

TOPIC

1. The Plan for the promotion of Intellectual Property 2008, mentioning that the introduction of the concept of Fair Use is being considered, has been adopted.

知財推進計画2008決定、フェアユースの導入検討など盛り込む

2. US Company extends lawsuit for touchscreen technology related patent infringement against a further ten companies, including Apple.

米企業、タッチスクリーン技術特許侵害でアップルなど10社提訴

3. Trademark registration of historical figures to be limited. Examination guidelines for trademark applications to be reviewed.

歴史上の人物名などの登録制限、商標の審査基準見直しへ

4. JPO to review the patent microorganism deposition system.

特許庁、特許微生物寄託制度の見直し検討着手



The Plan for the promotion of Intellectual Property 2008, mentioning that the introduction of the concept of Fair Use is being considered, has been adopted.
知財推進計画2008決定、フェアユースの導入検討など盛り込む

On June 18, 2008, the Intellectual Property Strategy Headquarters (led by Prime Minister Yasuo FUKUDA) adopted the Plan for the promotion of Intellectual Property 2008.

A key feature of this year's Plan is the review of the copyright system. The Plan mentioned, for example, that the introduction of the concept of Fair Use into Japanese Copyright Law will be considered so as to facilitate the use of intellectual property by companies. A revision enabling providers of web search engines to install a server in Japan will also be considered.

Further, the Plan also mentions the following points: the establishment of a general support system to accelerate the research and the commercialization of iPS cells, considerations on the shape to give to patent protection in the field of cutting-edge medical technology, governmental level action aimed at foreign video-sharing websites in order to eliminate illegal content on the Internet, and encouragement to foreign countries to improve their Intellectual Property systems so that Japanese regional names as well as trademarks established in Japan can be protected.



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The Plan also notes that the percentage of patent applications filed in foreign countries by Japanese companies is of a mere 22% - a low level compared with the equivalent percentage in the USA (44%) and Europe (60%), showing that Japan lags far behind in terms of development on the international market.

Reference website:

(i) http://news.braina.com/2008/0619/rule_20080619_001____.html

(ii) http://www.jimin.jp/jimin/daily/08_06/25/200625b.shtml

政府の知的財産戦略本部(本部長・福田首相)は、2008年6月18日、「知的財産推進計画2008」を決定した。

今回の計画の特徴としては、知的財産を活用するビジネスを阻害しないよう、著作権法にフェアユース概念の導入を検討することや、インターネット検索事業者が国内にサーバーを設置できるよう法改正を実現することなど、著作権制度の見直しについていくつも言及していることがあげられる。

また、iPS細胞の研究・事業化の加速のための総合支援体制の構築や、先端医療分野における特許保護の在り方の検討、ネット上の違法コンテンツ排除のための海外動画サイトへの政府レベルの働きかけや、日本の地名や著名商標保護されるよう各国への制度改善の働きかけなども、盛り込まれた。

なお、同計画は海外への特許出願率が22%と、米国(44%)や欧州(60%)に比べて低い水準にあることを挙げながら、国際市場での展開が遅れていることを指摘している。

(i) http://news.braina.com/2008/0619/rule_20080619_001____.html

(ii) http://www.jimin.jp/jimin/daily/08_06/25/200625b.shtml

US Company extends lawsuit for touchscreen technology related patent infringement against a further ten companies, including Apple.
米企業、タッチスクリーン技術特許侵害でアップルなど10社提訴

On June 23, 2008, the US company Typhoon Touch Technologies announced that it had expanded its touchscreen patent infringement suit against Dell Inc. by adding ten additional defendants, including Apple and Japanese companies. The ten companies added to the lawsuit are Apple, Fujitsu Computer Systems, Toshiba America Information Systems, Lenovo, Panasonic Corporation of North America, HTC America, Palm, Samsung Electronics America, Nokia and LG Electronics USA.

Typhoon Touch Technologies and its licensee Nova Mobility Systems had filed a lawsuit against Dell Inc. and Motion Computing on Dec. 2007 with the Eastern District of Texas, alleging that the production and sales of tablet PC and PDA infringed upon two US patents related to portable computers using touchscreen technology (Nos. 5,379,057 and 5,675,362) and owned by Typhoon..

According to the report, a settlement with Motion Computing has since been reached.

Reference website:

(i) http://news.braina.com/2008/0625/judge_20080625_001____.html

米タイフーンタッチテクノロジーは2008年6月23日、デルに対して係争中のタッチスクリーン技術特許侵害訴訟の被告として、アップルや日系企業など10社を追加したと発表した。新たに追加された企業は、Apple、Fujitsu Computer Systems、Toshiba America Information Systems、Lenovo、Panasonic Corporation of North America、HTC America、Palm、Samsung Electronics America、Nokia、LG Electronics USAの計10社。

タイフーンタッチテクノロジー (Typhoon Touch Technologies) と同社のライセンサーである Nova Mobility Systems は、2007年12月、タブレットPCやPDAなどの製造販売により、タッチスクリーン技術を用いた携帯型PCに関するTyphoonの米国特許 (5,379,057および5,675,362) が侵害されたとして、DellとMotion Computingをテキサス州東部連邦地裁に提訴している。

なお、Motion Computingとは、その後、和解に達したという。

(i) http://news.braina.com/2008/0625/judge_20080625_001____.html

Trademark registration of historical figures to be limited.
Examination guidelines for trademark applications to be reviewed.
歴史上の人物名などの登録制限、商標の審査基準見直しへ

The Japan Patent Office (JPO) announced on June 27, 2008 its intention to formulate examination guidelines for trademark applications regarding historical figures. A draft version of the said guidelines will be published first, by July 28, 2008, in order to gather opinions from the public.

Currently, a third party which has no relation with a historical figure can trademark the name of the said historical figure and obtain exclusive trademark rights. It has however been pointed out that such a situation might not only exert a harmful influence on the regional industry with which the historical figure is associated, but might also offend the feelings of the family. Further, there have been some appeal and case decisions in which the Court ruled that these trademarks fall under Section 4(1)(vii) (regarding violation of public order and morality) of the Trademark Law. Accordingly, the JPO will now formulate examination guidelines for Section 4(1)(vii) of the Trademark Law regarding trademark applications connected with historical figures.

The draft version of the examination guidelines states that trademark applications for the "name of a well-known and famous deceased person" or the "title/name of a well-known and famous literary work or festival" will be examined by using as criteria the following points as a whole: (1) the filing process of the application, (2) the relation between the applicant and, for example, the deceased or his/her family, (3) the relation between the deceased and the designated goods and services, and (4) the potential effect on society and industry if the name of the deceased is registered as a trademark. If the comprehensive examination shows that the application might cause damage, the application will be refused on grounds of violation of public order and morality.

Reference website:

(i) http://news.brainia.com/2008/0624/rule_20080624_001____.html

特許庁は2008年6月27日、歴史上の人物名等の商標に関する審査基準の策定を行う方向で、その案を公表し意見募集を同年7月28日まで行うと発表した。

歴史上の人物名等の商標を関係ない第三者が商標登録して独占的権利を得ることについては、郷土やゆかりの地の地域産業への悪影響や、遺族の感情を害する等の懸念が指摘され、また、これらの商標は商標法第4条第1項第7号(公序良俗違反)に該当するとする審決や判決もでていることから、歴史上の人物名等に係る商標登録出願に関する商標法第4条第1項第7号の基準を策定としている。

審査基準案では、「周知・著名な故人名」や同様の事情にある「周知・著名な著作物名や祭りの名称」などを対象に、(1) 出願の経緯、(2) 故人や遺族との関係、(3) 故人と指定商品・役務との関連性、(4) 故人名を登録した場合の社会や産業への影響、を総合的に勘案して判断し、悪影響のおそれがある場合は、公序良俗違反の商標として拒絶としている。

(i) http://news.braina.com/2008/0624/rule_20080624_001__.html

JPO to review the patent microorganism deposition system. 特許庁、特許微生物寄託制度の見直し検討着手

On June 23, 2008, the JPO announced the establishment of a "review committee on the patent microorganism deposit system", composed of legal experts, microorganism experts and users, in order to review the patent microorganism deposit system. The JPO also announced that the review committee held its first meeting on the same day, thus effectively starting the system review.

The patent microorganism deposit system is necessary for the general patent system, and is also important in terms of promotion of innovation in the field of life science. Since its establishment in 1971, the deposit system has been revised several times when needed, for example when Japan became a signatory of the Budapest Treaty, or as a consequence of the broadening of the scope of microorganisms likely to be deposited and of the multiplication of institutions in charge of deposits.



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However, in addition to the recommendations of the "Plan for the Promotion of Intellectual Property 2007", which highlighted the necessity to review the system (in order to reduce the cost for the applicant and to clarify whether or not the deposit is needed at the time of filing) in view of changes in society, such as the rapid development of life science technology, problems linked to the system and its operation became obvious, such as the administrative problems that occurred in the Center for Patent Microorganism Deposit in 2007 and the problems reported by the said Center's Study committee on the administrative system. A review of the system is therefore necessary.

Reference website:

(i) http://news.braina.com/2008/0624/rule_20080624_001____.html

特許庁は2008年6月23日、特許微生物寄託制度の見直しを行うため、特許庁に、法学者や微生物の専門家、ユーザーからなる「特許微生物寄託制度に関する検討委員会」を設置、同日に第1回会合を開催して検討に着手したと発表した。

特許微生物寄託制度は、特許制度上不可欠で、ライフサイエンス分野のイノベーション促進の観点からも重要であり、昭和46年に寄託制度が規定されて以来、ブダペスト条約への加盟、受託微生物範囲の拡大や寄託機関の複数化など、必要に応じて数々の見直しを行われてきた。

しかし、ライフサイエンス分野の技術の急速な発達等の社会情勢の変化の中で、「知的財産推進計画2007」での取り組むべき施策(出願人の寄託時の負担軽減や寄託の要否の明確化等)としての指摘に加え、2007年、産総研特許生物寄託センターで発生した管理上の問題や、それに関する「特許生物寄託センターの管理体制等に関する調査委員会」の報告など、同制度及びその運用の課題も顕在化したことから、同制度の見直しに着手したものである。

(i) http://news.braina.com/2008/0624/rule_20080624_001____.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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