



# HARAKENZO

WORLD PATENT & TRADEMARK  
PATENT LAW FIRM

JAPAN

## TOPIC

1. G8 Leaders Confirmed Integration to "First-to-File Rule" for Realization of a World-wide Patent System, at Heiligendamm Summit  
ハイリゲンダム・サミット 世界特許、実現へ前進  
「先願主義」統一を確認
2. Japan Patent Office Made Annual Report Public: 4% Decrease in Domestic Patent Applications and Increase in Applications Filed Abroad by Japanese Parties, in 2006  
特許庁年次報告書を発表:06年の国内特許出願件数は4%減、海外向けは増加
3. Japan Patent Office Decides Policy of Annual Patent Fee Reduction at Maximum of 40%  
特許庁方針:特許料を最大4割下げへ
4. National Tax Agency Presents New Transfer-Pricing Policy  
国税庁・移転価格税制で新指針



### G8 Leaders Confirmed Integration to "First-to-File Rule" for Realization of a World-wide Patent System, at Heiligendamm Summit ハイリゲンダム・サミット 世界特許、実現へ前進 「先願主義」統一を確認

On June 6, the G8 said it recognized the importance of harmonizing the international patent system, which would be stated in an economic statement to be released. This means that the US that adopts the "first-to-invent" system granting a patent to the first inventor clearly shows its intension to shift the system to the "first-to-file" system adopted in the majority of countries. This may be a significant step towards realization of the "worldwide patent system" in which a patent filed in one country becomes valid worldwide.

As to patent systems, Japan and Europe adopt the "first-to-file" system in which the patent is awarded to a person or a company "first to file". Meanwhile, the U.S. has stuck to the "first-to-invent" system since foundation of the nation. In the "first-to-invent" system, patents are awarded to those who can prove to be "first to invent", regardless of the filing order of the application. This system has been causing a trouble between one who argues that he is "first to invent" and an applicant for the patent of the invention.



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Japan and Europe had increasing demands on the U.S. for harmonization of U.S. Patent System with other nations. Last year, the U.S. announced that it would make a shift to the "first-to-file" system. Now, the proposed Patent Reform Legislation is under discussion in the U.S. Congress. However, because there are many arguments against the significant shift of the system that has continued for more than 200 years, a part of the proposed Legislation may be changed.

Inclusion of the "harmonization of international patent systems" in the economic statement of this Summit means that the G8 leaders confirm "integration to the first-to-file system."

Moreover, Japan, the U.S., and Europe are examining introduction of mutual patent approval in the harmonization of the international patent system so that the efficiency of patent acquisition is improved.

Companies are welcoming such movement for realization of the integrated international patent system, because such movement may significantly reduce cost for filing patent applications.

主要国首脳会議(サミット)で、世界的な特許制度の調和が経済声明に盛り込まれることが2007年6月6日、判明した。先に発明した人に特許を取得させる「先発明主義」を採用する米国が、主要国が採用する「先願主義」への移行を明確に示すことによって、1国で申請した特許が世界で通用する「世界特許」の実現に大きく前進しそうだ。

特許をめぐるのは、日本や欧州では早く出願した企業や個人が権利を取得する「先願主義」を採用しているのに対し、米国は建国以来「先発明主義」に固執してきた。先発明主義では、特許出願の後でも先に発明されたことを証明できれば特許と認められるため、「先に発明した」と主張する人と出願者との間でトラブルが絶えなかった。

日欧から米国に対して「特許制度の世界的な調和」を求める声が強まっていたが、昨年米国は「先願主義」への転換を表明し、米議会において特許改革法案が審議されている。もともと200年以上も続いた制度の大転換に反発も多く、法案の一部修正の可能性も指摘されている。

今回のサミットに「世界的な特許制度の調和」が盛り込まれることで、「先願主義への統一」がG8の首脳間で確認されたことになる。また、特許制度の調和に関して、日米欧3極は特許取得の効率化に向けて、特許の相互承認などの制度を導入することを検討している。

こうした動きは、特許出願の大幅なコスト削減につながると考えられるため、企業の間では実現への期待が高まっている。

Japan Patent Office Made Annual Report Public: 4% Decrease in Domestic Patent Applications and Increase in Applications Filed Abroad by Japanese Parties, in 2006  
特許庁年次報告書を発表:06年の国内特許出願件数は4%減、海外向けは増加

On June 19, 2007, the Japan Patent Office Annual Report 2007 "Current Status and Issues of Industrial Property Rights" was made public by the Japan Patent Office (JPO). According to the Report, the number of the patent applications filed with the JPO in 2006 was 409 thousand, which was a decrease of 4.3% over the previous year. Out of the number of the patent applications, 62 thousand applications were from foreign countries, while 347 thousand applications were filed by Japanese companies. It was the first time in last ten years that the number of the applications filed by Japanese companies went below 350 thousand. On the other hand, applications filed abroad by Japanese companies were increasing. The JPO thinks the number of the domestic application filings decreased in the background such that "(i) companies kept the invention secret as know-how, intending to prevent an outflow of the technology, and/or (ii) companies put emphasis on foreign application filings, carefully selecting the applications to be domestically filed". The JPO shows its opinion that the decrease is due to "the trend of an intellectual property strategy shifting the emphasis from the amount of the patent applications to the quality thereof" (Makoto Nakajima, Commissioner of the Japan Patent Office).

For the applications to be filed abroad by Japanese companies, there is an application system in which application filings in a plurality of countries is realized by one application filing (PCT application) on the basis of the PCT Treaty. The number of the international applications filed by Japanese companies under the system was 26 thousand, which was an increase of 9% over the previous year. Moreover, there were many cases in which Japanese companies did not file applications via the JPO but filed directly with foreign Patent Offices. Many of such applications were filed especially with the USPTO (74 thousand applications) and the Chinese Patent Office (32 thousand applications). In particular, the number of such applications filed in China doubled with respect to the number in 2002. This shows that Japanese companies put a great emphasis on business in foreign countries including business in China.

特許庁が平成19年6月19日に発表した2007年版特許行政年次報告書「産業財産権の現状と課題」によると、06年に同庁が受けた特許出願は40万9000件で前年に比べ4.3%減少した。上記出願件数のうち、外国からの出願が6万2000件、国内企業のもので34万7000件で、国内企業分は過去10年で初めて35万件を下回った。その一方で、日本企業が海外に特許を出願するケースは増加している。このことについて、特許庁では、国内出願の減少について「技術流出の防止を意図し、発明をノウハウとして秘匿する考え方や、世界的視野での出願戦略により、国内出願を厳選し、海外への出願を重視する考え方が背景にあるものと考えられる」とし、「量から質への知的財産戦略の流れ」(中嶋誠特許庁長官)との見解を示している。

国内企業の海外への特許出願には、特許協力条約に基づき1回の出願で複数国に出願できる制度(PCT出願)がある。これを利用した日本企業の国際出願は、前年比9%増の2万6000件だった。また、特許庁を経由せず、日本企業が直接、海外の特許当局に出願するケースも多く、特に米国(7万4000件)や中国(3万2000件)での出願が目立つ。中でも、対中国出願は02年の2倍以上に増えており、中国を中心とした日本企業の海外重視の姿勢がうかがえる。

## Japan Patent Office Decides Policy of Annual Patent Fee Reduction at Maximum of 40%

### 特許庁方針:特許料を最大4割下げへ

The Japan Patent Office (JPO) decides a policy of 20 - 40% reduction in the annual patent fees that each patent right holder pays every year in 2008. The JPO will also examine reduction in the renewal fees of trademark rights for protecting company logos or the like. Whereas the reduction in the annual patent fees will be the first time in the past four years, the reduction in the trademark right fees will be the first time in the present system from 1997. The JPO intends to improve an environment in which the patents and the trademarks are easy to obtain/maintain and strengthen the infrastructure for technical renovation, by the reduction in the fees.

The JPO is planning to hold an Industrial Structure Council (an advisory body for Minister of Economy, Trade, and Industry) so as to discuss how much to reduce the fees specifically, and is going to submit proposed revisions of Patent Law and Trademark Law to the ordinary diet session next year.

特許庁は2008年に特許権の保有者が毎年支払う特許料を2~4割引き下げる方針を固めた。企業のロゴマークなどを保護する商標権も登録更新料の引き下げを検討する。特許は4年ぶり、商標では現行制度が始まった1997年以来初の下げとなる。引き下げによって、特許権や商標権を取得・維持しやすい環境を整え、技術革新のインフラを強化する。

特許庁は2007年9月にも産業構造審議会(経済産業相の諮問機関)を開き、具体的な下げ幅を詰め、来年の通常国会に特許法と商標法の改正案を提出する予定である。

## National Tax Agency Presents New Transfer-Pricing Policy 国税庁・移転価格税制で新指針

National Tax Agency presented a new policy in its "transfer-pricing taxation system" in which a tax is imposed on a part of profits obtained by foreign subsidiaries of Japanese companies by assuming that the profits are profits of the parent companies.

Companies and the tax agency often have different views on an intangible asset. On this account, in a case where a parent company provides, to its foreign subsidiary, an intangible asset at a relatively cheap price, the parent company is often required to pay an additional tax because the case is considered to be income transfers. This often caused administrative disputes such as opposition to imposition of the additional tax. To reduce such administrative disputes, the JPO showed specific examples of the "intangible asset" for which the parent company should be paid. The JPO further showed 26 transaction cases that tend to cause troubles. "For example, in a case where familiarity of the name or a brand of the parent company contributes to product sales of a foreign subsidiary thereof, this case may be considered as a case an intangible asset is provided to the subsidiary and a tax may be imposed on the sales."

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国税庁は、日本企業の海外子会社が上げた利益の一部を親会社の利益と見なして課税する「移転価格税制」について、新たな運用指針を公表した。

無形資産は企業と国税当局との間で見解の違いが生じやすく、海外子会社に割安で提供していた場合、所得を移したと見なされて追徴課税される場合が多いため、追徴課税への異議申し立てなど、行政紛争が多発していた。そこで、特許庁は行政紛争を減らしていくために、海外子会社に与えた経営ノウハウなど、親会社が対価を得るべき「無形資産」を具体例に例示した。

さらに、特許庁は「例えば海外子会社で商品売る際、親会社の知名度やブランド価値が売り上げに貢献していれば、無形資産を与えていると見て課税する場合がある」というように、問題となりやすい26件の取引事例も示した。



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Please Contact us if You have any Comments or Require any Information.

Please acknowledge that the purpose of our column is to provide general information on the field of intellectual property, and that the description here does not represent our legal opinion on a specific theme.

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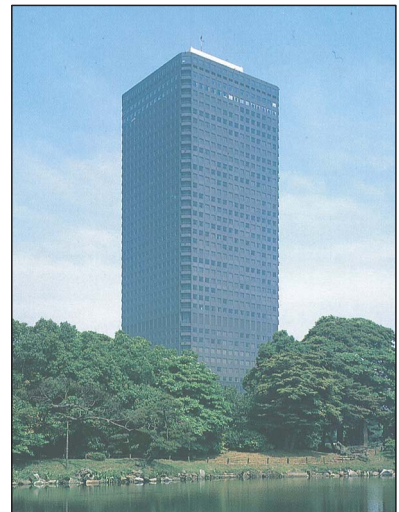
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For extension of business, we moved our Tokyo Office from the 12th floor to the 21st floor of the World Trade Center Building on August 1, 2007. There are no changes in the phone number, the facsimile number, and the like.

弊所東京事務所は、業務拡張のため2007年8月1日に、同ビル内の12階から21階に移転しました。  
なお、電話番号、FAX番号等に変更はありません。