

TOPIC

1. Outline of the revisions of Japanese Intellectual Property Law expected in 2008.

2008年度特許法等改正の概要

2. A dispatch system of specialists in the field of intellectual property to be established.

知財のプロを派遣する制度の創設

3. The "Community Patent Review" to be launched experimentally.

「コミュニティ・パテント・レビュー」の試行的運用決定

4. Eco-Patents: companies to mutually provide free access to their Eco-Patents.

環境特許:企業が相互開放 経産省方針

5. Intellectual Property High Court accepted the registration as a three-dimensional trademark of the Coca-Cola bottle.

コカ・コーラ瓶の立体商標登録、知財高裁が認める



Outline of the revisions of Japanese Intellectual Property Law expected in 2008. 2008年度特許法等改正の概要

In view of promoting the strategic use of intellectual property rights as well as of making it possible to protect them promptly and appropriately, the revisions of the Patent Law, Utility Model Law, Design Law, Trademark Law and Law concerning the Special Provisions to the Procedure related to Industrial Property Rights, expected in 2008, will cover the following:

- (1) Reconsideration of the registration system for non-exclusive license (Patent Law, Utility Model law).

In order to protect patent licenses during the filing procedure, a registration system will be established. Further, regarding the registries of non-exclusive licenses, the scope of the non-exclusive license, such as the name of the licensee, often desired to be kept secret, will only be disclosed to certain parties concerned.

*This revision will take effect within one year from the date of issue (April 18, 2008), on a date which will be designated by government ordinance.

(2) Reconsideration of the period for demanding an appeal (Patent Law, Design law, Trademark Law).

The period for demanding an appeal against a decision of refusal in the case of patent, design and trademark as well as the period for demanding appeals against a decision of refusal and against a decision to decline an amendment in the case of design and trademark will be expanded from "within 30 days from the mailing date of a certified copy of the decision", as it is currently, to "within 3 months from the mailing date of a certified copy of the decision". In addition, the period in which the applicant can amend the application, for example the patent claims, will change from "within 30 days from the date of demanding an appeal", as it is currently, to "only at the time of filing an appeal".

*This revision will take effect within one year from the date of issue (April 18, 2008), on a date which will be designated by government ordinance.

(3) Expansion of the cooperating countries where priority documents can be electronically exchanged (Patent Law, Utility Model Law).

With respect to electronic exchange of priority documents, the Japan Patent Office (JPO) will accept data not only from the countries of issue of the priority documents, but also from other countries or international organizations.

*This revision will take effect within one year from the date of issue (April 18, 2008), on a date which will be designated by government ordinance.

(4) Reduction of patent and trademark related official fees (Patent Law, Trademark Law).

Annuities from the tenth year onwards were reduced by an average of 12%, taking into account small and medium enterprises, which may have difficulties to pay them. The registration fee for the establishment of a Trademark right, which is higher than in foreign countries and is often paid by small and medium enterprises, was also reduced by an average of 43%.

*This revision took effect on June 1, 2008.

(5) Introduction of an account transfer system for the payment of official fees (Law concerning the Special Provisions to the Procedure related to Industrial Property Rights).

In order to simplify the payment of official fees such as annuities, a system allowing payment by account transfer will be introduced.

*This revision will take effect on January 1, 2009.

Reference website:

(i) http://news.braina.com/2008/0606/rule_20080606_001____.html



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2008年度特許法等の改正は、知的財産権の戦略的な活用の促進と、迅速かつ適正な権利保護の観点から、特許法、実用新案法、意匠法、商標法及び工業所有権に関する手続等の特例に関する法律について、以下のような措置を講ずるものとなっている。

(1) 通常実施権等登録制度の見直し(特許法・実用新案法)

特許の出願段階のライセンスを保護するための登録制度を創設し、また、通常実施権の登録事項のうち、秘匿の要望が強いライセンシーの氏名等、通常実施権の範囲の開示を一定の利害関係人に限定する。

※施行時期: 公布の日(2008年4月18日)から起算して1年を超えない範囲内において政令で定める日

(2) 不服審判請求期間の見直し(特許法・意匠法・商標法)

特許制度の拒絶査定不服審判請求期間、意匠制度と商標制度の拒絶査定不服審判と補正却下決定不服審判に係る審判請求期間を、いずれも現行の「査定謄本の送達日から30日以内」から「査定謄本の送達日から3月以内」に拡大する。また、特許請求の範囲等の補正可能時期を、現行の「審判請求から30日以内」から「審判請求と同時にのみ可能」と変更する。

※施行時期: 公布の日(2008年4月18日)から起算して1年を超えない範囲内において政令で定める日

(3) 優先権書類の電子的交換の対象国の拡大(特許法・実用新案法)

優先権書類の電子的交換を、優先権書類の発行国だけでなく、その他の国や国際機関のデータの受け入れも可能とする。

※施行時期: 公布の日(2008年4月18日)から起算して1年を超えない範囲内において政令で定める日

(4) 特許・商標関係料金の引き下げ(特許法・商標法)

中小企業等の負担感の強い10年目以降を重点に、特許料を平均12%引き下げる。また諸外国より高額で、中小企業等の利用割合の高い商標の設定登録料等を平均43%引き下げる。

※施行時期: 2008年6月1日

(5) 料金納付の口座振替制度の導入(工業所有権に関する手続等の特例に関する法律)

特許料等の料金の納付手続の簡素化を図る観点で、銀行口座からの振替えによる納付制度を導入する。

※施行期日: 2009年1月1日

(i) http://news.braina.com/2008/0606/rule_20080606_001__.html

A dispatch system of specialists in the field of
intellectual property to be established.
知財のプロを派遣する制度の創設

The JPO will establish a dispatch system of specialists called "intellectual property producers" in order to provide assistance to companies in obtaining patent rights. In order to get ahead of the competition in the filing of patent applications, the JPO considered it necessary to develop strategies at an early stage and thus determined to establish this system. On a trial basis, the JPO will dispatch the "intellectual property producers" to a pilot project during the fiscal year 2008, with the fully-fledged implementation of the system scheduled for 2009. Companies to which an "intellectual property producer" will be dispatched will receive state subsidies. The JPO will accept the candidacy of companies proposing projects to which several research institutes participate.

The "National Center for Industrial Property Information and Training", an independent Administrative institution under the jurisdiction of the JPO, will be in charge of dispatching the "producers". This institution will recruit as "intellectual property producers" specialists in obtaining patent rights, such as persons with manager experience in this field, and will set up teams consisting of the specialist, of a patent attorney in charge of the filing procedures and of a "patent information adviser" whose role will be to provide advice for a better use of patent-related information.

Reference website:

(i) <http://www.business-i.jp/news/sou-page/news/200805130011a.nwc>

特許庁は、企業などの特許取得を支援する「知財プロデューサー」の派遣制度を創設する。出願競争に先んじるには、初期段階の戦略構築が欠かせないと判断し、本制度創設を決定した。2008年度中に試験的に1プロジェクトに派遣し、2009年度からの本格実施を目指す。なお、派遣先は国の助成を受け、複数の研究機関が参加するプロジェクトから公募する。

派遣は同庁所管の独立行政法人「工業所有権情報・研修館」が担当。知財プロデューサーとして、企業の知財部の管理職経験者など特許取得の専門家を採用し、出願手続きを行う弁理士や特許情報の活用を助言する「特許情報活用アドバイザー」らとチームを編成する。

(i) <http://www.business-i.jp/news/sou-page/news/200805130011a.nwc>

The "Community Patent Review" to be launched experimentally.
「コミュニティ・パテント・レビュー」の試行的運用決定

The Ministry of Economy, Trade and Industry (<http://www.meti.go.jp/>) and the JPO (<http://www.jpo.go.jp/>) have decided to launch a program called "Community Patent Review" as early as August 2008.

Thanks to the "Community Patent Review", it will be possible to publish filed applications on the Internet and to seek feedback from third parties such as researchers or engineers. This project may be considered as a work sharing program between the government and the private sector in patent examination.

The purpose of this project is to utilize the knowledge of researchers and engineers in companies and universities for patent examination, in order to improve the examination quality and to make the examination process more efficient. The applicant of the patent, for example a company, will be able to better evaluate its own technology and thus to improve its shortcomings, while the JPO is expected to conduct more efficient and higher quality examinations.

The Ministry will at first launch the project experimentally in order to identify any eventual problems, with its fully-fledged implementation scheduled for as early as 2009.

(i) <http://robonable.typepad.jp/news/2008/05/20080519-447b.html>

(ii) <http://it.nikkei.co.jp/business/news/index.aspx?n=AS1D1703S%2014052008>

経済産業省(<http://www.meti.go.jp/>)と特許庁(<http://www.jpo.go.jp/>)は2008年8月にも、「コミュニティ・パテント・レビュー」を試行的に運用することを決定した。

「コミュニティ・パテント・レビュー」とは、出願した特許をネット上で公開し、研究者や技術者など第三者が評価したり不足点を指摘したりすることを意味し、特許審査における官民のワークシェアリングとも言える。

企業や大学の研究者・技術者が持つ知識を特許審査に活用することで、特許審査の質的向上や効率化を目指す。企業など特許出願人は自社技術の評価や改善点などを把握できる一方、特許庁では質の高い効率的な審査が期待される。

2008年度は試行して課題などを探りながら、2009年度にも本格運用に移行する。

(i) <http://robonable.typepad.jp/news/2008/05/20080519-447b.html>

(ii) <http://it.nikkei.co.jp/business/news/index.aspx?n=AS1D1703S%2014052008>

Eco-Patents: companies to mutually provide
free access to their Eco-Patents.
環境特許:企業が相互開放 経産省方針

The Ministry of Economy, Trade and Industry will launch the "Eco-Patent commons" program in April 2009. The "Eco-Patent commons" program will provide companies with mutual free access to unworked patents in relation with environmental technology. As environmental problems such as global warming become increasingly serious, Japan's advanced environmental technologies are starting to gather attention. The Ministry intends to make it possible to utilize patent technologies which are not in practical use in order to develop new environmental technologies.

In order to lower the financial burden of companies for registering the project and to promote the use of the project, the Ministry intends to reduce the fees for obtaining and maintaining the registered patent.

(i) <http://mainichi.jp/life/money/news/20080525k0000m020100000c.html>

経済産業省は、実用化されていない環境分野の特許を企業が無償で相互開放する仕組み「エコ・パテントコモンズ」を2009年4月に始める方針を固めた。地球温暖化が大きな問題になる中、日本の優れた環境技術に注目が集まっており、実用化されずに埋もれている特許技術を有効に活用することで、更なる環境技術の普及や発展につなげる狙いがある。

また、登録する特許を取得する際の費用や、登録済みの特許の維持費を減免するための法改正も予定しており、企業の負担を軽減することで利用促進を図る。

(i) <http://mainichi.jp/life/money/news/20080525k0000m020100000c.html>

Intellectual Property High Court accepted the registration
as a three-dimensional trademark of the Coca-Cola bottle.
コカ・コーラ瓶の立体商標登録、知財高裁が認める

In the law suite regarding whether or not the Coca-Cola bottle can be recognized as a three-dimensional trademark, the Intellectual Property High Court ruled in favor of Coca-Cola and canceled the former trial decision refusing the registration of the bottle. It is the first time in Japan that a three-dimensional trademark for a container without any lettering or graphic symbol is registered.

Chief Judge Mr. Toshiaki Iimura mentioned that the bottle of Coca-Cola is "within the scope of familiar shape", while pointing out that (1) Coca-Cola has been sold consistently in bottles of the same shape since 1957 in Japan, (2) Coca-Cola currently sells 96 million bottles a year, (3) Coca-Cola leaves an impression on consumers with advertising expenses of 3 billion yen a year, and (4) there is no bottle which has the same feature. He concluded that "the Coca-Cola bottle can easily be distinguished from other products without the Coca-Cola logo, since the shape of the bottle itself is recognized as the brand image", thus making it possible for the said bottle to be accepted as a three-dimensional trademark.

(i) <http://trendy.nikkeibp.co.jp/article/news/20080530/1013690/>

(ii) <http://www.itmedia.co.jp/news/articles/0805/30/news031.html>

炭酸飲料「コカ・コーラ」の瓶ボトルが「立体商標」として認められるかどうか争われた訴訟で、知財高裁は2008年5月29日、商標と認めなかった特許庁の審決を取り消した。文字や図形が付いていない容器の立体商標登録が認められるのは、日本で初めてである。

飯村敏明裁判長はコカ・コーラのボトルについて、「飲料用容器として通常採用されている形の域を出ない」とする一方、(1)日本国内でも昭和32年から一貫して同一の形で販売されている(2)現在でも年間9600万本の販売実績がある(3)年間30億円の広告費で消費者に印象づけている(4)同じような特徴を持ったボトルは他にはないなどを指摘したうえで、「ボトルの形自体がブランドイメージとして認識されており、『コカ・コーラ』のロゴがなくても、他社商品と容易に識別できる」と判断し、立体商標として認められると結論付けた。

(i) <http://trendy.nikkeibp.co.jp/article/news/20080530/1013690/>

(ii) <http://www.itmedia.co.jp/news/articles/0805/30/news031.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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