



TOKYO WTC HARAKENZO
50th Anniversary in 2026

特許業務法人
HARAKENZO
WORLD PATENT & TRADEMARK
INTELLECTUAL PROPERTY LAW FIRM

Newsletter

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JAPAN

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New Year's Message from Commissioner of JPO 特許庁長官 年頭所感

On January 4, 2021, Mr. Toshihide Kasutani, Commissioner of the Japan Patent Office, stated his sentiment for the beginning of this year.

The summary of the sentiment is as follows.

- Due to the spread of coronavirus infection, the number of patent/design registration/trademark registration applications decreased significantly in April and May last year, as compared with 2019. In the latter half of last year, the number of applications for design registration and trademark registration recovered to the same level as the previous year (2019), but the number of patent applications continues to decrease from the previous year (2019).
- While the economy has been hit hard by the spread of the new coronavirus infection, utilization of remote systems and digitization are accelerating, and innovation is becoming more important.
- In order to digitize all application procedures, we plan to formulate a digitalization promotion plan for application procedures, etc. by March this year. We will also consider making oral hearings online.

- The Basic Issues Subcommittee, which was established in October last year, will consider the industrial property rights system and policies suitable for the new era.
- To support innovation, we maintain and promote the examination processes while continuing to work on improving the quality of examinations. In particular, with regard to trademark registration applications, as the number of applications increases, the average period until acquisition of rights tends to be extended. In order to handle this problem, the examination system will be strengthened by, for example, hiring assistant examiners with a fixed term.
- We work to disseminate the contents of the revision of the Design Act, which contributes to the creation of innovation and the creation of corporate brand value.
- We promote the IP mix for multi-faceted intellectual property rights by conducting the "Collective Examinations for IP Portfolio Supporting Business Strategy" with which examinations and grant of rights are made in accordance with the time of business development across fields.
- We will continue to provide strong support to startups and small and medium enterprises, which are important players in creating innovation.
- We expand global networks such as Patent Prosecution Highway (PPH) to support users' global business activities.

From the sentiment, the general direction of the JPO this year can be understood.

Although the number of patent applications has decreased significantly in the current corona related crisis, we deem it useful to file applications

strategically on the basis of the idea that the applications are investments for the future.

令和3年1月4日、特許庁長官 糟谷敏秀氏により、本年度の年頭所感が述べられた。

年頭所感の概要は、以下の通りである。

- 新型コロナウイルス感染症拡大により、昨年4、5月には、特許・意匠登録・商標登録出願件数は、対前年比で大きく減少した。昨年後半には、意匠登録・商標登録出願件数は前年並に回復したものの、特許出願は前年比減少が続いている。
- 新型コロナウイルス感染症拡大により経済が大きな打撃を受ける一方で、リモート化・デジタル化は一層加速し、イノベーションの重要性はさらに高まっている。
- 全ての申請手続をデジタル化するべく、今年3月を目途に申請手続等デジタル化推進計画を策定する予定。また、口頭審理のオンライン化の検討も進める。
- 昨年10月に立ち上げた基本問題小委員会により、新たな時代にふさわしい産業財産権制度・政策について検討を進める。
- イノベーションを支援するために、引き続き継続的な審査の品質向上に取り組みつつ、審査処理を維持、促進する。特に、商標登録出願については、出願件数の増加に伴い、権利化までの平均期間が延伸する傾向にあるため、任期付審査官補の採用等、審査体制強化を進める。
- イノベーション創出、企業のブランド価値創出に資する意匠法改正内容の周知に取り組む。
- 分野横断的に事業展開の時期に合わせて審査・権利化を行う「事業戦略対応まとめ審査」の実施等によって、多角的に知財権利化する知財ミックスを推進する。

- ・イノベーション創出の重要な担い手であるスタートアップ・中小企業に対しても、引き続き強力に支援する。
- ・PPH(特許審査ハイウェイ)等、グローバルなネットワークを拡大し、ユーザーのグローバルな事業活動をサポートする。

本年度における特許庁の大まかな方向性が理解でき、興味深い。

なお、現在のコロナ渦においては、特許出願数の大幅な減少が見られるが、出願は将来への投資との考えの下、戦略的に出願しておくことが有用であると考ええる。

JPO's Measures Concerning Re-Declaration of State of Emergency 緊急事態宣言再発出に対する特許庁の対応

In response to the second declaration of the state of emergency in the Tokyo metropolitan area on January 7, 2021, the JPO will take the following measures.

(1) Suspension of reception of applications, etc. at the office in principle
From January 12, 2021, reception of applications, etc. at the JPO will be suspended in principle.

* When filing applications by mail, the following should be noted.

- (i) Strict management of procedures to which the principle of arrival is applied (e.g., applications for international registration under Madrid Protocol, etc.).
- (ii) Considering the possibilities of confusion at the office and delayed delivery due to postal irregularities.

(2) Teleworking by the JPO staff

It is expected that many JPO staff members, including examiners and appeal/trial examiners, will be teleworking.

* It may be difficult to get the JPO staff members to respond immediately after contact/consultation, so it is necessary to have sufficient time to take courses of action. Particular attention should be paid to cases with due dates (e.g., response to notifications of reasons for refusal, various appeal/trial cases, etc.)

令和3年1月7日、首都圏で2回目の緊急事態宣言が発出されたことに伴い、特許庁では、以下の対応が取られることとなった。

(1) 出願等の窓口受付の原則停止

令和3年1月12日より、原則、特許庁窓口での出願等の受付は停止。

※郵送による出願を行う場合は、以下への注意が必要。

①到達主義が適用される手続(例えば、マドプロの国際登録出願等)についての厳格な管理。

② 郵便事情の変化に伴う、窓口の混雑や遅配の可能性を考慮した対応。

(2) 特許庁職員のテレワークの実施

審査官・審判官を含む特許庁職員の多くの方がテレワークでの執務となる見込み。

※連絡・相談にすぐに対応してもらうことが困難な場合があると考えられ、十分に余裕を持って対応することが必要。特に、期限が設定されている案件については注意が必要(例えば、拒絶理由通知応答、各種審判事件等)。

Revisions to Trademark Act and Design Act – Imported Counterfeit Products Will Be Confiscated Even for Personal Use

模倣品の輸入 個人使用目的も没収 商標法・意匠法改正へ

On January 16, 2021, the Japan Patent Office (JPO) decided a strategy of revising the Trademark Act and the Design Act in order to strengthen the restrictions on the import of counterfeit products such as fake brand products. This strategy was prepared in consideration of the present circumstances where mail-order sales via the Internet have been widely spreading, and not only imports by business importers but also imports by individuals directly from overseas entrepreneurs have been increasing rapidly. After the revision, counterfeit products intended for personal use will also be confiscated by customs. The relevant ministries and agencies such as the JPO and the Ministry of Finance will compile a draft revision to the related laws and aim to submit it to the ordinary Diet session next year.

Under the current law, if a domestic importer imports a counterfeit product from an overseas entrepreneur, it will be a trademark infringement and can be stopped at the water's edge. On the other hand, if an individual imports a counterfeit product from an overseas entrepreneur for his/her own use, it will not be considered as a trademark infringement and so cannot be stopped. It is considered that some business importers abuse this and import counterfeit products by pretending to be individuals.

According to the reported strategy, importing counterfeit products from overseas entrepreneurs will be considered as an infringement to

trademarks etc. regardless of the purpose of imports, which will enable customs to confiscate the counterfeit products. On the other hand, individuals who purchase counterfeit products are expected to be exempt from penalties as with the current law.

特許庁は16日、偽ブランド品などの模倣品輸入に対する規制を強化するために、商標法および意匠法について、法改正を検討する方針を定めた。インターネット通販等が普及し、事業者による輸入だけでなく、海外の事業者が個人に直接商品を送付する取引が急増したことが背景にある。改正後は、個人使用が目的の模倣品も、税関で没収されることになる。特許庁、財務省等の関係省庁が関連する法律の改正案をまとめ、来年の通常国会提出を目指す。

現状の法律では、国内業者が海外事業者から模倣品を輸入した場合は、商標権侵害となり、水際で差し止めることができる。一方、個人が海外事業者から自分で使用するために輸入した場合は、侵害を問えず、阻止することができなかった。このため、個人に成りすまして模倣品を輸入する業者もいると思われる。

報告書案によると、輸入目的に関係なく海外事業者が模倣品を国内に流入させることを、商標権等の侵害行為と位置付け、税関で模倣品を没収することを可能とする。一方、模倣品を購入了個人は、現状のまま罰則の対象外となる見込みだ。

Relaxation of Limit on Number of Patent Prosecution Highway (PPH) Requests in Brazil

特許審査ハイウェイ (PPH) の件数緩和 ～ブラジル～

Brazil, which enjoys the largest economy and population in South America, has been attracting many Japanese companies developing their business. This has resulted in sharp rise in the number of patent applications filed by the Japanese companies in Brazil in the last ten years or so. Meanwhile, the National Institute of Industrial Property of Brazil (INPI) requires about 6 years on average to conduct patent examination procedures to issue the final results of the examination, which has been a serious problem.

In this situation, the Japanese Patent Office (JPO) started a Patent Prosecution Highway (PPH) pilot program with the INPI on April 1, 2017, and has achieved certain outcomes (Use of the PPH pilot program has significantly reduced the patent examination period required by the INPI (to about 6 months on average)).

Recently, the limitation on the number of PPH requests accepted by the INPI has been further relaxed. The outline of the relaxation is as follows (This relaxation is applied to applications filed on and after January 1, 2021):

(1) Relaxation of limitation on total number of requests:

The total number of PPH requests has been increased to 600 requests/year (150 requests/year for each IPC section) (previously, the limit on the total number was 400 requests/year (100 requests/year for

each IPC section))

(2) Relaxation of limitation on number of requests per applicant:

The number of PPH requests per applicant has been increased to one request/week (previously, the limit on the number was one request/month).

(3) Relaxation of restriction on first application:

In the case of a PPH request based on the JPO's examination results, the PPH request is available if the first application has been filed in Brazil or any other country implementing a PPH (previously, the PPH request was available only if the first application was filed in Japan or Brazil).

This relaxation of the limitation on the number of PPH requests is expected to work well for the development of business in Brazil.

南米最大の経済規模及び人口を誇るブラジルは、多くの日本企業が事業進出しており、それに伴う特許出願件数は、ここ10年程で急増している。しかし、ブラジル産業財産庁 (INPI) での特許審査では、最終的な結果が出るまでに平均で約6年を要することが、従来より大きな問題となっていた。

このような状況下、日本国特許庁 (JPO) は、2017年4月1日に、INPIとの間で、特許審査ハイウェイ (PPH) の試行を開始し、一定の成果を上げた (PPHの利用により、INPIでの特許審査期間が大幅に短縮 (平均約6か月))。

この度、INPIへのPPH申請の件数制限に関して、制限がさらに緩和されることとなった。概要は以下の通り (※2021年1月1日以降の出願に適用)。

(1) 総申請件数制限の緩和:

600件/年 (IPCセクション毎に150件/年) に緩和された (従来は、400件/年 (IPCセクション毎に100件/年))。

(2) 一出願人あたりの申請件数制限の緩和:

1件/週に緩和された (従来は、1件/月)。

(3) 第一国出願の制限の緩和:

日本の審査結果に基づくPPH申請の場合、第一国出願がブラジルとPPHを実施している国のいずれかであればPPH申請が可能となった (従来は、第一国出願が日本またはブラジルの場合に制限)。

今回のPPH申請件数制限の緩和により、ブラジルでの事業展開において、有利に働くことが期待される。

Copyright System and Related Policies in Digital Age デジタル時代における著作権制度・関連政策の在り方

On January 12, 2021, the fifth task force on examination of copyright system and related policies in the digital age was held at the Concept Committee of the Intellectual Property Strategy Headquarters. Discussions were made on facilitating the processing of rights for the distribution of audio and video contents and facilitating the use of copyrighted works.

(Refer to the URL below for the proceedings and various reference materials)

The following are listed as issues based on the past four meetings (parts of the issues are excerpted).

- It is becoming easier to copy, modify, edit, and spread contents. Under such circumstances, it is at issue how to balance the perspective that intellectual properties will have higher values by being used and the perspective that how the intentions of authors etc. are esteemed in terms of use of the intellectual properties.
- With the spread of new corona virus infection as a trigger, the need for facilitating the distribution of digital contents is increasing. How the copyright system is to be reviewed in term of digital transformation (DX)?
- When using copyrighted works, how to return compensation as

appropriate as possible to authors etc. (as a premise, it is necessary to provide the authors etc. as appropriate with information on the situation of use). Will the regulation by acts other than the Copyright Act, such as the Subcontract Act, be effective?

The revised Copyright Act stipulates measures for smooth use of copyrighted works (e.g. stipulation on objects that are captured incidentally).

* Reference URL

https://www.kantei.go.jp/jp/singi/titeki2/tyousakai/kousou/digital_kentou_tf/dai5/gijisidai.html

令和3年1月12日に知的財産戦略本部構想委員会にて「デジタル時代における著作権制度・関連政策の在り方に関する検討タスクフォース(第5回)」が開催された。音声・映像コンテンツ配信の権利処理の円滑化や著作物の利用円滑化等について議論が交わされている。

(議事次第及び各種参考資料は下記URLを参照)

過去4回の検討会を踏まえた論点として、以下の内容が挙げられている。(一部抜粋)

- コンテンツの複製、改変、編集、拡散が容易となる中で、知的財産は使われることによって価値が上がるという視点と、利用のされ方に関する著作者等の意思を尊重する視点の両立をどのように図るべきか。
- コロナをきっかけに、特にデジタル・コンテンツの流通円滑化の必要性が高まっているが、デジタル・トランスフォーメーション(DX)の側面から著作権制度

の在り方をどう見直すべきか。

・著作物等の利用にあたり可能な限り適切な対価が著作者等に還元されることをどのように促すことができるか(大前提、利用状況に関する情報が権者に適切に提供されることが必要)。著作権法による規律の他に、例えば下請法等による規律は有効か否か。

著作物の円滑な利用を図るための措置(写り込み等)は改正著作権法にて規定されている。

今後の進捗に注目したい。

※参考URL

https://www.kantei.go.jp/jp/singi/titeki2/tyousakai/kousou/digital_kentou_tf/dai5/gijisidai.html

Introduction to Our Firm's Service	当所のサービス紹介
 Patent Opposition (新) 異議申立て	
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、質の高いサービスを提供致します。	詳細はこちらへ



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.

Below are links to further IP information.

BIO IP Information バイオ知財情報	DX, IT IP Information DX, IT知財情報	IoT × AI Support Station IoT×AI支援室
Food & Medical Business Support Station 食品×医療支援室	Major & Emerging Economic Powers 諸外国知財情報	TPP IP Chapter TPP知財情報

Please visit our facebook pages below.

Our Legal Strategy Department on Facebook 法務戦略部Facebook

Our Legal Strategy Departments based in Osaka and Tokyo provide information on trademark applications, design applications, combating counterfeit goods etc. via Facebook. Please view our Facebook page for more details.

大阪・東京に拠点を置く法務戦略部のFacebookにて、商標出願・模倣品対策・意匠出願などの知財に関する情報を発信しております。ぜひご覧下さい。

[More information](#) [詳細はこちらへ](#)

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Our Hiroshima Office on Facebook 広島事務所Facebook

Our Hiroshima Office's Facebook page provides useful services for Hiroshima prefecture and the rest of the Chugoku and Shikoku regions, with constant IP information updates. Please find us on Facebook.

広島事務所のFacebookにて、広島県を含む、中四国地域の皆様に有用と思われる知財情報を随時発信しております。ぜひご覧下さい。

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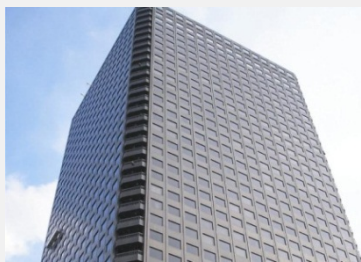
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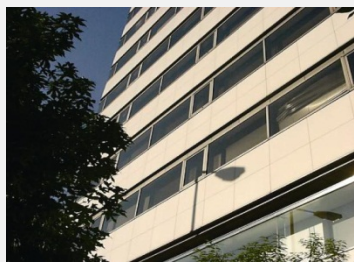
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