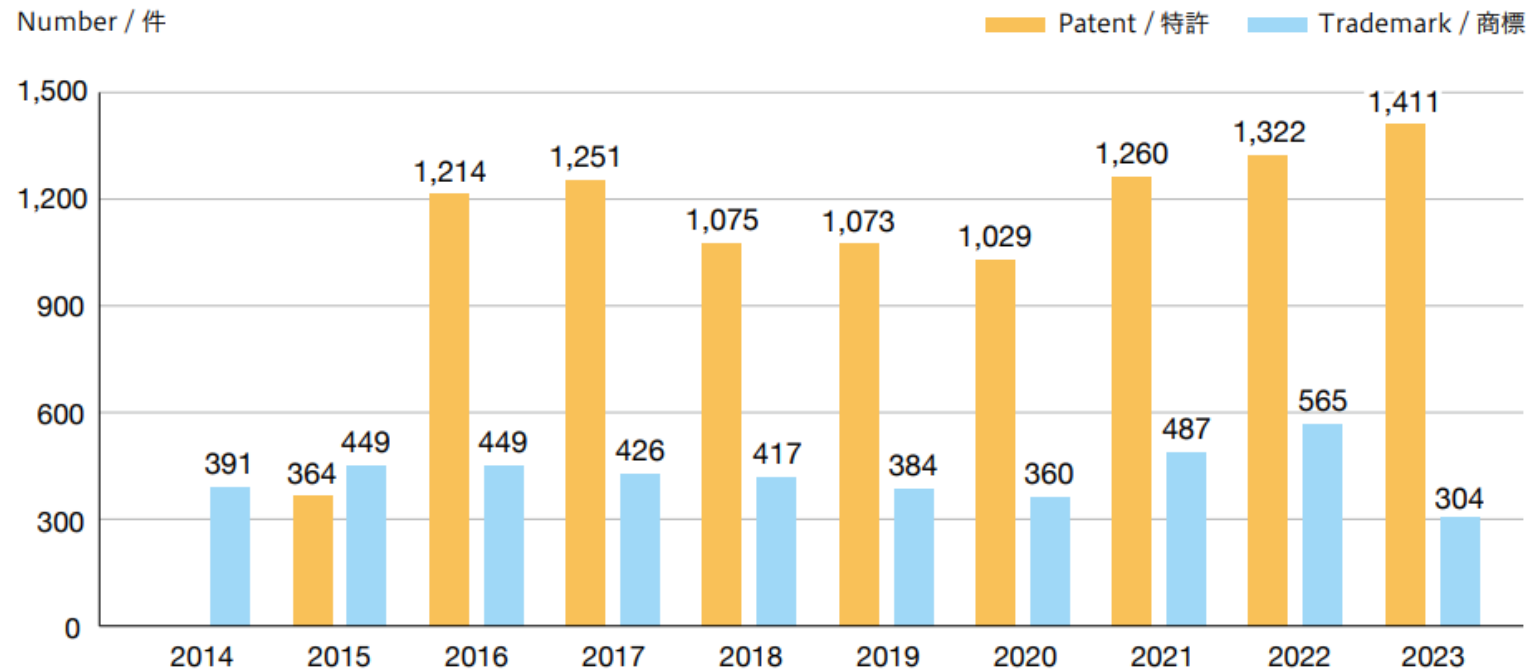


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Year / 年

## Number of Oppositions

The number of oppositions to patents and trademarks is shown below. The number of oppositions to patents began to increase in 2021. The number of oppositions to patents was a record 1411 in 2023.



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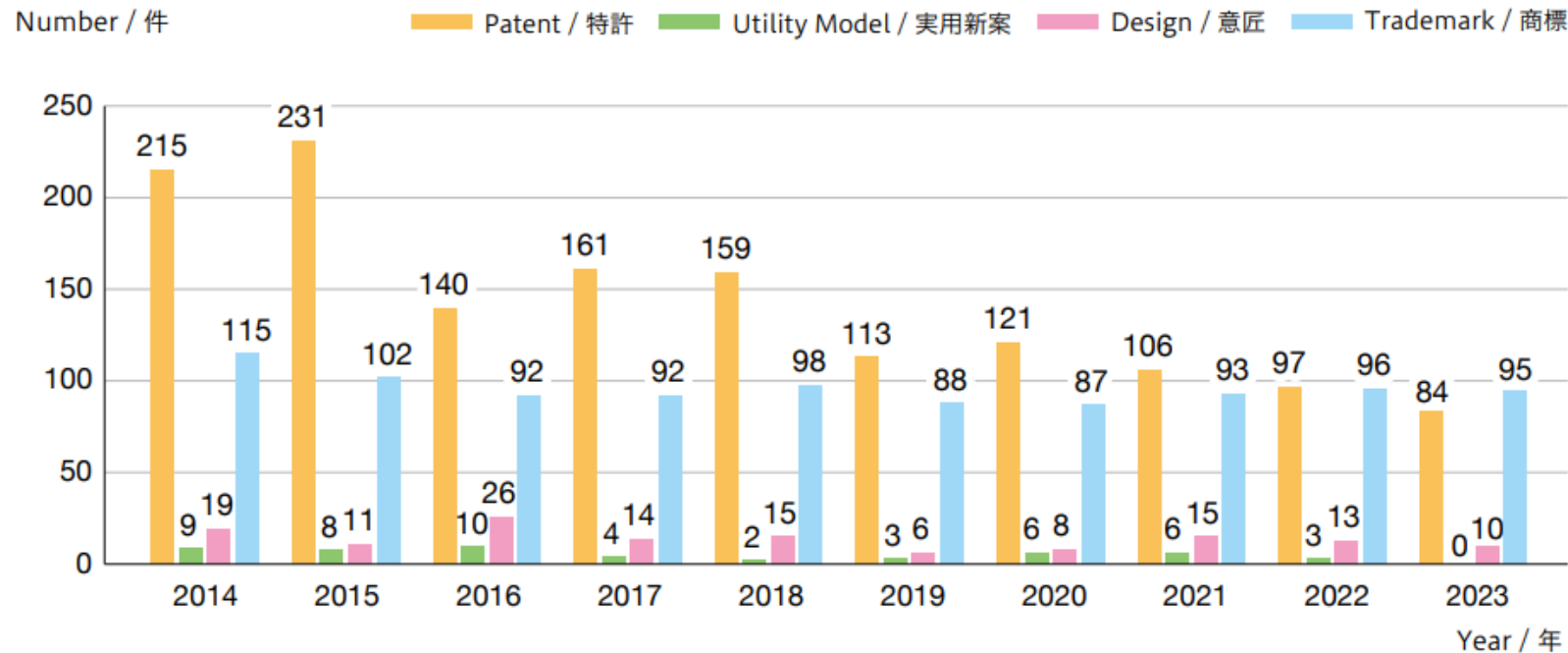
Year / 年

# IP Statistics Report 2024

## Number of Requests for Invalidation Trials

The number of requests for invalidation trials in each law category is shown below. In recent years, the number of requests for invalidation trials for patents and trademarks has hovered around 100.

In particular, while the number of patent oppositions is increasing, the number of requests for patent invalidation trials is gradually decreasing. It is considered that oppositions are more user friendly than invalidation trials in terms of dummy request, JPO fees, attorney fees, and other factors, although they must be filed within 6 months from the date of patent publication.



Japanese IP Statistics Report 2024 issued from the JPO

## Examination Period

### Patent applications:

- FA (First Action) period\* for super accelerated examination: **0.8 month**
- FA period for accelerated examination: **2.2 months**
- FA period for normal examination: **10.0 months**
- The average duration of pendency from request for examination to grant: **14.7 months**

\*The FA period means the average number of months from a request for examination to the receipt of the first examination result (first office action or notice of allowance).

## Design Patent Applications

- FA period for accelerated examination: **1.8 months**
- FA period for normal examination: **6.0 months**
- The average duration of pendency from filing to grant: **7.0 months**

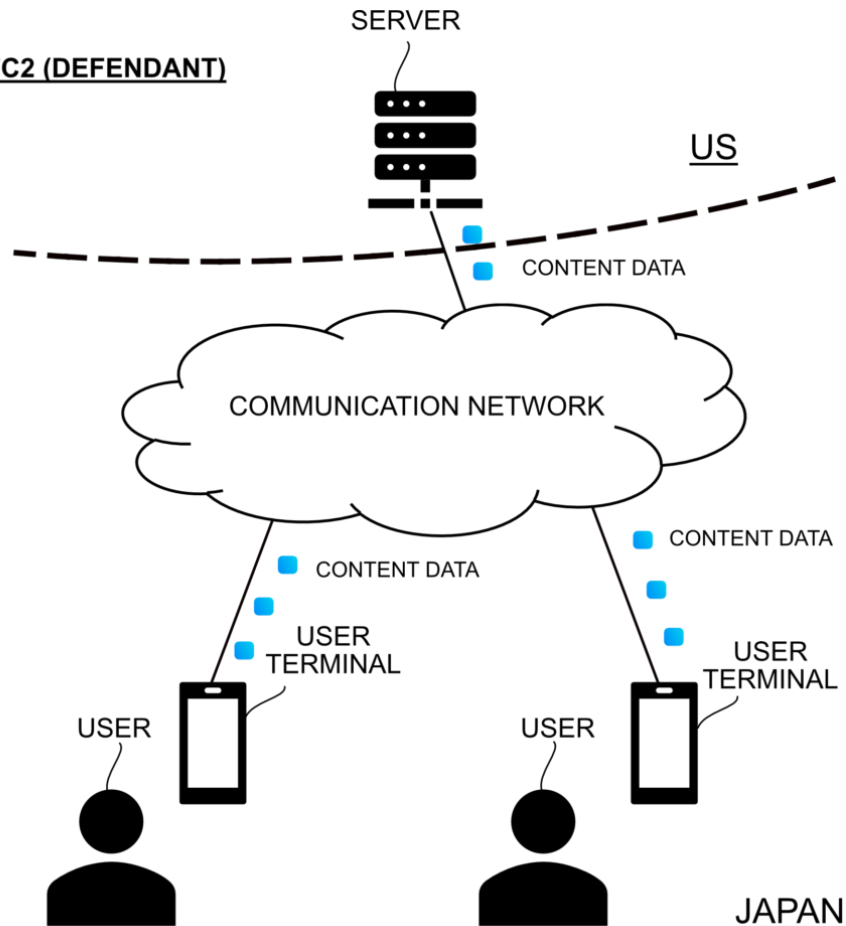
## Trademark Applications

- FA period for accelerated examination: **1.8 months**
- FA period for normal examination: **5.4 months**
- The average duration of pendency from filing to grant: **6.9 months**



# Grand Panel Decision of the IP High Court - Dwango v. FC2 No. 10046(Ne) 2021

SYSTEM OF FC2 (DEFENDANT)



The Intellectual Property (IP) High Court of Japan has issued an important grand panel decision on a patent infringement case (Dwango vs. FC2 Case No. 10046 (Ne) 2021) on May 26, 2023.

The case is well known as the Japanese version of the BlackBerry case (NTP v. RIM (Fed. Cir. 2005)) and involves whether a system including a server located outside of Japan can infringe a system claim comprising a user device and a server connected to the user device via a network.

The IP High Court has recognized the infringement, that is, the extraterritoriality of the system claim in the grand panel decision for the first time. That is, the court has ruled that the system claim could be enforced against the system where the server is located outside of Japan.

# Further consideration- Dwango v. FC2 No. 10046(Ne) 2021

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This case is currently on appeal to the Supreme Court, and thus we are awaiting the Supreme Court decision regarding the extraterritoriality of the system claim.

In the meanwhile, according to the official document\* issued from the JPO on Nov. 6, 2024, the Japanese government is currently considering revising the patent law to allow patents with system claims to be enforced against an infringer's system even if at least one element (e.g., a server) of the system is located outside Japan in view of the current situation that many business activities are transformed from offline to online (digital transformation).

\*[https://www.jpo.go.jp/resources/shingikai/sangyo-kouzou/shousai/tokkyo\\_shoi/document/50-shiryu/03.pdf](https://www.jpo.go.jp/resources/shingikai/sangyo-kouzou/shousai/tokkyo_shoi/document/50-shiryu/03.pdf)

**We look forward to working with you in the future!**

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