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50th Anniversary in 2026

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

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Newsletter

OCTOBER 2021
JAPAN

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TOPIC



Enforcement dates of "Act on Partial Revision of Patent Act and Other Acts" (regarding design and trademark)

「特許法等の一部を改正する法律」の施行期日（意匠・商標に関して）

Situation of suspension of IP infringing goods by Japan Customs in first half of 2021

税関における知的財産侵害物品の差止状況
～令和3年上半期～

Registration of 3D trademark of "Takenoko-no-Sato" -Distinctiveness as a result of use-

「たけのこの里」立体商標登録
～使用による識別力～

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「特許法等の一部を改正する法律」の施行期日（意匠・商標に関して）

On September 14, 2021, the Cabinet of Japan approved an ordinance to specify enforcement dates of "The Act on the Partial Revision of the Patent Act and Other Acts". The following will describe a few items from the revisions that relate mainly to designs and trademarks and the respective enforcement dates.

For your information: This Act on the Partial Revision of the Patent Act and Other Acts incorporates addition, to the services that patent attorneys are allowed to perform, of services including consultation on agriculture, forestry, and fishery intellectual property rights (new varieties of plants, geographical indications) (enforcement date: April 1, 2022). Our firm has plenty of experience of services associated with new varieties of plants and geographical indications, and we are able to offer sound advice.

Outline of the Act on the Partial Revision of the Patent Act and Other Acts and enforcement dates

1. Digital transformation in procedures for international design application

Notification of registration decision and other notifications can be electronically delivered via the International Bureau instead of postal delivery. (enforcement date: October 1, 2021)

Note that the enforcement date of such digital transformation in international

trademark applications will be determined in the future.

2. Oral proceedings for appeals/trials via Internet

Oral proceedings for appeals/trials through a video conference system can be held at the discretion of the chief administrative judge. (enforcement date: October 1, 2021)

3. Abolition of advance payment with revenue stamp and introduction of new payment methods

- Advance payment by using account transfers, etc. (abolition of advance payment with a revenue stamp) (enforcement date: October 1, 2021)
- Payment by using a credit card and other payment methods can be made at service counters. (enforcement date: April 1, 2022)

4. Exemption from surcharges added after due date because of disasters or the like

If the payment for a registration fee is overdue as a result of the spread of infections, disasters, or the like, an additional surcharge are exempted. (enforcement date: October 1, 2021)

5. The consent of non-exclusive licensees (licensed persons) is not required for correction, etc. (enforcement date: April 1, 2022)

6. Review of fee structures of registration fees and other fees

To ensure the balance between income and expenditure in response to the increasing burden of examination and the digital transformation in procedures, the structures of fees including a registration fee are changed. (enforcement date: April 1, 2022)

2021年9月14日、「特許法等の一部を改正する法律」の施行期日を定める政令が閣議決定されました。ここでは、主に、意匠・商標等に関するものについて記載いたします。

また、弁理士を名乗って行うことができる業務として、農林水産関連の知的財産権（植物の新品種・地理的表示）に関する相談等の業務が追加されました（施行期日：令和4年4月1日）。弊所では、以前から植物の新品種・地理的表示の業務を数多く行っており、的確なアドバイスをご提供することができます。

政令の概要と施行期日

①意匠国際出願手続きのデジタル化

登録査定のお知らせ等について、郵送に代えて国際機関を経由した電子送付が可能となった。

：施行期日：令和3年10月1日

※商標国際出願手続については、今後施行期日を定める予定。

②審判口頭審理のオンライン化

審判長の判断により、ウェブ会議システムでも可能となった

：施行期日：令和3年10月1日

③紙予納の廃止・料金支払い方法の拡充

・口座振込等による予納（印紙予納の廃止）

：施行期日：令和3年10月1日

・窓口でのクレジットカード支払等が可能

：施行期日：令和4年4月1日

④災害等の理由による手続期間徒過後の割増料金免除

感染症拡大や災害等の理由によって登録料の納付期間を経過した場合

：施行期日：令和3年10月1日

⑤訂正等における通常実施権者（ライセンスを受けた者）の承諾要件が不要となった。

：施行期日：令和4年4月1日

⑥登録料等の料金体系の見直し

審査負担増大や手続のデジタル化に対応し収支バランスの確保を図る。

：施行期日：令和4年4月1日

Introduction to Our Firm's Service

当所のサービス紹介

Copyright Support Station 著作権支援室

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、質の高いサービスを提供致します。

[詳細はこちらへ](#)

Situation of suspension of IP infringing goods by Japan Customs in first half of 2021

税関における知的財産侵害物品の差止状況
～令和3年上半期～

On September 10, 2021, the Ministry of Finance released a summary of the situation of suspension of intellectual property infringing goods by the Japan Customs in the first half of 2021.

The number of import suspension cases in the first half of 2021 was 14,600, which is 5.0% lower than in the same period a year earlier, but seems to still stay at a high level. The number of import suspension goods in the first half of 2021 was 460,764, which is 67.2% higher than in the same period a year earlier.

By intellectual property, the number of cases of suspension of the import of trademark infringing goods such as counterfeit branded products was 14,211, which accounted for most of the total number of cases of suspension of the import of the intellectual property infringing goods, and was followed by 314, which is the number of cases of suspension of the import of copyright infringing goods such as character-themed items. Regarding the number of import suspension goods by intellectual property, the import of 341,781 trademark infringing goods followed by 61,390 copyright infringing goods was suspended.

By item, the import of electric appliances, pharmaceuticals, automobile accessories, etc., which may threaten health and safety due to use or inoculation thereof, is continuously suspended, and the number of items of electric appliances the import of which was suspended was the highest of all the items. In addition, the number of items of pharmaceuticals the import of which was

suspended in the first half of 2021 is 815.6% higher than in the same period a year earlier.

In "The Act on the Partial Revision of the Patent Act and Other Acts" promulgated on May 21, 2021, "Definition of Import" has been added to the Trademark Act and the Design Act, and the definition has become more likely to be adaptable to "the import for the purpose of personal use", which has been conventionally custom-cleared. Attention is advised to be paid also to the future situation of suspension of intellectual property infringing goods.

令和3年9月10日、財務省は令和3年上半期の税関における知的財産侵害物品の差止状況をまとめた。

輸入差止件数は14,600件で、前年同期と比べて5.0%減少したが、依然高水準で推移しているとのことだ。輸入差止点数は460,764点で、前年同期と比べて67.2%増加した。

知的財産別にみると、差止件数は偽ブランド品などの商標権侵害物品が14,211件で大半を占めており、次いでキャラクターグッズなどの著作権侵害物品が314件だった。差止点数についても、商標権侵害物品が341,781点、次いで著作権侵害物品が61,390点だった。

品目別では、使用又は接種することにより、健康や安全を脅かす危険性のある、電気製品、医薬品、自動車付属品などの輸入差止が続いており、電気製品の輸入差止点数が全品目中最多となった。また、医薬品は前年同期と比べて815.6%増加したとのことだ。

2021年5月21日に公布された「特許法等の一部を改正する法律」にて、商標法及び意匠法にて「輸入の定義」が追加され、これまで税関を通過していた「個人使用目的の輸入」にも対応できる可能性が高まった。今後の知的財産侵害物品の差止状況にも注目していきたい。

Registration of 3D trademark of "*Takenoko-no-Sato*"

-Distinctiveness as a result of use-

「たけのこの里」立体商標登録
～使用による識別力～

Following "*Kinoko-no-Yama*" (chocolate snack, registered as a three-dimensional trademark in 2018), the three-dimensional shape of "*Takenoko-no-Sato*" (chocolate snack) was also registered as a three-dimensional trademark (applicant: Meiji Co., Ltd.).

Examples of three-dimensional trademarks to be registered include (1) three-dimensional representations of characters etc., (2) three-dimensional shapes with characters and figures that have distinctiveness, even if the three-dimensional shapes themselves do not have distinctiveness, and (3) three-dimensional shapes that have distinctiveness as a result of use of the three-dimensional shapes. It can be said that the three-dimensional trademark of "*Takenoko-no-Sato*" falls under (3).

In order to achieve "distinctiveness as a result of use" (Article 3(2) of the Japanese Trademark Act), it is necessary that goods be so-called long-selling goods. Moreover, since the goods need to be recognized by a wide range of general consumers nationwide, not only by specific age groups and not only in some regions, it can be easily imagined that considerable efforts would be required to only prepare such evidences.

While character trademarks and logo trademarks to which "distinctiveness as a result of use" was applied and which were then registered are seen, it is extremely rare that only the three-dimensional shape of a food is registered as a

three-dimensional trademark.

It can be said that this registration taught us the importance of continuing to take on the challenge for every registration of a trademark without giving up.

2018年登録の「きのこの山」に続き、「たけのこの里」も立体商標（出願人：株式会社明治）で登録となった。

立体商標の登録例としては、①キャラクター等を立体で表現したもの、②立体形状自体に識別力が無くても、そこに記されている文字や図形に識別力があるもの、③使用の結果、識別性のある立体形状、の3種に分けられ、「たけのこの里」の立体商標は③に該当すると言えよう。

「使用による識別力」（商標法第3条第2項）を得るには、いわゆるロングセラー商品である必要がある。更に、一部の地域や特定の年代だけではなく、全国的に幅広い一般消費者に認知されている必要があるため、これらの証拠を準備するだけでもかなりの労力を有することは容易に想像できる。

「使用による識別力」が適用され商標登録に至る中でも、文字商標やロゴ商標は見かけるが、立体形状のみの食品の立体商標登録例は極めて珍しいと言える。

商標登録一つとっても、登録に向けて諦めずに挑戦し続ける重要性を教えてくださいました内容を言えよう。



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

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Official Facebook Page 公式フェイスブックページ

We have an official Facebook page where we post helpful information gathered from our offices in Osaka, Tokyo, Hiroshima, and Nagoya. On this page, we publish a variety of information, such as the latest developments in IP law and practice in various countries around the world, exciting IP-related news, and what's going on with us and around us. Please find us on Facebook!

大阪・東京・広島・名古屋に拠点を持つ国際特許事務所のFacebookページです。知財制度等の最新情勢や、知財ニュース、また、所内の雰囲気や、複数拠点近辺の近況などを発信していきます!ぜひご覧ください。

[More information](#) [詳細はこちらへ](#)

HARA KENZO WORLD PATENT & TRADEMARK
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Our Twitter Account 弊所公式Twitter

To help you become familiar with our activities and projects, we post a variety of information in addition to IP-related news on Twitter. If you have a Twitter account, please follow us! Your "likes" and "re-tweets" are also appreciated!

弊所の活動や取組みをより身近に感じて頂けるよう、知財情報に限らず様々な情報を発信しております。Twitterアカウントをお持ちの方は、お気軽にフォローください。いいねやRTも大歓迎です。



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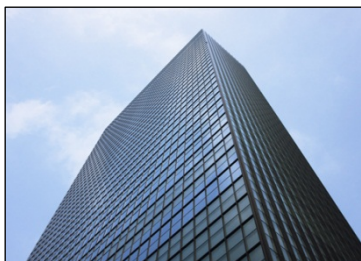
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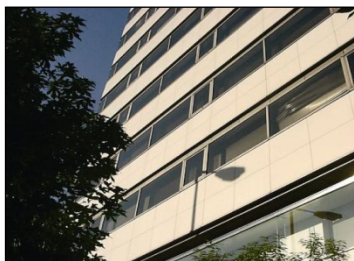
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