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EPC Rule 141 revised regulation effective; new requirement and exemptions regarding submission of search results EPC改正規則141条施行－サーチ結果の提出義務化と免除について

The revised EPC Rules go into effect on January 1, 2011. According to Rule 141(1) of these Rules, applicants who file European patent applications and international applications on entry into the European phase filed on or after January 1, 2011 have, in principle, a duty to submit copies of any search results published by the patent office/authorities of the country where the priority application was filed, at the time of filing the applications in case of European patent applications, and at the time of entry into the European phase in case of the international applications.

However, the Rule exempts the applicant from this applicant's duty if the applicant filed the priority application in Japan, Great Britain, or the United States.

JPO website source:

http://www.jpo.go.jp/tetuzuki/t_tokkyo/shutsugan/Europe_tokkyo_kaisei.htm

2011年1月1日からEPC改正規則が施行されている。同規則141条(1)によると、2011年1月1日以降に出願される欧州特許出願及び欧州広域段階の移行出願について、(1)優先権に基づく欧州特許出願をする者は欧州特許出願時に、(2)欧州へ移行する者はその移行時に、原則として、基礎出願がされた国の特許庁のサーチ結果の写しを提出する義務が生じる。

しかし、基礎出願が日本国、英国、米国特許庁へ出願された場合は、出願人によるサーチ結果の提出義務が免除される。

特許庁ホームページ:

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"Kiri-mochi" Infringement lawsuit, Echigoseika appeals 切り餅訴訟、越後製菓が控訴

On November 30, 2010, the Tokyo District Court handed down a decision on a seeking 1.5 billion yen in damages for an infringement lawsuit by Echigoseika Co., Ltd. (Nagaoka City, Niigata Prefecture) against Satosyokuhin (a food company in Niigata City, Niigata Prefecture), in which Echigoseika claimed that its patent for cuts it made in its *mochi* [glutinous rice cake], enabling *kiri-mochi* [*mochi* cut into a prescribed size and shape] to be grilled and puff up in a round, attractive shape, was being violated.

According to the decision, Echigoseika's patent description limited the claims to "cuts not on the bottom or top side of the *kiri-mochi* but all around its side," and that Satosyokuhin, which inserted cuts in surfaces of the *kiri-mochi* other than the side(s), was not infringing upon the technical scope of the patent, and the court rejected the claim.

In response, Echigoseika appealed this negative ruling of the Tokyo Regional.

2010年11月30日、切り餅をふっくらきれいに焼き上げるための「切り込み」に関する特許を侵害されたとして、「越後製菓」(新潟県長岡市)が「佐藤食品工業」(新潟市)に製造中止と約15億円の損害賠償を求めた訴訟の判決が東京地裁であった。

判決によると、越後製菓の特許は「切り餅の底面や上面ではなく、側面を一周させる切り込み」との文言通り、側面に限ったものであり、側面以外にも切り込みを入れた佐藤食品工業の商品は特許の技術的範囲に属さず侵害には当たらないとして、請求を棄却した。

これに対し、越後製菓は2010年12月13日、訴えを退けた東京地裁判決を不服として控訴した。

Chinese Trademark Registration Applications expected to surpass 1 million in 2010

中国の商標登録出願件数100万件突破へ

On December 9, 2010, Deputy Director Mr. Fu Shuangjian of the Chinese State Administration for Industry & Commerce (SAIC) expressed that the number of trademark applications in China is increasing annually at a high rate; in 1980 there were 26,000 applications for trademark registrations in the country, and in 2010 the number is expected to surpass 1 million, he said.

According to the Deputy Director, China, with its increasing economic development, is likely to be the world's leader in the number of trademark applications for the ninth straight year in 2010.

2010年12月9日、国家工商行政管理総局の付双建副局長は、中国の商標登録出願件数が年々大幅に増加しており、1980年に2万6千件だった出願件数は、2010年は100万件を突破する見込みであると述べた。

付副局長によると、中国の経済発展などにもない、2010年の出願件数は9年連続で世界一になる見込みだ。

Registered Trademark for "Sanuki" Invalidated in Taiwan

台湾で「讃岐」の商標登録は無効

In response to a trademark registered by a Taiwanese food company for "Sanuki" [a region of Japan famous for its specialty *udon*], a Japanese *udon* restaurant owner in Taipei filed for an invalidation of the registration, arguing that "It is inappropriate to register a geographical name as a trademark." The Taiwan Intellectual Property Office (TIPO) accepted the claim and invalidated the trademark registration.

TIPO stated that "Taiwanese consumers know that 'Sanuki' is the name of a region of Japan famous for its *udon*, so the trademark is likely to mislead as to the area of production." and invalidated the Taiwanese corporation's four trademark versions of "Sanuki" [in Chinese characters, *hiragana* and *katakana* Japanese characters, and "SANUKI"].

台湾の食品企業が登録した「讃岐」等の商標に対して、台北市内で讃岐うどん店を営む日本人経営者が「地名を商標登録するのは不適切」と申し立てた審判で、台湾知的財産局が主張を認め、商標登録を無効とする決定を出した。

知財局は「『讃岐』はうどんで有名な日本の地名であることを台湾の消費者は知っており、商標登録は産地を誤認させる恐れがある」として、台湾企業が登録していた「讃岐」「さぬき」「サヌキ」「SANUKI」の4商標を無効とした。



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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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