

Newsletter

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JAPAN









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Collection of Examples of Enterprises Using IP 2018 知的財産権活用企業事例集2018

On October 3, 2018, the Japan Patent Office published "Collection of Examples of Enterprises Using IP 2018".

The collection introduces 52 examples of small and medium-sized enterprises using IP in the following 11 fields:

- Foodstuffs, drinks and pharmaceuticals
- Architecture, construction and civil engineering
- Dies, press forging and industrial parts
- Chemicals, plastics and materials
- Agricultural machinery and food processing machinery





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- Industrial machinery and environmental apparatus
- Medical apparatus, medical tools, nursing goods
- IT, electrical apparatus, electronic apparatus and analytical apparatus
- Manufacturing equipment and inspection equipment
- Life and culture goods
- Wholesale, retail and services

The booklet describes the outline of each enterprise's impetus for starting use of IP, how it approached using IP and what the results were. The content is likely to be of use to enterprises formulating IP strategies that wish to check how others in the same field approached IP.

The booklet also includes the locations and contact information of each enterprise featured, making it possible for users to find and contact small and medium-sized enterprises that hold patents related to their business. It is hoped that the booklet will help lead to new business ties between users.

In addition to amount of capital and number of employees, the outline of each enterprise featured includes a section on how its IP handlers are organized. This offers an interesting glimpse into the realities of how IP is used in small and medium-sized enterprises, with some enterprises having dedicated legal or IP departments, others having IP matters handled by the company presidents, and so on.

2018年10月3日に、特許庁から「知的財産権活用企業事例集2018」が刊行された。

「食品・飲料・医薬品」、「建築・建設・土木」、「金型・プレス加工・工業部品」、「化学・プラスチック・材料」、「農業機械・食品機械」、「産業機械・環境関連機器」、「医療機器・医療用具・介護用品」、「IT・電気機器・電子機器・分析機器」、「製造装置・検査装置」、「生活文化用品」、「卸売・小売・サービス」の11分野について、計52の中小企業の事例が紹介されている。

同冊子では、各企業について、知的財産権活用の「きっかけ」、「取り組み」、「成果」の概要が紹介されている。そのため、同業の中小企業が行なっている取り組みを確認することで、今後の知財戦略に役立つ可能性がある。

また、企業の所在地や連絡先も記載されていることから、自社事業に関連する特許を保有する中小企業を発見しコンタクトすることで、新たなビジネスへつなげることも期待できるのではないかと思料される。

さらに、企業概要には資本金の額や従業員数等以外に「知財担当者の体制」の欄が設けられている。法務・知財課を設けている企業や、社長が知財を担当される企業など様々であり、中小企業における知財活用の現実が垣間見られる点も興味深い。







Introduction of "Fast-track Examinations" for Trademarks 商標審査に「ファストトラック審査」が導入される

A system for carrying out trademark examinations at a faster rate than normal (fast-track examinations) has begun on a trial basis for applications filed on or after October 1, 2018. Applications that qualify for the system must meet specific requirements regarding designated goods/services. The fast-track examinations will be carried out around two months faster than normal examinations. As the number of trademark applications being made is increasing rapidly, the aim of fast-track examinations is to facilitate the entire trademark examination process by encouraging appropriate applications that do not cause a large amount of work for examiners.

1. Trademark applications that may be subject to fast-track examinations

In order to be made subject to a fast-track examination, an application must meet the following requirements (1) and (2).

- (1) At the time of filing, the application only designated goods/services written in the "Examination Guidelines on Similar Goods and Services", "Trademark Law Enforcement Regulations", or in the "International Classification Tables of Goods and Services (Nice Classifications)" (herein after referred to 'standard indications').
- (2) No amendments to the goods/services have been made prior to starting examination.

*Note: Applications that may not be made subject to fast-track examinations

- Applications for "new type" trademarks and International trademark applications (Madrid Protocol)
- Applications that designate any goods or services that other than the 'standard indications' such as those published under "Names of Goods and Services Adopted in Examinations" published on the Patent Information Platform (J-PlatPat).
- Applications made prior to October 1, 2018.

2. Requesting fast-track examination

No special request is necessary. Applications that qualify will automatically be made subject to fast-track examination. However, as with normal cases, the time required for examination will vary from case to case. No fee is incurred for fast-track examination.



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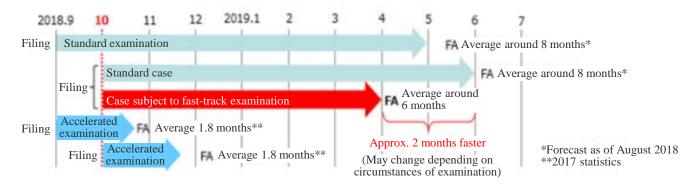


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Source: JPO website

指定商品・指定役務の記載が一定の条件を満たす商標登録出願について、通常よりも早く(2カ月程度)審 査を行う運用(ファストトラック審査)が、2018年10月1日以降に出願された案件を対象に、試行的に 開始された。商標登録出願件数が急激に増加する中、審査負担の少ない適正な出願を促すことによって、商標 審査全体の処理促進を図っていく。

1. 対象となる商標登録出願

下記の(1)及び(2)の両方の要件を満たす商標登録出願

- 「類似商品・役務審査基準」、「商標法施行規則」又は「商品・サービス国際分類表(ニー (1)出願時に、 ス分類) | に掲載の商品・役務(以下、「基準等表示」) のみを指定している商標登録出願
- 審査着手時までに指定商品・指定役務の補正を行っていない商標登録出願

※注:対象とならないもの

・新しいタイプの商標に係る出願及び国際商標登録出願(マドプロ出願)。

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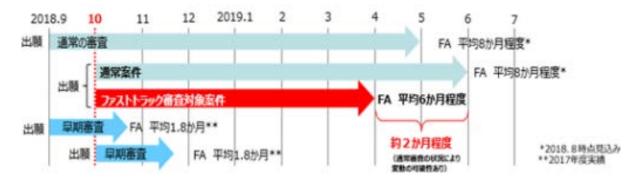
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- ・特許情報プラットフォーム(J-PlatPat)で公表している「審査において採用された商品・役務名」等、「基準等表示」以外の商品・役務が指定されているもの。
- ・平成30年10月1日より前に出願されたもの。

2. 申請

特別な申請は不要で、要件を満たす商標登録出願は自動的にファストトラック審査の対象となる。ただし、 通常の案件と同様に、案件によっては審査に時間を要するものもある。なお、手数料も不要。



特許庁HPより

Handling in Japan of Trademark Applications with "Providing Casino Facilities" as a Designated Service
「カジノ施設の提供」を指定役務とする商標登録出願の我国での取扱いについて

Since it was unclear what sort of service was indicated under the law of Japan by the expression "providing casino facilities [gambling]" of Class 41 of the Nice International Classification Tables, this expression is marked with an asterisk (*) to show that it is a service that cannot be adopted in Japan. Thus, if said service is designated in an application, a notice of reasons for refusal will be issued under Article 6(I) of the Japan Trademark Law.

However, the Law on Development of Specified Complex Tourist Facilities Areas was established on July 20, 2018 and promulgated on July 27, 2018. When the law is enacted (within three years of the date of promulgation), the provision of casino facilities in Japan will be permitted. Therefore, the handling of the above expression in the Nice Classifications will change as follows.

•Without waiting for the next update of the Nice International Classification Tables (January 1, 2019), it will









become possible to adopt a Japanese translation of "providing casino facilities" as an indication of a designated service in Japanese trademark registration applications.

•Examination will be carried out by treating "providing casino facilities" as being included in "providing amusement facilities" (Class 41).

ニース国際分類表の表示「第41類providing casino facilities [gambling]」(仮訳:「カジノ(賭博)の提供」)については、我国の法律上どのような役務か明確ではなかったため、日本において指定役務の表示として採用できない役務として「*(アスタリスク)」を付している。よって、当該役務を指定した場合は商標法第6条第1項に基づく拒絶理由が通知される。

しかし、2018年7月20日に特定複合観光施設区域整備法が成立、同年7月27日に公布され、施行される(公布後3年以内)により、今後日本においてカジノ施設を提供することが認められることとなる。そこで上記ニース表示の運用は下記のように変更することとなった。

- ・ニース国際分類表の版改訂のタイミング(2019年1月1日)を待つことなく、「カジノ施設の提供」の訳で商標登録出願における指定役務の表示として採択可能なものとする。
- ・「カジノ施設の提供」は「第41類 娯楽施設の提供」に含まれるものとして審査が行われる。

Drug Fees and IP 薬価と知財

On October 3, 2018, Tasuku Honjo, Distinguished Professor of Kyoto University, was awarded the Nobel Prize in medicine and physiology. Since Professor Honjo received the prize, the anti-cancer drug Opdivo, which is based on his research, has come under the spotlight, although this is not the first time Opdivo has become a lively topic of public debate.

Administering a single dose of Opdivo costs around 1.3 million yen (approx. 11,700 USD), and a single year's worth of treatment costs 35 million yen (approx. 315,000 USD), making it a notorious example of high-cost medicine often cited in newspapers and other media.

In Japan, as a rule new medicines that are approved under the Pharmaceuticals and Medical Devices Law must be covered by insurance, and therefore the fees for high-cost medicines have a major effect on health insurance. For example, in the UK the drug YESCARTA, which is used for treating lymphoma, is not available on the





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National Health Service because it is deemed "too expensive". Also, whether or not a drug is covered by insurance can have an effect on the users of said drug. On the other hand, the deferment of insurance being applied to a drug or the controlling of the list price of a drug can also diminish pharmaceutical companies' motivation to develop new drugs as well as their research and development ability. Thus, in the long term, doing so can be of a greater detriment to humankind as a whole.

It is a challenge to try and strike a balance to simultaneously preserve or improve the speed with which new drugs are developed, preserve public medical finances and provide fair access to medicine to those who need it.

2018年10月3日に、京都大学の本庶佑特別教授のノーベル医学・生理学賞受賞が決まった。本庶氏の受賞により、同氏の研究を基にして作られた抗がん剤「オプジーボ」が注目を集めているが、「オプジーボ」が世間を賑わせたのはこれが初めてではない。

「オプジーボ」は、1回の投与で約130万円、1年間の投与で3500万円という超高額医薬品として、新聞等の各種メディアで取り上げられ有名になった抗がん剤である。

日本では薬機法承認が出た新薬については原則として保険が適用されるため、超高額の薬価が医療保険に大きな影響を与えることになる。例えば、英国では、リンパ腫治療薬「イエスカルタ」が「高価すぎる」との理由によって、公的医療保険から外されたとのことである。また、保険の適用の有無によって医薬品の利用者にも影響が及びうる。他方、保険適用の見送りや薬価の抑制は、製薬企業の新薬開発のモチベーションおよび研究開発能力を削ぐ結果にもなりかねず、長期的視点でみると、人類全体への不利益ともなり得る。

新薬開発速度の維持・向上、医療財政の維持、そして、医薬品を必要とする人たちへの公平な医薬品の提供 という3者のバランスを取るのは、容易ではない。

From Application to Use 出願から利用へ

According to a newspaper report in September, 2018, the percentages of patents approved in China in 2013 that were abandoned by 2017 were as follows:

- Over 91% of Design Patents (equivalent to Designs under Japanese law)
- 61% of Utility Model Patents
- 37% of Invention Patents

From the above, it can be seen that there is a tendency for a high proportion of patent rights to be abandoned within 5 years of acquisition.







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As numbers of patent applications, particularly design patent applications are seeing a huge increase, in China there are incentive programs for patents being carried out, such as providing financial support for applications by enterprises or universities. Also, it is easier to select design patent applications, which have less strict examinations compared to invention patents. On the other hand, there is no support system in China for patents post-acquisition, which means that upkeep costs for patents present a problem, and many patents are abandoned shortly after acquisition.

In Japan as well, multiple systems exist to support applications particularly by small and medium-sized enterprises and universities. A more thorough support system would be desirable from the point of view of enabling the effective use of IP and the protection of right holders after rights have been acquired.

2018年9月の新聞報道によれば、中国において2013年に認められた特許の2017年時点での放棄率は、デザイン特許(日本における「意匠権」に相当)が91%強、実用新案特許が61%、発明特許が3

7%であり、いったん取得した特許を5年以内に放棄する可能性が高い傾向にある。

特許出願、中でも特にデザイン特許の著しい増加の背景には、中国では、企業や大学の特許出願に対する補助金提供等の特許奨励策が実施されていること、また、発明特許に比べ審査が緩やかなデザイン特許出願が選択されやすいことが挙げられる。他方、中国では登録後の補助制度が存在しないため、特許維持費の負担が問題となり、特許取得後に短期間で特許が放棄されることが多いと推察される。

日本でも、特に中小企業や大学に出願を促す各種の支援制度が実施されている。権利化後においても、当該財産の有効活用や権利者の保護を図る観点から、より一層の支援制度が望まれる。





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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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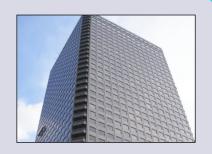
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