



# HARAKENZO

WORLD PATENT & TRADEMARK  
PATENT LAW FIRM

JAPAN

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「シェーン」の著作権は消滅 (最高裁)



## The JP-FIRST, a measure to start examinations of Japanese basic patent applications. 優先権基礎出願の早期審査着手 (JP-FIRST) の実施について

In order to promote international work sharing in patent examination and to help Japanese applicants obtain appropriate patent rights in foreign countries, the JPO will launch the JP-FIRST, a measure to early start the examination of Japanese patent application which will be filed also with foreign patent offices and to release the JPO's examination results to the rest of the world as soon as possible. (\*JP-FIRST: JP - Fast Information Release Strategy)

Recently, cases in which same applications have been filed with patent offices of major countries are increasing. This causes such inefficient situations that the examination procedures of the same applications at the different patent offices must be performed, which raises some problems such as protracting of the examination waiting time.

For example, the applications filed in overseas from Japan in 2005 was approximately 630,000, which was twice as much as that of 1995. In view of the major countries Japan, US, and Europe, approximately 970,000 applications were totally filed in 2006, one fourth of them were also filed in the plurality of countries.

This is because the JPO has presented the above measure to work around the current situation in which more and more applications are filed in Japan and other countries as the same applications. The policy of this JP-FIRST is to reduce an average of the examination waiting time of 2 years and 3 months to one half year. The examination results will be provided to the foreign patent offices, so that the examination waiting time in the foreign countries will also be reduced. Concretely speaking, when Japanese applicant will file the same application in foreign country, the JPO, in principle, will start the examination of the basic application within 6 months after filing a request for examination under the JP-FIRST. In addition to the Patent Prosecution Highway which is currently underway between Japan and US, England, Korea, etc. for speeding up the examination prosecutions by releasing the examination results to the corresponding patent offices, the JP-FIRST will further promote Japanese companies to file applications abroad, because the measure can be applied to regardless of whether or not applicants file applications with the countries covered with the Patent Prosecution Highway.

The outlines of the JP-FIRST are as follows:

-The JPO will give preference on start of examination to patent applications on which claims to Paris Convention priority are based and whose request for an examination has already been filed within 2 years from the filing date.

-The applications, in principle, will be examined within 6 months from the later of the date of examination request or the date of the publication of the application, and the examination should be started within 30 months from the filing date. This can be seen to be rough estimated time to start examination.

The JP-FIRST is applicable to applications filed on April 1, 2006 or later.

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特許庁は、特許審査の国際ワークシェアリングの推進と、海外での適切な特許権の取得支援のため、日本から海外への出願を対象に早期に審査着手し、いち早く日本国特許庁の審査結果を世界に発信する施策(JP-FIRST)を、平成20年4月から実施することとした。(※JP-FIRST:JP - Fast Information Release Strategy)

近年、主要国特許庁に同じ内容の出願がなされるケースが急増しており、各国特許庁では、重複出願の審査という非効率な状況が発生し、審査待ち期間の長期化にも影響するといった課題が顕在化してきている。

例えば、日本からの海外出願は2005年で約63万件と1995年の約2倍に増加。日米欧で見ても、06年の全出願件数は約97万件で、このうち4分の1が複数の国への重複出願になっている。



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そこで、特許庁は、海外で同じ特許を出願するケースが増えていることに対応するため、この施策を発表した。現在、平均2年3カ月の審査待ち時間を半年に短縮する方針である。また、審査結果は海外特許当局に提供するため、海外での審査期間も短くなる。具体的には、日本と同じ特許を出願する場合、日本では原則すべて請求から6か月以内に審査を始める。特許庁はすでに米国や英国、韓国などと、特許当局同士で審査結果を融通して審査スピードを速めるハイウェイ制度を導入しているが、出願先の国がどこであっても国内では早期に審査することで、企業の海外出願を一層促進する。

新制度の骨子は以下の通り。

- ・パリ優先権主張の基礎となる特許出願のうち、出願日から2年以内に審査請求されたものを、他の出願に優先して審査着手する。
- ・審査着手時期の目安として、審査請求と出願公開のいずれか遅い方の日から、原則6月以内に着手を行う。また、審査着手は出願から30月を越えないものとする。

※なお、平成18年4月1日以降の出願が対象となる。

参照

- 1) [http://www.jpo.go.jp/torikumi/t\\_torikumi/jp\\_first.htm](http://www.jpo.go.jp/torikumi/t_torikumi/jp_first.htm)
- 2) <http://www.nikkei.co.jp/news/keizai/20071229AT3S2801X28122007.html>

## More than 4 million patent applications (accumulating total) filed in China. 中国の特許申請件数、累計400万件を突破

The Chinese National Intellectual Property Office announced that the accumulating total of patent applications (including Utility Model applications and Design applications) filed with the Chinese Patent Office both from China and from foreign counties has exceeded 4 million.

It means that after 3 million applications were filed, the National Intellectual Property Office received further 1 million applications only in one and a half years.

In particular, the rate of the invention applications filed from Chinese applicants has been rapidly increased. This shows that the Chinese intellectual property business tends to develop well and rapidly.



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In recent years, the number of invention patents filed with the National Intellectual Property Office continues to increase at the rapid rate. It took 15 years to achieve the first one million applications, but it took 4 years and 2 months to achieve further one million, i.e., from 1 millionth to 2 millionth, and then it took only 2 years and 3 months to achieve further one million, i.e., from 2 millionth to 3 millionth.

As mentioned above, in particular, the invention applications filed from Chinese applicants have been increasing. The percentages of applications filed from Chinese applicants per one million accumulating total are changing as follows: 47.8% of first 1 million, 50.7% of next 1 million, 53% of further next 1 million, and 60.8% of last 1 million.

According to the Chinese National Intellectual Property Office, increasing rate of the Chinese applications is obviously more than that of the foreign applications. For example, the increasing rate of Chinese applications is grown by 30.8% from the previous year; this is 20 points more than that of the foreign applications.

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中国国家知的財産権局は、現在までに同局が受理した中国国内外からの専利(日本の特許・実用新案・意匠に相当)出願総数が累計で400万件を突破したと発表した。

300万件達成からわずか1年半で100万件の専利出願を受理したことになる。

なかでも国内からの発明出願増加率は国外からに比べ著しく上昇しており、知的財産権事業は現在急速で良好な発展傾向にあるという。

同局が受理する専利出願件数は近年急速なペースで増加し続けている。専利出願受理総数の最初の100万件達成には15年もかかった。しかし、100万件～200万件の達成には4年2カ月、200万件～300万件はわずか2年3カ月で達成した。

中国国内からの発明専利出願の割合が著しく上昇している。0～400万件までの100万件毎の国内発明出願率は、順に47.8%、50.7%、53.4%、60.8%である。

また、同局は、中国国内からの出願増加率は海外からの出願に比べ明らかに多く、2006年を例にとると、国内からの出願増加率は前年に比べ30.8%増加、これは海外からの出願に比べ約20ポイントも上回る数字であるとも話している。

### 参照

- 1) [http://j.people.com.cn/2007/12/26/jp20071226\\_81798.html](http://j.people.com.cn/2007/12/26/jp20071226_81798.html)
- 2) [http://www.newschina.jp/news/category\\_1/child\\_4/item\\_8320](http://www.newschina.jp/news/category_1/child_4/item_8320)
- 3) <http://www.chinapress.jp/events/7670/>

The copyright of "Shane" is no longer in force (Supreme Court decision).  
「シェーン」の著作権は消滅(最高裁)

Regarding the legal case in which the US film company Paramount Pictures and etc. filed for the suspension of low-priced DVDs of "Shane" against two companies selling the DVDs, saying that the copyright of "Shane" released in 1953 was violated, the third Petty Bench of the Supreme Court ruled that "the copyright on the film released in 1953 by the name of corporate name (such as film company) is expired at the end of 2003" and dismissed a final appeal of the paramount Pictures and etc. on December 18, 2008. Hereby, the Paramount Pictures and etc. has definitively lost the lawsuit.

Period of protection for copyright of film was 50 years after release, but with the revised Copyright Law that went into effect on January 1, 2004, the Period of protection has been extended to 70 years after release. In the lawsuit, it is disputed whether or not the revised Copyright Law should be applied to the film which was released in 1953 and whose protected period of 50 years under the old Copyright Law has passed at the end of 2003.

Paramount Pictures argued "it could be read from the revised Copyright Law that the period of protection for copyright existing just before its enforcement could be extended". Also the Cultural Affairs Agency holding jurisdiction over the Copyright Law had argued, "the copyright of the film released in 1953 is in force". With this decision, it becomes clear the argument of the Cultural Affairs Agency was wrong.

1953 was the year in which a number of masterpieces such as the "Shane", "Roman Holiday" and etc. were released. Therefore, the decision may have effects on film industries.

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1953年公開の映画「シェーン」の著作権を侵害されたとして、米映画会社パラマウント・ピクチャーズ等が格安DVDを製造販売する2社に、販売差し止め等を要求した訴訟において、最高裁第3小法廷は2007年12月18日、「1953年に(映画会社などの)団体名で公表された映画の著作権は、2003年末で消滅した」として、パラマウント社側の原告を棄却した。これにより、パラマウント社側の敗訴が確定した。

映画の著作権の保護期間は公開後50年間だったが、2004年1月1日施行の改正著作権法で70年に延長された。この裁判では2003年末に公開後50年を迎えた1953年公開の映画にも改正法が適用されるかが争点となった。



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パラマウント社は「改正法の条文は、施行直前まで存続していた著作権も保護期間が延長されると読める」と主張していた。また、著作権法を所管する文化庁「53年公表の映画の著作権は有効」としていた。この判決により、同庁の解釈に誤りがあったことにもなった。

なお、1953年は「シェーン」のほか「ローマの休日」等の名作が多く発表された年であり、判決は映画業界等に影響を与えそうである。

#### 参照

- 1) <http://www.jiji.com/jc/zc?k=200712/2007121800663>
- 2) <http://www.nikkei.co.jp/news/shakai/20071219AT1G1803318122007.html>
- 3) <http://www.itmedia.co.jp/news/articles/0712/18/news119.html>



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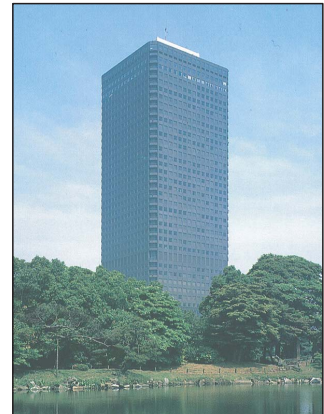
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For extension of business, we moved our Tokyo Office from the 12th floor to the 21st floor of the World Trade Center Building on August 1, 2007. There are no changes in the phone number, the facsimile number, and the like.

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。