

# Patent Litigation Statistics in Japan



**Aki Ryuka**

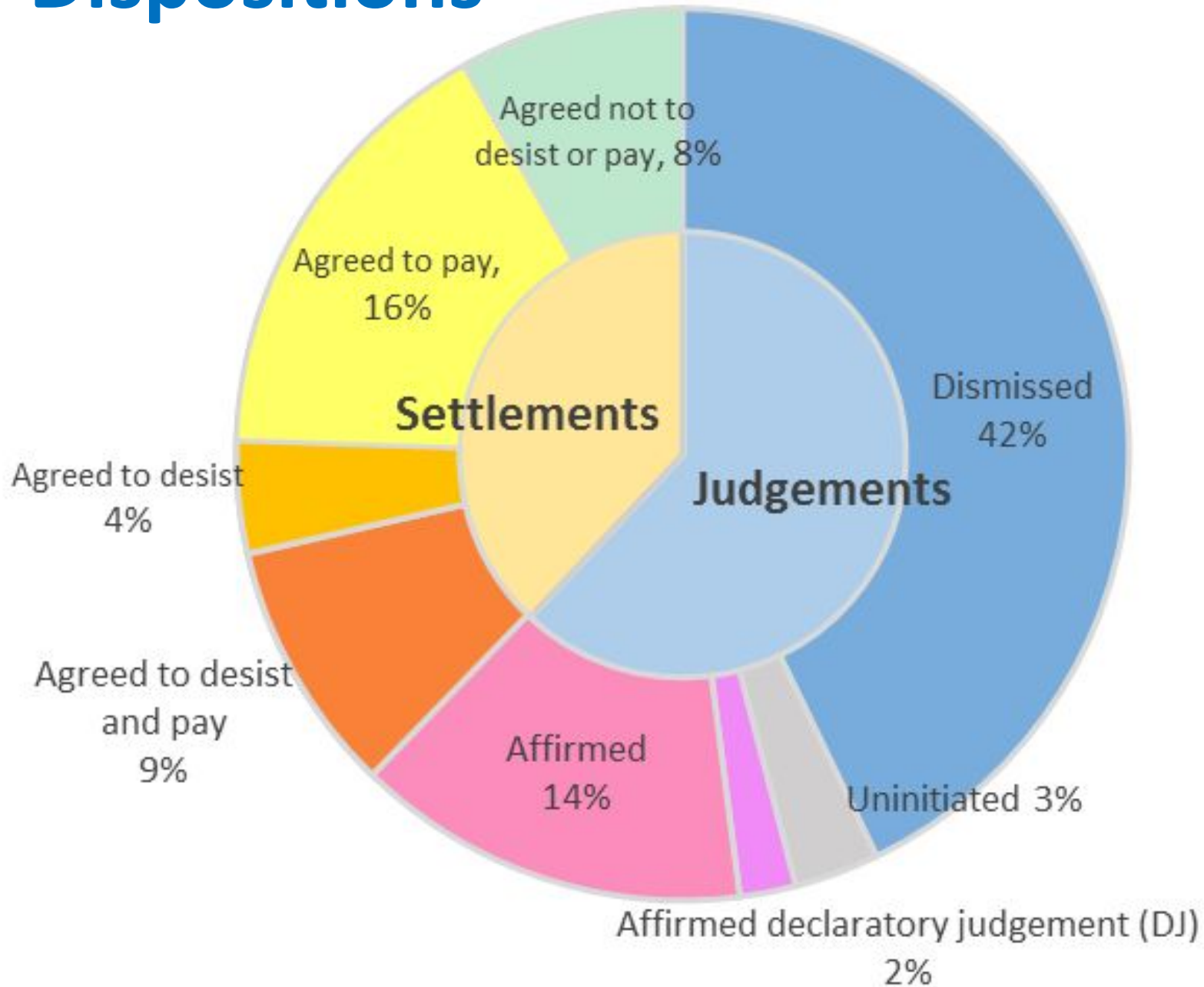
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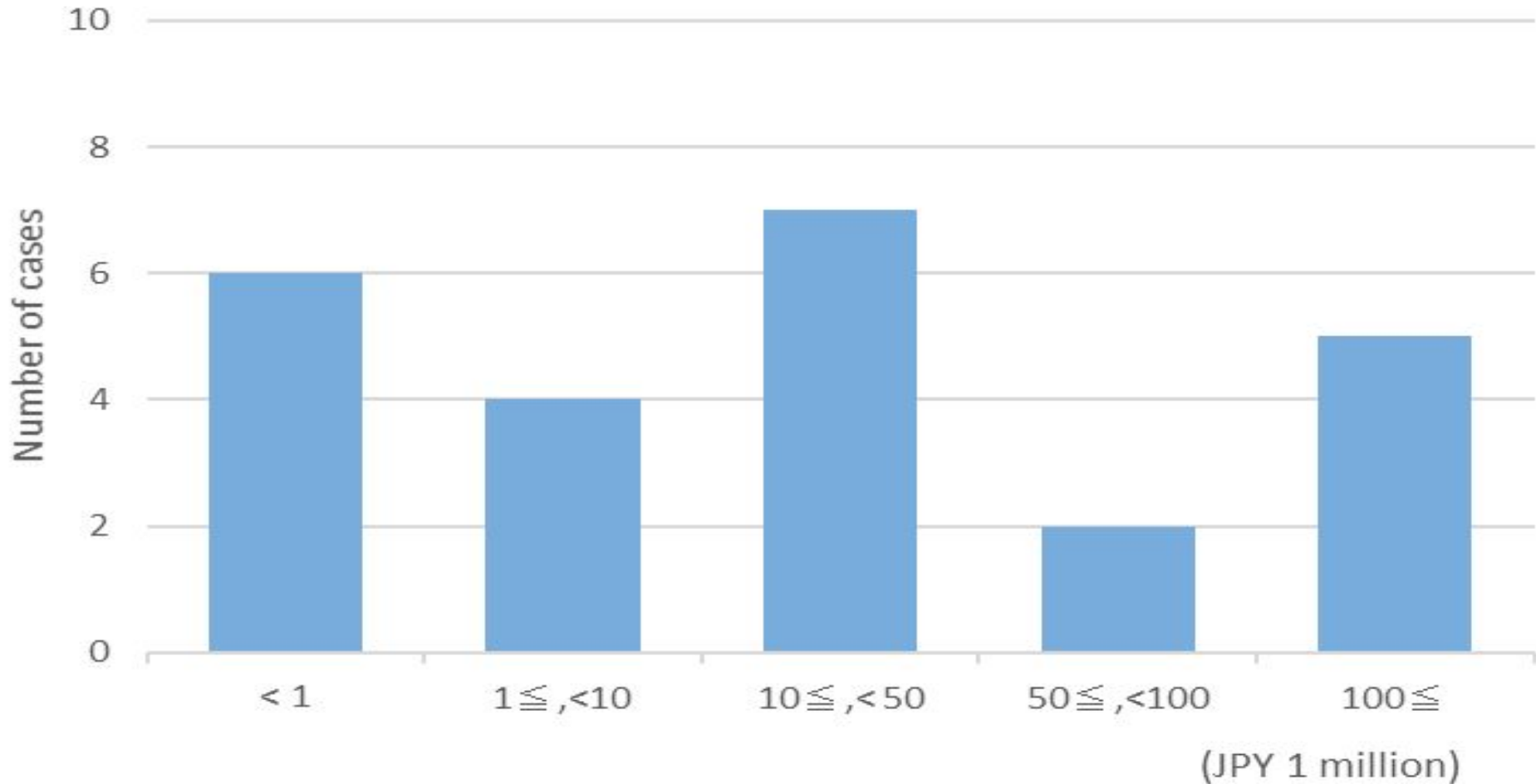
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# District court dispositions in 2014 and 2015

# Dispositions

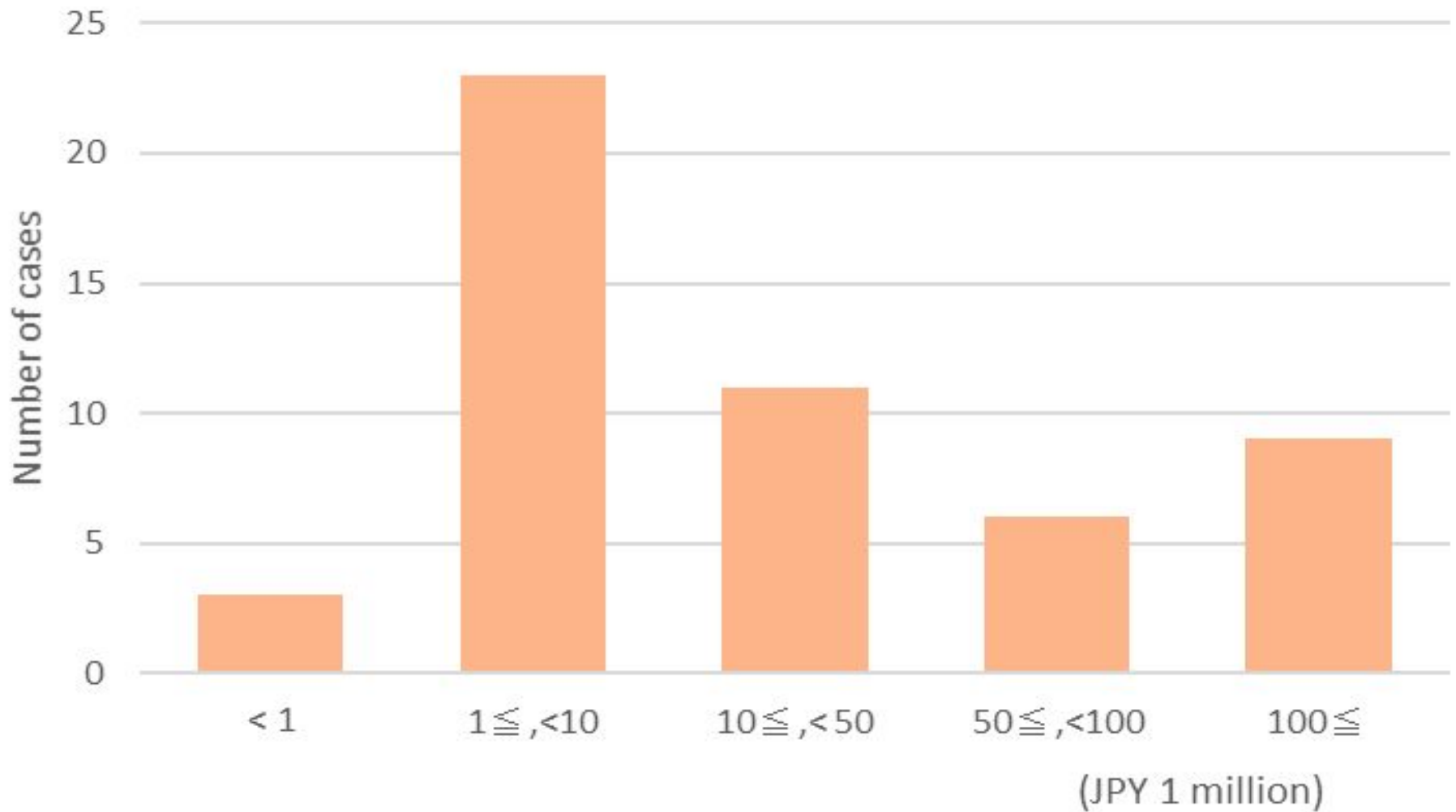


# Fees awarded by judgements



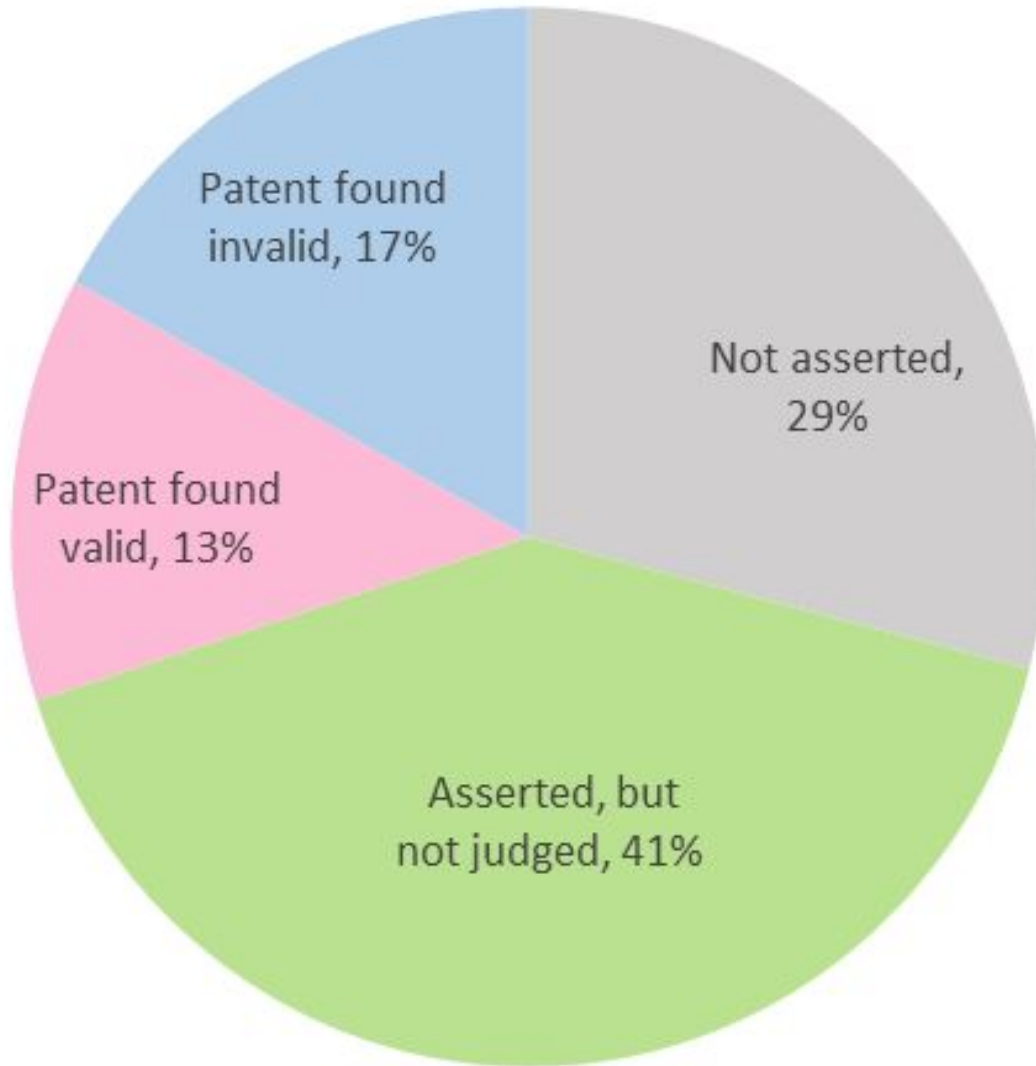
Incidental or litigation fees are not included<sub>4</sub>

# Fees agreed to pay by settlements



Incidental or litigation fees are not included.

# Invalidity assertions



16.5% of the Board decisions at the PTO were reversed by the IP High Court in 2017 and 2018.

Numbers are counted per patent, even if a single litigation involved multiple patents.

# Reduction of damage compensation by own patents

# *Samsung v. Apple* (Tokyo IP High Court, 2014)

Reasonable royalty was calculated by multiplying the followings to the “**reasonable accumulated royalty**” of 5%.

Sales of standard portion / Sales of products

**Number of asserted patent / Number of all patents**



## Dobson v. Dornan, US Sup. Ct, 1886 -- Comparisons with US practices --

The US Supreme Court construed the statute to require proof that the profits were “due to” the design rather than other aspects of the carpets.

“The plaintiff must show what profits or damages are attributable to the use of the infringing design.”

Cited in *Samsung Electronics v. Apple* by US Sup. Ct. in 2016.

# Reduction of damage by own patents [US Fed. Cir. Cases]

## Apportionment of “Royalty Rate” by other patents

The expert acknowledged that Briggs and its co-defendant ... have patents covering other components of the accused mowers. But she ignored those components, opining without support that they do not relate to the quality of cut, which she considered “paramount” to selling mowers. **We are skeptical that other patented components of the mower bear no relation to the overall value of the accused mowers, which would influence the relative value of the patented baffle and thus the royalty rate.** The damage award was vacated and remanded.

*Exmark v. Briggs & Stratton Power Prods.* (Fed. Cir. 2017)

# Defense 2: Reduction of damage by own patents [US Fed. Cir. Cases]

## Reduction of “Royalty Rate” by other features

The component also performed non-infringing filtering functions so even if the component was the smallest identifiable component, it “does not insulate them from the ‘essential requirement that the ‘ultimate reasonable royalty awarded must be based on the incremental value that the patented invention adds to the end product.’”

“[F]urther apportionment was required to reflect the value of the patented technology compared to the value of the unpatented elements.” The damage award was vacated and remanded.

*Finjan, Inv. v. Blue Coat Sys.* (Fed. Cir. 2018).

# Reduction of damage by own patents [US Fed. Cir. Cases]

**Own patents also help reduce Royalty “Bate”**

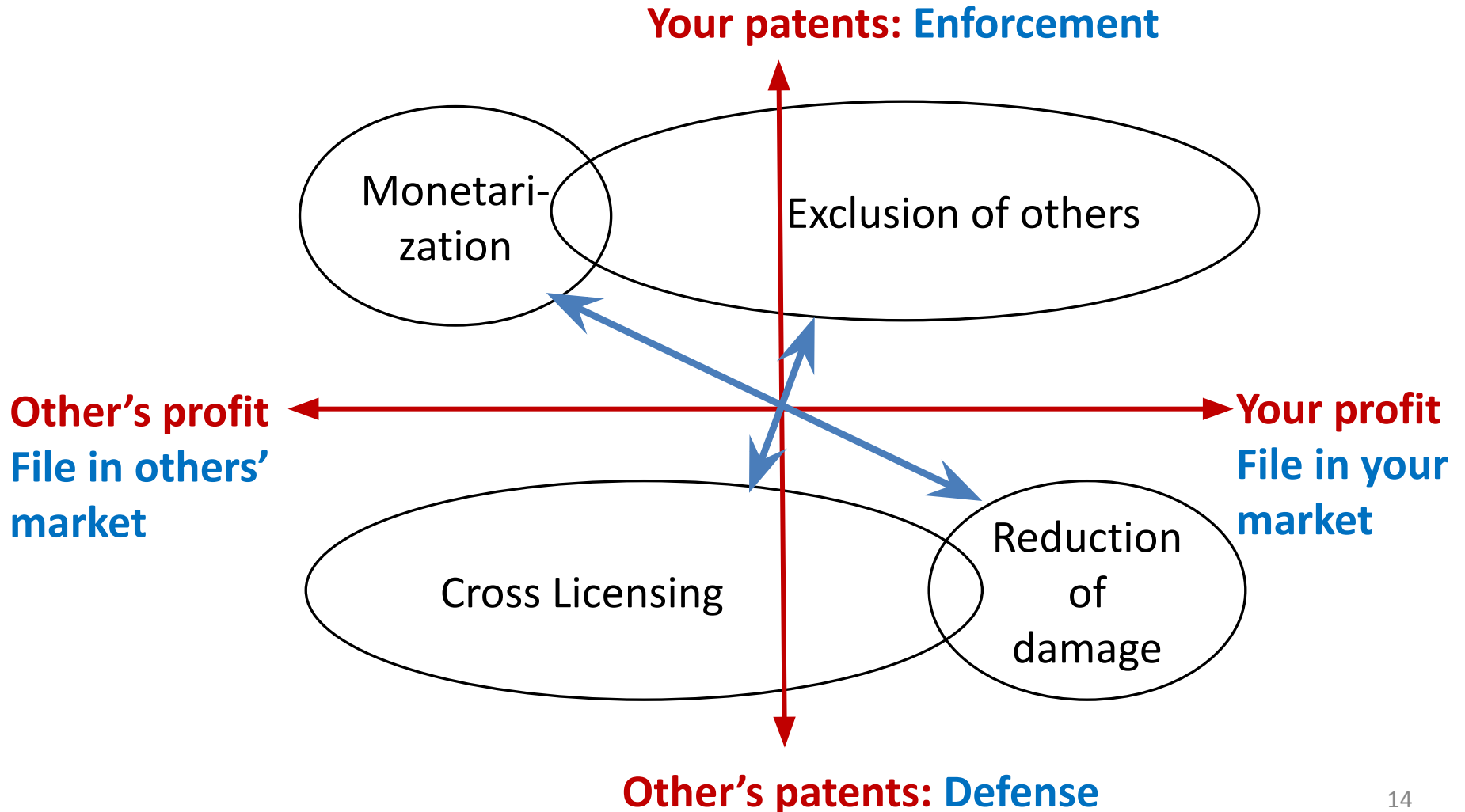
**(Royalty = Royalty Base x Royalty Rate)**

The court found that the product as a whole infringes other patents to be significant in overturning application of the entire market value rule. The whole product cannot be the royalty base, because it is clear that other components have their own significant value.

*Power Integration v. Fairchild Semiconductor* (Fed. Cir. Sept, 2018).

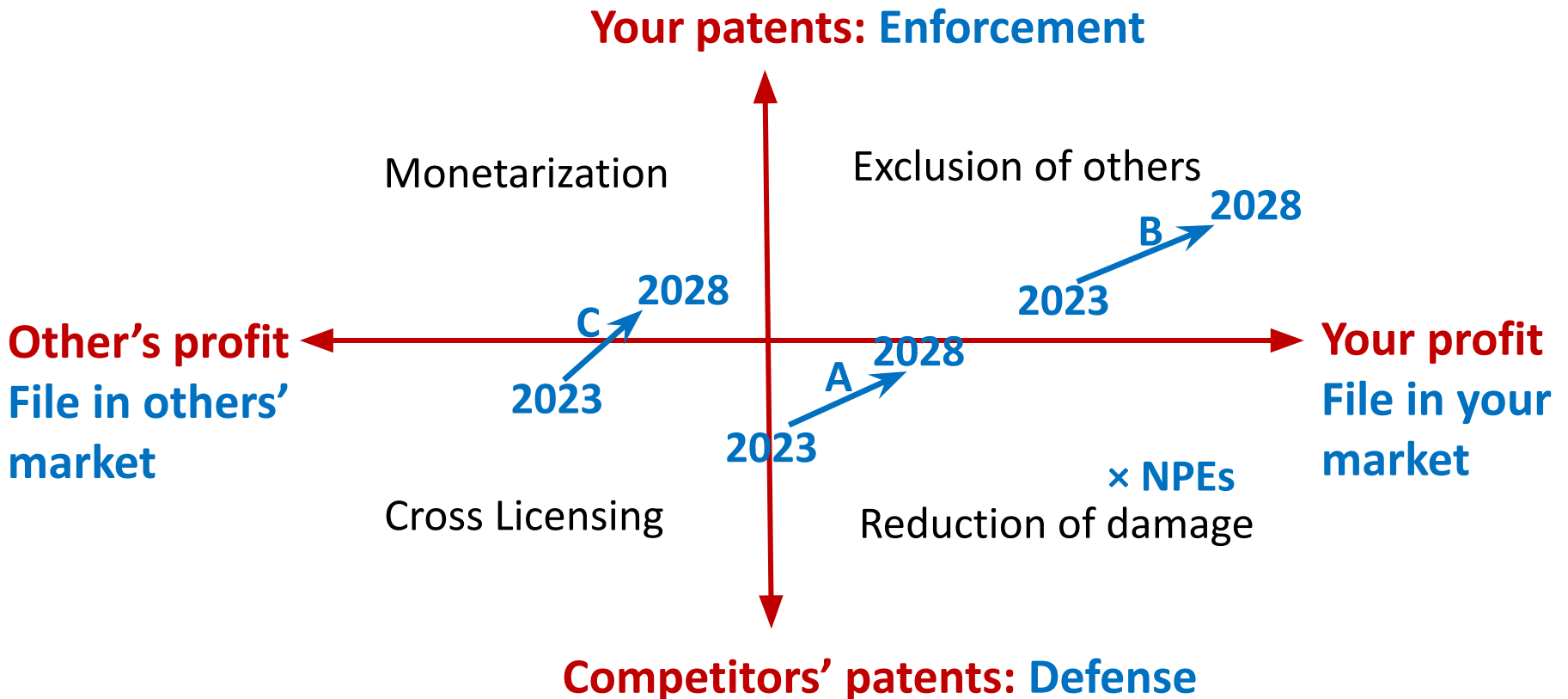
# Patent Filing Strategies

# Deciding objects of patent applications based on profit balance and patent balance



# Deciding objects of patent applications

Plotting each competitor **A, B, C** for each product by estimating five/ten years later.  
Deciding the objects per competitor, per product, per time



# Thank you

about us:

Celebrated 20<sup>th</sup> year in 2018.

39 attorneys, 120 in total

They say:

*Rising Star in Japan IP, ILASA*

*Top 5 Japan Patent Firm, Asia IP*

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*Top 20 Japan Trademark Firm, MIP*



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