

Newsletter
November 2019

JAPAN

HARAKENZO
WORLD PATENT & TRADEMARK
INTELLECTUAL PROPERTY LAW FIRM







TOPIC

- Numbers of Standard Essential Patents for Next-Generation Communications Standard 5G 次世代通信規格「5G」の標準必須特許の件数
- 2. Strengthening of IP Protections for Agricultural Varieties Abroad 海外での農産物品種の知的財産保護の強化
- Vietnam, Samoa and Israel Join the Hague Agreement ベトナム、サモア、イスラエル ハーグ協定加盟
- 4. Background to New Recruitment of Trademark Examination Assistants 商標審査官補の新規募集にある背景
- 5. Reselling and Second-hand Selling of E-books in EU EU域内における電子書籍の中古販売・転売



Numbers of Standard Essential Patents for Next-Generation Communications Standard 5G 次世代通信規格「5G」の標準必須特許の件数

On September 20, 2019, Chinese Minister of Industry and Information Technology Miao Wei announced that China has the highest number of Standard Essential Patents (SEPs) related to next-generation communications (5G) in the world. Europe and the United States have the most SEPs for the current generation (4G), but when it comes to 5G, it can be seen that Chinese companies such as Huawei and CRRC have acquired large numbers of SEPs.

In addition to "person-to-person" communications, 5G technology aims to enable "person-to-machine" and "machine-to-machine" communications. As China becomes the country with the most SEPs related to this





WORLD PATENT & TRADEMARK INTELLECTUAL PROPERTY LAW FIRM

November 2019

JAPAN

technology, we can more easily envision the day when China holds supremacy over advanced technology. It is feared that the United States' wariness towards China will grow further and the current rivalry between the two nations will become even fiercer.

China's digital industry at the end of 2018 was worth 31 trillion yuan, and is thought to account for one-third of GDP. Because of this, it seems unlikely that China will surrender its high-tech hegemony to the United States easily. It is possible that market predictions are correct and that the road to reconciliation between the US and China will be long.

2019年9月20日、中国の工業・情報化部の苗圩部長は、次世代通信規格「5G」の標準必須特許(SEP)の件数につい て、中国が世界最多であることを発表した。4GのSEPの件数では欧米が勝っていたが、5Gでは、中国の華為技術 (ファーウェイ)や中車などが多数のSEPを取得したものとみられる。

「ヒトとヒトとの通信」に加え、「ヒトとマシンとの通信」、さらに、「マシンとマシンとの通信」を射程 とした技術である5Gにおいて、中国の保有するSEPの件数が世界最多となったことは、中国がハイテクの覇権を 握る日を予感させる。米国の中国への警戒感がさらに高まり、現在の米中対立が激化することが危惧される。

中国のデジタル産業の規模は、2018年末時点で31兆元に達し、国内総生産(GDP)の3分の1を占めるとも言われ ている。そのため、中国がハイテクの覇権を簡単に米国に譲るとは思われない。市場の予測する通り、米中の融和 への道程は長いかもしれない。

Strengthening of IP Protections for Agricultural Varieties Abroad 海外での農産物品種の知的財産保護の強化

There continue to be reports of beans and strawberries, grape seeds, wagyu cattle embryos and other wellregarded varieties being leaked abroad and cultivated without permission. In order to address this situation, the Ministry of Agriculture, Forestry and Fisheries (MAFF) has begun activities to strengthen intellectual property protections for agricultural varieties abroad.

Specifically, nongovernmental support organizations providing unified handling of IP related to agricultural varieties abroad will be recruited and receive financial aid from MAFF for expenses etc. Generally speaking, in order to stop unauthorized cultivation of a variety abroad, a support organization will first be entrusted by the inventor to acquire the right to cultivate the variety locally. Following this, the support organization will cooperate with the local Patent Office etc. to exercise the right of cultivation and put a stop to unauthorized





Newslefter

November 2019

JAPAN



cultivation in that country or region.

However, some have voiced the opinion that cracking down on unauthorized foreign cultivation in this way alone is insufficient. For example, in a recent case where embryos and semen of wagyu cattle were apparently being smuggled to China, the livestock farmer who produced the smuggled goods and the transporter who shipped the goods were only arrested for violating laws aimed at preventing the spread of communicable livestock diseases. In Japan, there is currently no law to crack down on those who leak genetic resources abroad.

In order to plan for increased exports of agricultural, forestry and fishery products and foodstuffs, in addition to mechanisms to protect the rights of those who develop new varieties abroad, it may be necessary to introduced laws to crack down on the leaking of genetic resources overseas.

いんげん豆やいちご、ブドウの苗、和牛の受精卵などの優良品種が海外に流出し、無断で栽培されているとの報道が相次いでいる。こうした事態を防ぐため、農水省は、海外での農産物品種の知的財産保護を強化する取り組みを始めている。

具体的には、海外での農産物品種の知的財産の対応を一元的に担う、民間の支援組織を公募し、農水省が経費などを助成する。支援組織は、海外での無断栽培をなくすために先ず、品種開発者から権利を受託して現地での育成者権を取得する。その上で、支援組織は、現地の特許事務所などと連携して、取得した現地での育成者権を用いて、無断栽培を失くしていくというのが基本的な流れである。

ただし、このような海外での無断栽培の取り締まりだけでは十分ではないのではないかとの声もある。例えば、今年発生した、和牛の受精卵と精液が中国に持ち出されそうになった事件において、流出元の畜産農家と運搬役との逮捕理由は、伝染病を防ぐための家畜伝染病予防法違反などでしかない。日本では、現状、遺伝資源の海外流出そのものを取り締まる法律はないのである。

Introduction to Our Firm's Service

当所のサービス紹介

Plant Registration Consultation 植物品種登録・アグッビジネス相談室

We provide services of the highest standard by combining expert knowledge—cultivated through decades of experience— with unique analytical capabilities that only a large-scale international IP firm can offer.

Click here for details

長年の経験で培ったノウハウと、国際特許事務所ならではの能力を組み合わせた 質の高いサービスを提供致します。

詳細はこちらへ





Newsletter
November 2019

JAPAN

農林水産物・食品の輸出拡大を図るためには、品種開発者の権利を海外でも守るための仕組みに加えて、遺伝資源の海外流出そのものを取り締まる法律が必要とされているのかもしれない。

Vietnam, Samoa and Israel Join the Hague Agreement ベトナム、サモア、イスラエル ハーグ協定加盟

On the following dates, Vietnam, Samoa and Israel deposited their instruments of ratification of the Geneva Act (1999) of the Hague Agreement on International Design Registrations with the director of the World Intellectual Property Organization (WIPO), Mr. Francis Gurry.

Vietnam: September 30, 2019

Samoa: October 2, 2019 Israel: October 3, 2019

As a result, Vietnam will become the 61st member of the Geneva Act and the 71st member of the Hague Agreement. Samoa will be the 62nd member of the Geneva Act and the 72nd member of the Hague Agreement and Israel will be the 63rd member of the Geneva Act and the 73rd member of the Hague Agreement.

The 1999 Geneva Act will come into force in each country respectively on the following dates, after which it will become possible to request protection for designs under the Hague Agreement in said countries.

Vietnam: December 30, 2019

Samoa: January 2, 2020 Israel: January 3, 2020

Declarations by each country based on the 1999 Act and joint regulations are as follows.

Vietnam

- Common regulations Rule 9(3)(a): Requirement of specified views
- Article 5(2)(b)(ii): Brief description of the characteristic features of an industrial design
- Article 5(2)(b)(iii): Claims



November 2010

November 2019

JAPAN



- Article 11(1)(b): Law of Vietnam does not provide for the deferment of the publication of an industrial design
- Article 13(1): Special Requirements regarding unity of design
- Common regulations rule 12(1)(b)(iii): standard designation fee: level three
- Article 17(3)(c): Maximum duration of protection

Samoa

- Article 11(1)(a): Law of Samoa provides for deferment of the publication of an industrial design for a period which is less than the prescribed period
- Article 17(3)(c): Maximum duration of protection

Israel

- Article 4(1)(b): International applications may not be filed through the Israel Office
- Article 7(2): Individual designation fee
- Article 11(1)(a): Law of Israel provides for deferment of the publication of an industrial design for a period which is less than the prescribed period
- Article 17(3)(c): Maximum duration of protection
- Common regulation 18(1)(b): Prescribed period for notification of refusal: 12 months

2019年9月30日にベトナム政府、10月2日にサモア政府、10月3日にイスラエル政府が、ハーグ協定のジュネーブ改正協定(1999年)の加盟書をWIPO事務局長Francis Gurry氏に寄託した。

これにより、ベトナムは1999年改正協定の61番目の加盟国、及びハーグ同盟の71番目の加盟国となり、サモアは1999年改正協定の62番目の加盟国、及びハーグ同盟の72番目の加盟国となり、イスラエルは1999年改正協定の63番目の加盟国、及びハーグ同盟の73番目の加盟国となる。

1999年改正協定は、ベトナムにおいて2019年12月30日に、サモアにおいて2020年1月2日に、イスラエルにおいて2020年1月3日に発効し、これ以後これらの国に対して、ハーグ制度を通じて意匠の保護を求めることができる。

各国の1999年改正協定及び共通規則に基づく宣言 ベトナム

共通規則第9規則(3)(a):特定の図の要求

第5条(2)(b)(ii): 意匠の特徴についての説明

第5条(2)(b)(iii) :請求の範囲 第11条(1)(b) :公表の延期規定無し



November 2019

JAPAN

HARAKENZO WORLD PATENT & TRADEMARK INTELLECTUAL PROPERTY LAW FIRM

第13条(1) : 意匠の単一性に関する特別の要件

共通規則第12規則(1)(b)(iii):標準指定手数料 等級3

第17条(3)(c):保護の存続期間

サモア

第11条(1)(a):公表の延期は所定の期間より短い

第17条(3)(c):保護の存続期間

イスラエル

第4条(1)(b):イスラエル官庁を通じた国際出願はできない

第7条(2):個別指定手数料

第11条(1)(a):公表の延期は所定の期間より短い

第17条(3)(c):保護の存続期間

共通規則第18規則(1)(b):12カ月の拒絶通報

Background to New Recruitment of Trademark Examination Assistants 商標審査官補の新規募集にある背景

In recent years, there has been an increase worldwide in the number of trademark applications filed. Statistics indicate that there was has been a sharp upturn in applications since 2016. Japan has also seen an increase in applications, with around 190,000 filed in 2017. The number of applications filed in 2018 was around 1.6 times the number filed in 2013. (See the chart below. Source: Ministry of Economy, Trade and Industry (METI) website (https://www.meti.go.jp/press/2019/10/20191003002/20191003002.html)).

However, with an increase in applications there is naturally also an increase in delays to examinations, and as a result it is easy to suppose that the acquisition of rights too will be delayed. In Japan, the average time from application to rights acquisition was 6.8 months in 2016, but by 2018 this had increased to 9.3 months, an increase of almost three months.

With this in mind, the Japan Patent Office (JPO) has begun recruiting trademark examination assistants from the public, on a fixed-term basis. In the same way as the projects the Japan Patent Information Organization (JAPIO) is entrusted by the JPO, the aim appears to be to increase efficiency of work and speed of



November 2019

JAPAN

WORLD PATENT & TRADEMARK INTELLECTUAL PROPERTY LAW FIRM

特許業務法人

examinations by drawing on the skills of the public.

If future statistics show a decrease in the length of time required from application to right acquisition, it may spur a further increase in the number of applications filed.

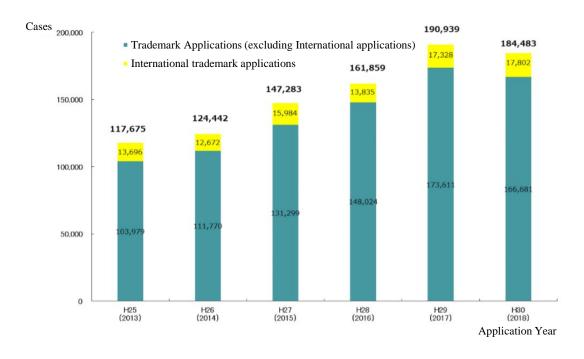


Image: Changes in numbers of trademark applications in Japan (source: METI website)

近年、商標の出願は世界的に増加傾向にある。統計を見る限り、2016年を皮切りに急上昇している。出願数 の増加は日本も同様であり2017年には約19万件の出願があり、2013年から2018年にかけて出願件数は約1.6倍 に増加した。

(下図参照/引用元:経済産業省HP→

https://www.meti.go.jp/press/2019/10/20191003002/20191003002.html)

しかし、出願件数が増えると自ずと審査の着手が遅れていき、結果として出願からの権利化は遅くなるのは 容易に想像できる。日本では、2016年度は平均6.8か月で権利化に至っていたものが、2018年度では平均9.3か 月と、約3ヶ月近く延伸している。

これを受けて、特許庁は民間から(任期付きで)商標審査官補の募集を始めた。日本特許情報機構 (JAPIO) が特許庁から受託したプロジェクトと同様に、民間を活用することで業務の効率化・審査の迅速化 を図っていると思われる。



WORLD PATENT & TRADEMARK INTELLECTUAL PROPERTY LAW FIRM

JAPAN

今後の統計で、出願からの権利化要す期間が短縮される結果が出れば、今後の出願件数の増加に拍車がかか ると思われる。

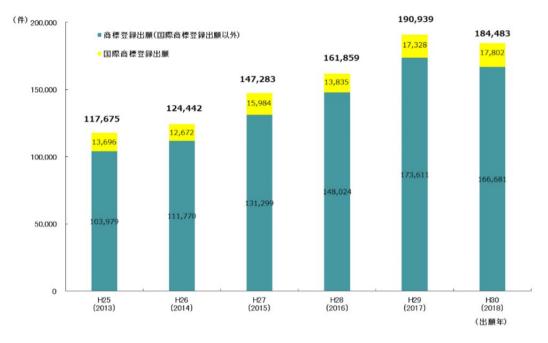


図:日本における商標登録出願件数の推移(引用元:経済産業省HP)

Reselling and Second-hand Selling of E-books in EU EU域内における電子書籍の中古販売・転売

On September 11, 2019, website THE BOOKSELLER drew attention with an article entitled "Resale of ebooks 'unlawful' under EU law, suggests Szpunar'. According to the article, Advocate General Szpunar gave an opinion at the Court of Justice of the European Union (CJEU) that the resale and second-hand sale of e-books within the EU was unlawful. Although the opinion is not currently legally binding, it is possible that the resale and second hand sale of e-books will become regarded as illegal within the EU.

The opinion is based on the idea that the exhaustion of copyright does not apply to e-books. Bearing in mind that electronic content can be easily accessed across international borders via the Internet, this opinion may have an effect on the resale and second-hand sale of e-books in other places as well, such as Japan and the United States.

The CJEU has previously judged that e-books are not "books" but an "electronic service". When considering



売は違法とみなされる可能性がある。

TOKYO WTC HARAKIENZO 45th Anniversary in 2021

Newsletter

JAPAN

November 2019



the resale and second-hand sale of e-books in the EU, one should take care not to be misled by the "books" part of the word "e-books".

2019年9月11日にBOOKSELLERが掲載した"Resale of e-books 'unlawful' under EU law, suggests Szpunar" という記事が注目を集めている。同記事によれば、「電子書籍の中古販売・転売はEU域内においては違法である」との見解が、欧州連合司法裁判所(CJEU、Court of Justice of the European Union)の法務官によって示されたという。現時点ではこの見解には拘束力はないが、少なくともEU域内では、電子書籍の中古販売・転

この見解は、「電子書籍には、『著作権の消尽 (exhaustion) 』は適用されない」という考えに基づいているとのことである。電子コンテンツはインターネットを介して容易に国境を超えることができることを考えれば、この見解は、日本や米国での電子書籍の中古販売・転売にも影響を与え得るだろう。

CJEUは、以前にも「電子書籍は書籍ではなく、電子サービスである」旨の判断を示しており、EU域内における電子書籍の中古販売・転売に際しては、電子「書籍」との語に惑わされないように注意が必要である。



Newsletter

November 2019

JAPAN





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.

Please visit our facebook pages below.





Below are links to further IP information.

BIO IP Information バイオ知財情報

Food & Medical Business Support Station 食品×医療支援室 IT IP Information IT知財情報

Major & Emerging Economic Powers 諸外国知財情報 IoT × Al Support Station IoT×AI支援室

TPP I.P. Chapter
TPP知財情報



45th Anniversary in 2021

HARAKENZO

WORLD PATENT & TRADEMARK INTELLECTUAL PROPERTY LAW FIRM

November 2019

Newsletter

JAPAN

TOKYO HEAD OFFICE

ADDRESS

WORLD TRADE CENTER BLDG. 21F 2-4-1, HAMAMATSU-CHO, MINATO-KU, TOKYO 105-6121, JAPAN

TELEPHONE:

+81-3-3433-5810 (Main Number)

FACSIMILE:

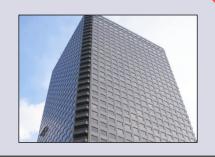
+81-3-3433-5281 (Main Number)

WEBSITE:

http://www.harakenzo.com http://trademark.ip-kenzo.com http://design.ip-kenzo.com http://www.intellelution.com

E-MAIL:

iplaw-tky@harakenzo.com



OSAKA HEAD OFFICE

ADDRESS

DAIWA MINAMIMORIMACHI BLDG., 2-6, 2-CHOME-KITA, TENJINBASHI, KITA-KU, OSAKA 530-0041, JAPAN

TELEPHONE:

+81-6-6351-4384 (Main Number)

FACSIMILE:

+81-6-6351-5664 (Main Number)

WEBSITE:

http://www.harakenzo.com http://trademark.ip-kenzo.com http://design.ip-kenzo.com http://www.intellelution.com

E-MAIL:

iplaw-osk@harakenzo.com



OSAKA 2nd OFFICE

ADDRESS:

MITSUI SUMITOMO BANK MINAMIMORIMACHI BLDG., 1-29, 2-CHOME, MINAMIMORIMACHI, KITA-KU, OSAKA 530-0054, JAPAN

TELEPHONE:

+81-6-6351-4384 (Main Number)

FACSIMILE:

+81-6-6351-5664 (Main Number)

WEBSITE:

http://www.harakenzo.com http://trademark.ip-kenzo.com http://design.ip-kenzo.com http://www.intellelution.com

E-MAIL:

iplaw-osk@harakenzo.com



HIROSHIMA OFFICE

ADDRESS:

NOMURA REAL ESTATE HIROSHIMA BLDG. 4F 2-23, TATEMACHI, NAKA-KU, HIROSHIMA 730-0032, JAPAN

TELEPHONE:

+81-82-545-3680 (Main Number)

FACSIMILE:

+81-82-243-4130 (Main Number)

WEBSITE:

http://www.harakenzo.com http://trademark.ip-kenzo.com http://design.ip-kenzo.com http://www.intellelution.com

E-MAIL:

iplaw-hsm@harakenzo.com



NAGOYA OFFICE

ADDRESS:

GLOBAL GATE 9F, 4-60-12 HIRAIKE-CHO, NAKAMURA-KU, NAGOYA-SHI, AICHI 453-6109, JAPAN

TELEPHONE:

+81-52-589-2581 (Main Number)

FACSIMILE:

+81-52-589-2582 (Main Number)

WEBSITE:

http://www.harakenzo.com http://trademark.ip-kenzo.com http://design.ip-kenzo.com http://www.intellelution.com

E-MAIL:

iplaw-ngy@harakenzo.com

