

JAPAN INTELLECTUAL PROPERTY NEWS

INDEX

COURT DECISION 1

No Distribution Rights on Used Game Software

INFORMATION OF JP LAW PRACTICE 1-2

Patents rights on medical technologies

FOCUS 2-3

Structure of Patent Applications in Japan

COLUMN 4

General Information on Obtaining Patents in Japan (Part 3)

Application Procedure (2)

OUR OFFICE 4



COURT DECISION

No Distribution Rights on Used Game software

On April 25, 2002, the Supreme Court gave a final decision on two trials at the court of final appeal where the legality of free distribution of used game software has been contested for the last four and a half years. The judge rejected the final appeal on the part of software houses [software planning and development companies] that “free distribution of used game software is illegal”. This decision established a new interpretation of Japan’s law, which allows free distribution of used game software.

Since there have been divided reasons among four courts: District Court of Tokyo, High Court of Tokyo, District Court of Osaka and High Court of Osaka, these two trials have attracted considerable attention as to what decision the Supreme Court was about to make.

The following are the main points of issue: 1) TV game software are film products; 2) therefore, authors of game software such as software houses possess distribution rights (rights of controlling distribution of a product) of these TV game software; and 3) however, once a product is sold legally, from that time on the distribution rights are nullified.

In terms of an interpretation of law, the Supreme Court indicated the



Omori & Yaguchi, Tokyo (Minami-Aoyama)

fact that “Regarding film products, if they are mass reproduction such as CD-ROM, their authors’ distribution rights are valid only until the point of sales and the distribution rights disappear after the products are sold for the second time”. This is a complete application of the approach to the extinguishment of patent rights into that of [film] products.



IP LINKS

Japan Patent Office
<http://www.jpo.go.jp/indexj.htm>

Industrial Property Digital Library
http://www.ipdl.jpo.go.jp/homepg_e.ipdl

Japan Patent Attorney Association (JPAA)
<http://www.jpaa.or.jp/english/index.html>

AIPPI (International Association for the Protection of Industrial Property)
<http://www.aippi.org>

Supreme Court of Japan
<http://www.courts.go.jp/english/home.htm>

Institute of Intellectual Property (IIP)
<http://www.iip.or.jp/e/index.html>

INFORMATION ON JP LAW PRACTICE

Patent rights on medical technologies

The Patent Office decides on its policy of approving patent rights of medical technologies such as treatment methods. With this policy, medical technologies of regenerative medicine, such as skin cultivation methods for treatment of burns, whose rapid growth is expected, will be approved as the subjects of patent rights. This will protect new medical technologies and support research and development and medical venture companies. A proposal bill to revise the Patent Law will be presented at next year's ordinary session of the Diet. Until now the Patent Office has excluded medical technologies from the subjects of patent rights, therefore, this policy will mark

a significant change in direction on the part of the Patent Office.

Currently the Patent Office approves patents for inventions of drugs and medical devices but does not accept "medical acts and technologies" such as methods of operations, diagnosis and treatment. This is because the Patent Office does not consider medical acts and technologies as "industries", based on the rule of conditions of patents under the Patent Law Article 29 "an invention which is industrially applicable".

FOCUS

Structure of Patent Applications in Japan

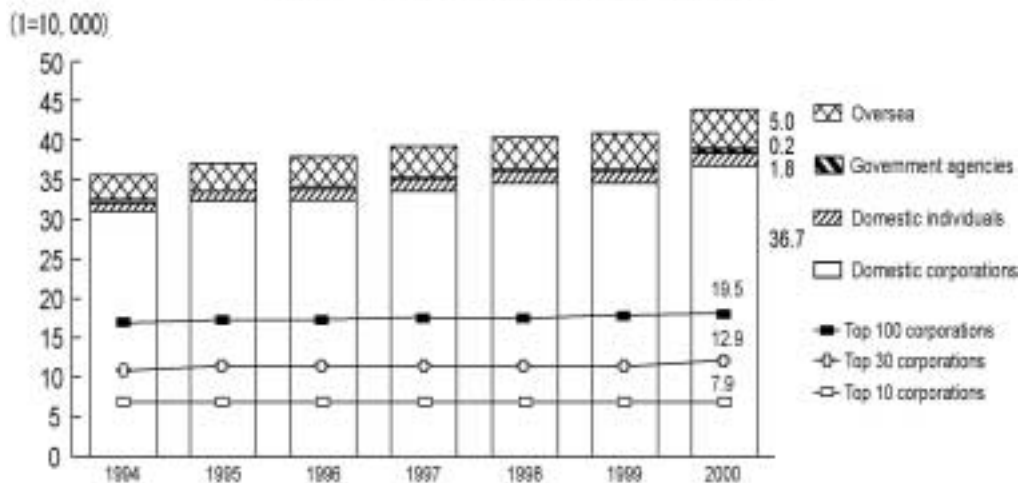
FIG 1. Trend of applications by group of applicants

The number of patent applications by companies that rank highest in number of patent applications remained practically the same. In the meantime, application activities by small and medium-sized companies and individuals were becoming livelier, and the number of their applications increased 11 percent in 2002 compared with 190,000 from the year before which account for 3.6 percent of all applications.

FIG 2. Trend of applications by technologies

Compared with Europe, Japan receives more applications in the area of physics and electricity and less in chemistry, metallurgy, and human necessities. Moreover, compared with the United States, Japan receives more applications in the area of electricity and mechanical engineering and less on human necessities.

[FIG. 1] Trend of applications by group of applicants in Japan



Japan Intellectual Property Association (JIPA)
<http://www.jipa.or.jp/english/index.html>

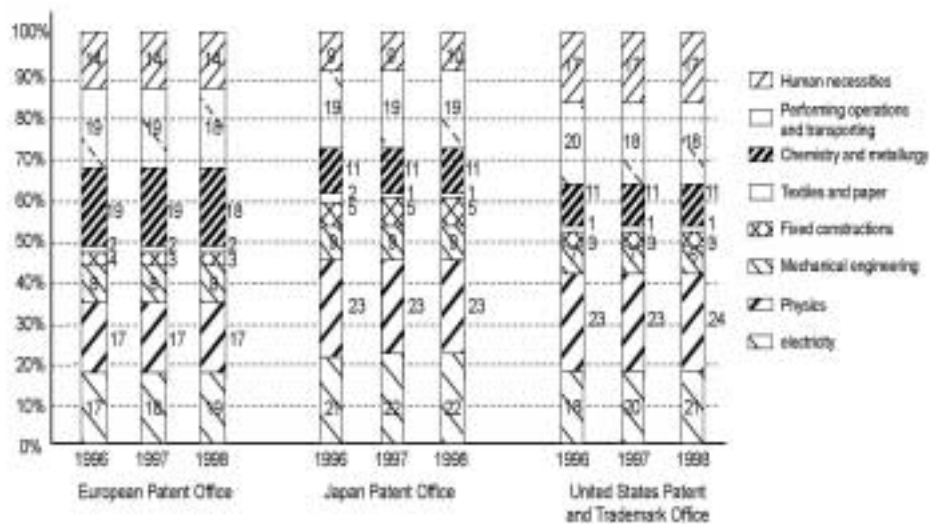
Japan Patent Information Organization (JPIO)
<http://www.jpio.or.jp/welcome2.html>

License Exchange Society Japan (LES)
<http://www.lesj.org>

Asia-Pacific Industrial Property Center (APIC)
<http://www.apic.jiii.or.jp>



[FIG. 2] Trend of applications by technologies on tripolar region (Japan, United States, and Europe)



Omori & Yaguchi

Eight Penn Center BLDG, Suite 1360
1628 John F. Kennedy Blvd
Philadelphia, PA 19103

Try Instant Fee Calculator at www.omori-yaguchi.com



Try Instant Fee Calculator at www.omori-yaguchi.com

Quick and Easy

Instant estimate for filing Patent and Trademark applications in Japan

- For entering the Japanese national phase for PCT patent applications.
- For filing a Japanese Trademark application having a corresponding foreign application
- Formal online estimate in available

COLUMN

General Information on Obtaining Patents in Japan (Part 3)

Application Procedures (2)

Patent-applications to the JPO can be filed in English. In this case, a Japanese translation of the application must be filed within 2 months of the filing date.

However, it should be noted that this rule does not apply to applications filed under the national phase of the PCT. In other words, when time is pressing, applicants can file in English for applications with the Paris Convention priority, but not for PCT applications.

If the applicant files an application in English, amendments can be filed later for any mistakes in the Japanese translation. For this reason, many Americans think English language applications are better than Japanese language applications in case of any mistranslations.

However, Japanese patent attorneys generally do not encourage applications in English.

This is because a mistranslation in

itself can become a reason for rejection. When considering the difference between English and Japanese, it is nearly impossible to create a truly precise translation between these two languages. Anyone who is interested can claim invalidity of the patent right by pointing out trivial mistranslations.

Also, amendments for mistranslations are not always granted. When filing an amendment, it is required to explain in detail why the mistranslation occurred. As a result, the Japanese patent attorney will have to explain how incompetent he or she is. Moreover, since the other party is very likely to reject any amendment for such a mistranslation, applicants may end up wasting their time in the attempt.

For these reasons, we recommend that applicants file applications in Japanese instead of English if there is any extra time.

OUR OFFICE

Patents and Trademarks

Omori & Yaguchi

TOKYO

4th Floor Matrice Bldg., 2-13-7 Minamiaoyama, Minato-ku, Tokyo 107-226, Japan
Tel: +81-3-5412-0315, Fax: +81-3-5412-0316

PHILADELPHIA

Eight Penn Center, Suite 1360, 1628 John F. Kennedy Boulevard, Philadelphia, PA19103
Tel: 215-701-6349, Fax: 215-701-6351

Our Services in the U.S.A. and Japan

- preparation of Japanese specifications to be filed with Japan Patent Office, based upon translation and review of English specifications.
- translation of specifications, laid-open publications and other technical documents from Japanese into English.
- research on Japanese patents, designs and trademarks.