

Patent non-disclosure system in Japan

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The plenary session of the House of Councillors passed the Economic Security Promotion Law in May of this year, and it is expected that the law will be fully enacted in Japan. The law consists of four pillars: strengthening the supply chain, ensuring the safety of core infrastructure, private and public development of advanced technology, and the introduction of a patent non-disclosure system. The current law does not provide for a patent non-disclosure system. This paper focuses on this system and describes expectations for the future.

The purpose of Japan Patent Act is to protect inventions while allowing for their use and to thereby contribute to the development of industry. The patent application disclosure system is a method by which inventions may be put into use, and it plays an important role in achieving the purpose of the Japan Patent Act. Although a secret patent system was in place a long time ago, the current law does not provide for it. Therefore, under the current law, a patent publication bulletin is basically issued 18 months after a patent application is filed. This information is available to the public on a free online database. Globally, however, many countries have introduced systems that restrict the disclosure of patents in order to protect critical security interests. Accordingly, in view of the necessity to suspend the publication of applications and to develop a system to prevent the leakage of sensitive inventions, Japan plans to introduce the Patent Non-Disclosure System.

The basic guidelines for the Patent Non-Disclosure System in Japan have been established, but the details have not yet been published. Broadly speaking, the Japan Patent Office will perform the first examination and the Cabinet Office will perform the second examination as follows:

1) Screening by technical field, etc. (first examination)

The Japan Patent Office shall transmit patent applications for inventions in technical fields for which public disclosure is highly likely to adversely affect the safety of the state and the people to the Japan Cabinet Office.

2) Examination by the Cabinet Office (second examination)

The Cabinet Office shall examine the application and determine whether it is appropriate to keep the inventions in question secret.

3) Designation of secret inventions

The designation of the invention as secret is determined, and the applicant is notified thereof.

When a patent application is designated as a “secret invention,” restrictions will be imposed on the use thereof. The applicant will be prohibited from withdrawing the application, disclosing its contents, or filing for a patent of the invention in other countries. These restrictions shall be in place for less than one year, and extensions of the restrictions shall be reviewed each year thereafter.

However, inventions that are subject to non-disclosure are limited to those for which only “single use” may be made and inventions that may be used in several ways in multiple fields (“dual use”) are unlikely to be subject to this system.

In addition, the government is also considering instituting an obligation on applicants to file patent applications in the technical fields covered by point 1 above in Japan first prior to filing an application in any other countries.

The Patent Non-Disclosure System will be implemented in Japan in the near future in line with the majority of countries. The current Japan Patent Act was established in 1959, and it is urgently necessary to make more revisions in order to adapt to rapid technological developments (such as the borderless working of inventions) and recent changes in the global status. The Japan Patent Act is expected to undergo another major change in the future. We hope that the Japan Patent Act will continue to be globalized.

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