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No. 3

IP Friends Connections

This Magazine is published as part of the Intellectual Property Cooperation in Human Resource Development Program of the Japan Patent Office. The aim of this Magazine is to follow up on training programs through the dissemination of information to IP Friends, those who have completed training courses of the above program.
We very much hope that the information in this publication related to intellectual property, and the comments from either IP Friends or lectures, will prove beneficial to you in your work.

JAPAN PATENT OFFICE

【The meaning of 縁 (Enishi)】
"Enishi" refers to the bond created between people when encountering someone they were destined to meet. We have chosen this term as the title for our publication because we are all members of the Intellectual Property community, and the bonds created between us extend beyond national borders. We hope that you will use this informative publication to deepen the "Enishi" you have created with your IP Friends.

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Report of WIPO/JF Training Course for Patent Examiners in the Field of Lighting from APIC

The WIPO/JF training course "for Patent Examiners in the Field of Lighting" was held February 21-28, 2012, including a total of 18 trainees from China, Egypt, Indonesia, Malaysia, Mexico, Morocco, Pakistan, Philippines, Thailand, Vietnam, and the OAPI.

This course series wass established for patent examiners working at intellectual property agencies and engaging in specific technological fields designated by the Japan Patent Office. The training courses, whose participants are experienced examiners in developing countries, provide lectures on technical trends and patent requirements within specific technical fields in Japan, as well as enhance the examiners' technical knowledge of state-of-the-art technology that is necessary to conduct substantial examinations.

The trainees in this particular course were examiners from intellectual property agencies of foreign countries working within the "lighting equipment field". The training focused upon examination guidelines and practices of the Japan Patent Office relating to Japanese patents, with a focus on the lighting equipment field.

On the first day, the trainees had an orientation session at APIC. They then went to the Japan Patent Office, where they visited the examination department responsible for the lighting equipment field, and toured the application counter, publication reading room, and trial court. Examiner Hidetaka Tsukamoto also explained the examination practices and method of using terminals, making the content of the training course quite extensive from the very first day.

On the third day of the course, the trainees visited the Panasonic Living Showroom Tokyo (located at Panasonic Tokyo Shiodome Bldg. 1-5-1 Higashi Shimbashi, Minato-ku, Tokyo). First, they attended a lecture regarding the intellectual property management of the company, and were then given a tour of the business showroom and the Comfortable Living Floor. During the lecture, the trainees actively asked questions and exchanged opinions, and reported being

Trainees attending a lecture (1)

Trainees attending a lecture (2)

greatly impressed by the state-of-the-art lighting equipment.

On the fourth day, Mr. Toshiaki Aoki with the Madoka International Patent Office led a training session on patent information searches in the PC room at APIC, where participants were able to try using the FI/F term searching method. The trainees said the experience was very useful, and some said they wanted to share this information with their colleagues after going back to their home countries.

In the afternoon of the final day, a training assessment meeting and closing ceremony were held, where a certificate was handed to each of the trainees from the Overseas Corporation Chief, International Affairs Division of JPO.

The trainees participated enthusiastically in this training course. Although it was during the cold season, a number of trainees visited various places in Japan after the lectures and on the weekends. The trainees appeared to enjoy their experience in Japan, and we are hoping for their future success.

Closing ceremony

Report of Follow-up Seminar in China from APIC

On March 11, 2013, we held a follow-up seminar in Guangzhou city, which is the third largest city in China (following Beijing and Shanghai). This was the fourth follow-up seminar and also the last seminar for us during this fiscal year. Thanks to the great cooperation of the State Intellectual Property Office of P.R.C. (SIPO), the Guangdong Provincial Intellectual Property Office (GIPO) and the Guangdong Intellectual Property Research and Development Center, about 110 people joined this seminar. The seminar was not held in China for over five years, with the last seminar being held in 2007. The participants were mainly from the Patent Examination Cooperation Center of SIPO, as well as intellectual property offices, law firms, universities and private companies around Guangzhou city.

Mr. Liu, Deputy Director General of SIPO, who was the first long term researcher in this field, gave the first speech at the opening ceremony. Mr. Minami from the JPO and Ms. Xie from the GIPO also gave opening remarks.

The theme of this seminar was "Use of IPR for Economic Development", including three sessions such as "Introduction of IPR Policy in China and Japan", "Use of IPR for Regional Vitalization" and "IPR Management in Private Companies".

From the Japanese side, Mr. Minami from JPO, Mr. Kato from Kyowa Patent and Law Office (Executive of JIPA, ex-director of the IPR division at Toshiba Corporation), and Mr. Ogiya, director general of APIC-JIPII gave lectures. From China, in addition to the above, lectures were given by Mr. Liu (SIPO), Mr. Wang (South China University of Technology), Mr. Wang (IPR Center), and Mr. Bai (VTRON TECHNOLOGIES LTD).

Participants listened eagerly to the lectures, taking notes and actively asking questions during the Q&A sessions following each session. Japanese speakers were very impressed by this eagerness.

Mr. Liu from SIPO and Mr. Wang from the South China University of Technology are both alumni of our training program (known as "IP Friends"). We were pleased to see that they mentioned the training courses in Japan during their lectures, as well as the knowledge that they gained during the course, and the importance of the interaction with participants from other countries during the training program. Such words enhance our motivation for follow-up activities, and we are looking forward to future strong cooperation with "IP Friends", as well as SIPO, GIPO and the people who have supported this seminar.

Please check the details of this seminar program on our website (click the "Follow-up Seminar" link). http://www.training-jpo.go.jp/en/modules/smartsection2/item.php?itemid=368


中日知识产权跟进研讨会
运用知识产权促进经济发展
Sino-Japan Follow-up IPR Seminar
"Use of IPR for Economic Development"


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Report of WIPO/JF Training Course for Patent Examiners in Field of Computer Programs from Course Participant

Mr. Every Nanda
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Directorate General of Intellectual Property Rights (DGIPR)
(Indonesia)

Mr. Every Nanda

The Gifts from Japan

First of all I wish to give thanks to Allah that with His permission I got the opportunity to attend the training in Japan and returned home safely, and also to all those who have given me the ease to attend the training in Japan. I had two periods of training in Japan, the first was February 16-23, 2011, a training course for patent examiners in the field of information and communication technology, and the second was February 13-20, 2013, a training course for patent examiners in the field of computer programs. I have gained many new experiences from both of periods.

The first Period, February 16-23, 2011.

I was very impressed with what was taught by the experts, but unfortunately I have not been able to absorb a lot of the training materials, probably because it was my first time in Japan, and the air was so cold that it required adjustment to the environment in order to concentrate. Except during a visit to the museum of communications in Japan, where I got a lot of information about the history of telecommunications in Japan since its inception to the present, and this was very important feedback for me in gaining insight and knowledge of telecommunications. The visit to Dokomo company was also amazing. In short, during the first period I could gain knowledge on patent examination relating to telecommunications technology as well as prior art.

But I was very sad because approximately two weeks after I returned home from Japan, I heard a tsunami hit Japan. I contacted Ms. Ayako Sakuma to learn about the situation in Japan after the tsunami and she told me all. Japan has become part of my life, and for what is experienced by Japan I also feel a very deep sorrow. Japan was grieving, so I was grieving. Hopefully Japan was given strength and pa-

tience in the face of this tragedy.

The second period, February 13-20, 2013.

During this periode I was more comfortable and enjoyed the course and could absorb a lot of knowledge about patent examination relating to computers, software, hardware and formula, which can be patented and cannot be patented. But unfortunately, the visit to Hitachi company was less memorable for me, probably because the name Hitachi is not strange to my ears because I have seen many products by Hitachi in Indonesia. In short, during the second training I got more knowledge than during the first, and a week after returning home from Japan I was assigned to Malang to teach the inventor about invention relating to mathematic formula.

For me Japan is a country that is very civilized, orderly and safe. I was always greeted by a friendly person and was given directions, because not many people that I met on the street spoke Indonesian. Strangely, they knew I was from Indonesia. When I asked why they guessed I was from Indonesia, thhe said because I wore a typical cap of Indonesia. I was so honored to have encountered Japanese people who spoke Indonesian.

I hope someday I will return to Japan again for training as a patent examiner in JPO, although for a month only, to gain experience as a patent examiner, or at least to assist the JPO patent examiners in examinations of patent applications. Thanks to APIC, which allowed me to attend the training in Japan and to all those who organized this course.

By the way, I have a good gift for IP Friends to share, and that is a few tips for examination of software-related inventions and mathematic formula. I quote the topics presented by Mr. Hiroshi ENDO, Senior Patent Examiner at the Japan patent office and Mr. Daigoro BANDO, Patent Examiner at the Japan Patent Office in the topic titled Examination Guidelines of Software-related Applications in JPO. Because in my opinion is very well understood by IP Friends, inventors and patent examiners, there is no misunderstanding in making the decision of whether or not to grant a patent.

History.

Mr bendo suggests there are three phases of examination guidelines for software, namely:

1. Apparatus claim, such as calculators, computer-controlled household appliances, and so on.
2. A computer readable storage medium having a program recorded thereon, such as a floppy disk, CD-ROM, hardisk, and so on.
3. Program Claim, such as network.

And according to Japanese laws relating to industrial property Article 2.

(3) (i) in the case of an invention of a product (including a program, etc.....),....

(4) "program, etc." in this Law mean programs (a set or sets of instructions to computer which are combined so as to produce a result—hereinafter referred to as "programs, etc." in this paragraph) and other information equivalent to programs to be used for computer processing.

We know that in the computer system there are hardware and software. Hardware means things such as processor, keyboard, monitor, etc., and software means programs. Both hardware and software must work cooperatively , but have a difference in protection, namely:

1. By patent, such as:
   a. Method claim
      A method for detecting the intrusion...
   b. Product claim
      A system for detecting an intrusion.....,
      A computer readable storage medium having a program for detecting the intrusion...
      A computer program for detecting the intrusion...

2. By copyright, such as:
Source code, object code
Specifications, program list, etc.

Further, according to Mr. Endo, requirements for granting patents of inventions must be:

1. Industrially applicable, the invention must be industrially applicable.
2. Clarity, description and claim must be clear.
3. Novelty/ inventive step.

In practice, determination of novelty and inventive step to software-related inventions is difficult. Below are terms relating to inventions:

Statutory invention

Article 2 (1) "Invention" in this means "the highhly advanced creation of technical ideas utilizing the laws of nature".

Article 29 (1) an invention of an invention that is industrially applicable may be entitled to obtain a patent for the said invention...

Thus, the invention must use the laws of nature and creation of technical ideas, so that the examiner must check whether the claimed subject matter is a creation of technical ideas utilizing the laws of nature.

Not a statutory invention

Laws other than the laws of nature, e.g. econonic laws per se.
Arbitrary arrangement (rules, schemes), e.g. rules of game per se.
Mathematical methods.
Human activities.

Non technical ideas

Music CD characterized only by its contents,
Source code of sofware,
Presentation of information has no technical character.

In his presentation, Mr Endo explained the basic concept in examinations for software-related inventions, and that is:

> If a claim specifies information processing by a software that is concretely realized by using hardware resources, the claimed subject-matter is considered to be "a creation of technical ideas utilizing the laws of nature".
> Underlined sentence means:
> By loading a software into a computer, the software and hardware resources are working cooperatively so as to realize desired operation.

For more details, the following are some examples given by Mr. Endo for inventions relating to software and mathematics:

Example 1:

> A method for calculating a product "S" of natural numbers "N" and "M" by the formula:
> $S=\{(M+N)^2-(M-N)^2\}/4$

Note: the purpose of this invention is to calculate the product "S" wihtout using "multiply" operation (multiplier) because "multiply" operation in a normal CPU usually takes a lot of time. By using the formula above, "square"(^{2}) can be calculated by a look-up table and the product "S" can be calculated without using "multiply" operation.

Analysis:

Claims as above cannot be granted a patent because of mathematical formula per se. Not using laws of nature.

Consider the following example

Example 2:

A computer for calculating a product "S" of natural number "N" and "M" by formula:

$S=\{(M+N)^2-(M-N)^2\}/4$

Analysis:

Claims as above also cannot be granted a patent, because it does not indicate a working between hardware and software.

Then, the amendment claim is as follows:

Example 3:

A program that makes a computer execute a method for calculating a product "S" of natural namubers "N" and "M" by the formula:

$S=\{(M+N)^2-(M-N)^2\}/4$

Comprising:

Reading data of natural numbers "N" and "M" from a memory,
calculating "N+M" and "N-M" by using an adder and a substractor,
obtaining square value of "M+M" by referring to a look-up table containing values of "K2" indexed by "K",
obtaining square value of "N-M" by referring to the look-up table, and
calculating "S" by using the substractor and a bit-shifter.

Analysis:

Claims as above may be patented because there is a cooperative working relationship between hardware and software. such as reading data from memory, computing using an adder and substractor, and so on.

Example for economic functions and software, as follow:

Example 4:

A method for determining a selling price of a commodity comprising:
Retrieving a labelled price of a commodity,
retrieving a current time, and
calculating a selling price of commodity as:
[selling price] = [the labelled price of the comocdity]x 0.5
If the current time is later than 19:00.

Analysis:

Claims as above are not clear, as they are not using laws of nature, rather only use economic laws.

Example 5:

A method for determining a selling price of a commodity performed in a computer hav-

ing an inputting means, a comparing means, an arithmetic means and a displays means, comprising:

Retrieving a labelled price of a commodity from the inputting means,
retrieving a current time from the clock means,
comparing the current time with 19:00 by the comparing means,
calculating a selling price of the commodity as:
[selling price] = [the labelled price of the commodity] x 0.5 by the arithmetic means if the comparing means decides that the current time is later than 19:00, and
displaying the calculated selling price by the display means.

Analysis:

Claims as above clearly show the existence of working hardware resources. Where the methods are executed by inputting means, comparing means, clock means, and so on.

And for IP Friends I have the following question:

Claim 1:

Methods for determining the age of the cadavers which consists of the following steps:
Taking bone samples from the cadavers, approximately 0.5 grams, and
mixing bone pieces with solution X,
place it in a container for 1 week,
measuring bone weight after being soaked for a week, and
calculating age with the following formula:
age= (weight before soaking-weight after soaked) x 1 years.

Would the above claim be patentable?

Sayonara and thank You.

A Journey to the Capital of the East

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Mr. Mustafa Guney Caliskan

Disclaimer: Before expressing my opinions, I have to remark that the views given below are my own views and those should not be considered the views of my fellow trainees. The views presented here are by no means the official opinion of the TPI, but only the author's own thoughts. In no way are the views meant to put down the efforts of JPO-APIC or intellectual ability of the trainers.

1. Overview of the Training Program

The Japan Patent Office (JPO), in cooperation with the World Intellectual Property Organization (WIPO) under Japan Funds-in-trust (FIT) arrangement organized a training course for Patent Examiners in the Field of Computer Programs in Tokyo, 13 – 20 February, 2013. The main objective of the training course was to provide insight and information to the participants about the related patent laws and procedures in the field of Computer Programs, mainly in Japanese Patent System.

The total of 13 trainees from China, Indonesia, Kenya, Malaysia, Morocco, the Philippines, Singapore, Turkey and Vietnam attended the training program.

There were in total of 6 lecturers (2 Examiners from JPO, 3 patent attorneys and 1 university professor)

The lecture subjects of the course program were as follows:

The lectures were held at the Asia-Pacific Industrial Property Center (APIC), Japan Institute for Promoting Invention and Innovation (JIPII). WIPO has provided the air ticket and

DATE		SUBJECT (AM 10:00-13:00 PM 14:00-17:00)
Feb. 13 2013	AM	Orientation, Observation Tour of Examination Department, Japan Patent Office
	PM	Recent Patent Issues on Computer Programs: Notable Technology (Patent) and Noteworthy Cases
Feb. 14 2013	AM	Practices and Standards of Patent Examinations
	PM	Comparative Study of Patent Examination Practices in Japan, the USA and Europe
Feb. 15 2013	All day	Case Study for Examination Practices -Novelty, Inventive Step-
Feb. 18 2013	All day	IP Management in the Company Study Tour: Hitachi's IP Activity
Feb. 19 2013	All day	Patent Information Search, Hands-on Practice (Search/Judgment)
Feb. 20 2013	AM	Patent Dispute Case Study
	PM	Course Evaluation/Closing Ceremony

daily subsistence allowance for accommodation, meals, etc. and medical insurance. The accommodation was provided by HIDA at AOTS-Tokyo Kenshu Center (TKC), Tokyo.

2. Discussion on Each Topic Covered During the Training

2.1. Orientation, Observation Tour of Examination Department, JPO

In this introductory part of the course, firstly, we were informed about a variety of assistance activities by the JPO such as technical assistance, cooperation schemes, and other useful tools offered by the JPO. We were also provided detailed orientation documents related to the APIC facilities.

Secondly, with the guidance of two patent examiners from JPO, the trainees visited the JPO building. The main emphasis on the visit focused on the appeal room and examination department tours. We were also informed about the organizational details and patent procedures of the JPO.

The examiners demonstrated to us briefly how they search documents and conduct examination reports on patent applications.

2.2. Recent Patent Issues on Computer Programs: Notable Technology (Patent) and Noteworthy Cases

In this lecture we were informed about recent situation of computer software technology, focused technologies, and were also presented with some examples.

After the overview of software-related patents, the lecturer mentioned about application trends in major technological fields and analysis thereof; and recent trends in business-related inventions.

2.3. Practices and Standards of Patent Examinations

In this session, patent examiners from JPO first introduced us to the differences between patent and copyright protection of software-related inventions. Then legislation about software-related patent applications in Japan was presented. Statutory invention and some clarity issues were explained in detail by means of the Patent Act and Examination Guidelines of JPO. The perspective of JPO in this manner was also compared to USPTO and EPO perspectives. Related examples were also presented so as to clarify the issues discussed in the lecture.

2.4. Comparative Study of Patent Examination Practices in Japan, the USA and Europe

In this lecture, we are informed firstly on patentability the criteria of the Japan Patent Act

(esp. novelty and inventive step), adequacy of description and claims, and patentability of computer software-related inventions in a comparative way with USPTO and EPO. We gained some insight about patent examination practices in Japan, the USA and Europe.

2.5. Case Study for Examination Practices -Novelty, Inventive Step-

In this course, the lecturer emphasized the definition of invention, patent eligibility of software-related inventions; comparison among JPO, EPO, USPTO and SIPO; and lastly case study of eligibility, novelty and inventive step of the applications.

After the explanation of basic structure, the topics were presented in a comparative study, and at the end five different cases were discussed in groups.

2.6. IP Management in the Company Study Tour: Hitachi's IP Activity

To understand and observe, in practice, how intellectual property is managed in a leading company in the real world, we were invited to visit Hitachi Company. First of all, a brief presentation is given about the company profile, focused business areas, and a history of Hitachi's IP activity and strategy. Then, in groups, we observed some of the projects conducted by Hitachi such as digital pen solution, finger vein authentication management system, moderate and effective weight-loss program, and web accessibility solution.

2.7. Patent Information Search, Hands-on Practice (Search/Judgment)

In this session, the lecturer gave us information about examination flow, search strategy, FI, F-Term classification and some online patent databases. At the end of the lecture, we were given six exercises related to computer software applications and the trainees were asked to perform search on the online patent databases.

2.8. Patent Dispute Case Study

In this lecture, patent infringement dispute cases of computer-program related inventions in Japan were introduced with the court decisions and the relevant Articles of the Japan Patent Act. The cases that were discussed were "Icon Case", "Internet Access Service Method Case" and "Media Player Synchronization Method Case". All three cases are well-known and touchstone cases related to computer software-related patents in Japan.

Finally, patent infringement litigation in Japan was briefly presented to the trainees and the Japanese Jurisdiction of Patent Infringement Litigation was introduced.

3. My Opinions on the Training Course

Since I am working mainly on computer software related patents in TPI, the subject of the seminar was directly related to my work. After I was nominated for the course by my Office, I was very excited about the journey, because this would be the first time for me to visit Japan. After long preparations, the time had come, and after about a 12-hour plane trip, at last I arrived to Tokyo.

Before attending the course, my target goals were mainly:

- Obtaining information about the Japanese patent prosecution system.
- Obtaining information about Japanese patent office procedures (such as pre-classification, examination, and appeal departments)

- Learning about the Japanese approach to software patents, computer implemented inventions and business methods comparatived to the USPTO and EPO approaches.
- Gaining information about milestone decisions in Japanese courts about software patents, computer implemented inventions and business methods.
- Brief on-the-job training with a Japanese patent examiner in the field of computers (working together with a Japanese patent examiner while conducting a search report).

After the completion of the course, I could easily admit that I mainly reached most of my target goals, except the last one.

First of all, I have to confess that everything was on time and all information was very useful during the course.

I am very interested in learning about the working methods of Japanese Patent examiners. So, the Observation Tour of Examination Department of JPO was especially insightful for me.

I think the order of the courses may be changed slightly so as to achieve the coherence and step by step development of the presented matter. For example, the "Practices and Standards of Patent Examinations" part may be presented as an introductory part before all the other sessions, because it has some foundational topics about patents. Also, the "Recent Patent Issues on Computer Programs: Notable Technology (Patent) and Noteworthy Cases" session could be presented after the "Practices and Standards of Patent Examinations" and "Comparative Study of Patent Examination Practices in Japan, the USA and Europe" sessions.

Comparative studies have always been a better way to learn certain subjects, and I really got some useful and insightful information, especially on Japanese practices and some different implementations from EPO and USPTO in the "Comparative Study of Patent Examination Practices in Japan, the USA and Europe" lecture.

The "Case Study for Examination Practices -Novelty, Inventive Step-" course had some similar topics to "Practices and standards of patent examinations", so these courses may be combined into one course so as not to duplicate some topics.

The "Patent Information Search, Hands-on Practice" session was very insightful for us, but the search was conducted on the free internet patent databases. However, in my opinion, it would have been more useful for us if we could see how a Japanese patent examiner conducts a search from beginning to end. Because of the Japanese language used in the search tools, we may not understand every detail, but it would be useful for us to see how an examiner decides on FI/FT terms while searching, and some other different perspectives that we can receive during the search.

The "Patent Dispute Case Study" about computer software related applications was very useful for me to learn how Japan's courts actually handle the topic. I also learned the structure of the court system and its relation to JPO. So the course was very fruitful for me.

One point I would like to mention is that "the self-evaluation sheet" may be better filled later in the course so as to judge whether or not the target goals are achieved.

I believe almost all the trainees felt that the training program would be more effective if it is extended to two weeks in length. The large volume of course material and variety of topics discussed simply require more time than one week. I think we could not have enough time to recapitulate the matters discussed in the lectures. And though all the interpreters were good in their translations and have specialized in patent terms, all the waiting for the interpretations to be done was also reducing our time to almost half of the actual duration of the course.

One suggestion for the solution to this shortage of time may be to focus on the special topic that the training course is about. For example, "patentability criteria for applications in Japan" and "patent search" topics could be the subject of different training courses. In that case, we could have a chance to focus on the computer software related applications in one week. Another suggestion may be the extension of the whole course to two weeks.

4. Brief Explanation of the Turkish Perspective on the Computer Software Related Patent Applications

As a member of European Patent Organization, Turkey's Patent Decree Law (PDL) is mostly parallel to European Patent Convention. According to article 6 of PDL (emphasis added):

"The following, not being inventions as of their nature, shall remain outside the scope of this present Decree Law :

a- Discoveries, scientific theories, mathematical methods;

b- Plans, methods, schemes/rules for performing mental acts, for conducting business/trading activity, and for playing games.

c- Literary and artistic works, scientific works, creations having an esthetic characteristic, **computer programs.**

d- Methods involving no technical aspect, for collecting, arranging, offering/presenting and transmitting information/data.

e- Methods of diagnosis, therapy and surgery applying to human or animal body.

The provision under Paragraph 1, Subparagraph (e) of this present Article, shall apply neither to the products and compositions used in connection with these methods nor to their process of manufacturing.

Those related to such subject-matter or activities *as such* aforementioned under the paragraph one of this present Article, shall be excluded from patentability."

As seen from the above mentioned article, the provision is very close to EPC Article 52 in respect to computer programs.

Although computer programs as such are excluded from patentability, computer programs that have technical characters and have technical effects may still be patentable. Although there is no definition of what is technical in PDL, inventions that are related to a technical field, that concern a technical problem, and that have technical features in terms of which the matter for which protection is sought can be accepted as having a technical character.

Normally, a program for computers is excluded from patentability because it has no technical effect. However, if you think of when the program runs on a computer, electrons run from one end of the processor to the other end of the processor, you may reach a conclusion that it actually has a technical effect. However, all programs have that effect, and if that were sufficient, it would render the exclusion in Article 6 meaningless. So, the program needs to have a further technical effect.

Business methods as such are not patentable in view of Article 6 of PDL, however, business methods that have technical characters and have technical effects that may still be patentable.

Unlike JPO, a claimed invention is not assessed as a whole in the Turkish system if some non-technical aspects exist in the claim. In that case, a non-technical part that has no contribution to the technical part is separated from the technical part, and only the technical part is considered when evaluating the patentability of the claim.

There is also some difference between JPO and TPI in respect to handling Inventive step of the claimed invention. JPO has its own approach for assessing inventive step, however TPI uses in most cases the "problem-solution approach" adapted from the EPO.

5. Conclusions

The training course was really useful and fruitful for me in many aspects. I think, overall, I am able to find some new means, especially the Japanese way of looking towards solving problems related to the field of computer software related inventions. I am trying to establish my personal view and approach towards determining patentability of computer software related inventions. So the course was very helpful for me in this manner. The presented examples were really good and beneficial to us.

All of the lecturers were very good in their fields, and their presentations were very satisfactory for me. They especially provided me with answers to my questions concerning not only the specific topics they were lecturing, but also other practices as well, even during the breaks.

The Course Evaluation part was also very beneficial to us and also to the organizers of the course so as to have some useful feedback about the event.

Course coordinators were very helpful to us in all aspects, and I present my sincere thanks to them for inviting and accepting us with a warm welcome. I am really fascinated by the warmth of JPO and APIC personnel to make us feel at home the entire time.

6. Miscellaneous

In this part, I would like to mention a little bit about the impressions that I got from my visit to Japan. I have been interested in the Japanese culture for a long time prior to coming to Japan. I am a fan of the game of go. And I really like the movies of the directors Akira Kurosawa and Yasujiro Ozu, and also Miyazaki's animations.

Though Japanese cuisine looks completely different from the Turkish cuisine, I really liked

some Japanese food that I had the chance to taste during my visit, such as yakitori, sushi, noodles, and kakipee. And there are also lots of other kinds of food that one can eat. So, one should not prejudicially think that he/she cannot find what he/she wants to eat in Japan.

Japan is famous for its high technology. Everything is in order and everything is automated! Those vending machines you can find on every corner of the streets offer a great variety of beverages.

Since I am an electronics engineer, for me Akihabara, also known as "electric town" is like a heart of electronics. Everywhere is illuminated with huge billboards and displays. The scenery was amazing. I bought a robot arm from a robot shop, and couldn't wait for to assemble it when I got back home.

Kawaii (cuteness) phenomenon is really great in every aspect. Japan has wonderful kawaii characters such as Hello Kitty, Rilakkuma and Doraemon. I really like toy stores where you can find a wide variety of toys that are sold only in Japan.

There is a Japanese word "Shibui" which depicts simplicity, subtlety, and unobtrusive beauty. However, I am actually a bit confused about the simplicity concept of Japanese after seeing streets and buildings full of complicated patterns, lights, boards, and so on. Even packages of goods have detailed patterns, designs, pictures and inscriptions on them.

The Tokyo Tower looks really great at night, I had a chance to see Tokyo from the Tokyo Tower, and it was really wonderful.

Tokyo metro stations are some of the busiest stations in the world, and especially at rush hour the crowd is really immense.

I also visited Takeshita Street, Harajuku, Yoyogi Park and Ometasando, and did some shopping.

Japanese people are really respectful towards other people, and they are really polite. They strictly follow the rules and regulations, and I guess this makes life easier and livable. Every crucial sign also has an English translation on it, so contrary to what is believed, I found Tokyo as a really foreigner-friendly city.

Odaiba, the artificial island in Tokyo Bay was really amazing. Rainbow Bridge looks wonderful at night. The train line that draws a loop over the sea was really beautiful.

I also had a chance to visit Ueno Zoo, and saw a panda and some interesting animals. There was also a children's zoo where children can pet some domestic animals. After that I visited Ameyayakocho market. I came up with some Turkish people who have a kebab restaurant in Ueno. There were also lots of different kinds seafood, spices, fruits, textile goods, etc. in the market.

Shibuya's famous scramble crossing amazed me very much. I watched the crowd for some time and then took some photos of the statue of the famous dog Hachiko.

Sensoji Temple in Asakusa looks really elegant and beautiful. Sakura flowers are on the sides of shops along the Nakamise Shopping Street that makes the scenery even more beautiful.

I didn't want to leave Tokyo without seeing Tokyo Skytree, the world's highest structure at a total height of 634 meters. However, it was really crowded and I didn't havethe chance to go up and experience it.

Meeting other examiners from different countries also provided me with an invaluable chance to discuss some topics about patents, cultures and everything about life.

7. Acknowledgements

I would like to express my sincere thanks to dear Michiko Hiyama-san and Kazumi Kinoshita-san for their warm and sincere welcome and for their support in innumerable ways. And I also present my special thanks to Ayako Sakuma-san, and other APIC-JIPII officials.

I am thankful to all HIDA-TKC personnel for their warm hospitality, and my gratitude to all the lecturers, JPO and WIPO Japan. I am grateful to TPI for nominating me as a trainee for this course. I am also grateful to WIPO for the financial support and to officials of UNDP-Turkey for their timely help for logistic arrangements.

Arigato gozaimasu!

Report of Alumni Meetings

Alumni Meeting in India, 2012

Mr. Varun Sharma

Mr. Varun Sharma
Senior Associate,
Amarchand & Mangaldas & Suresh A. Shroff & Co. (India)

Under the aegis and initiative of the Asia-Pacific Industrial Property Center (APIC) of the Japan Institute for Promoting Invention and Innovation (JIPII), an alumni meeting was held in India on December 21, 2012. The purpose, as the name suggests, was to bring together IP friends in India to share their views on the training they had received during various IP training programs in Japan. In particular, the participants were required to share their reflections on the utilization of the knowledge gained during the training courses and to provide feedback on how such training programs could be further improved.

The meeting was held at the Indian Society of International Law (ISIL), New Delhi and the participants included IP professionals from various industries and law firms. Also participating were Ms. Sunita Rani and Mr. Piyush Garg, examiners, and Mr. S.S. Singh, Assistant Controller of the New Delhi Patent Office. From Japan, the meeting was attended by Mr. Isao Honzawa, Deputy Director of the International Affairs Division, Japan Patent Office (JPO), Mr. Takao Ogiya, Director General of (APIC, JIPII), Ms. Yumi Ohno, Deputy Manager of International Training Team (APIC, JIPII) (MC) and Ms. Ayako Sakuma, International Training Team (APIC, JIPII). The great initiative and efforts taken by Ms. Ohno and Ms. Sakuma in organizing this meeting and the follow-up seminar requires a special mention. The credit of proper execution of the meeting and the seminar goes to their tireless preparations and hard-work.

The meeting began with warm greetings from Mr. Isao Honzawa of the Japanese Patent Office, who welcomed all participants and apprised them of the program and schedule of the meeting. In the first leg of the meeting, professional experiences of each participant were sought with a focus on the usefulness of the training which he or she received. One of the participants was a general IP counsel of an Indian company. He enlightened other participants as to how he benefitted tremendously from the training he received in Japan. His primary work involved identification of intellectual property, especially potential patentable inventions. He was delighted to narrate that the training received in Japan helped him greatly in identifying useful inventions in his company, as well as in drafting patent applications for their protection.

Another participant, who is a litigating lawyer, informed attendees that in a case he was handling, some of the issues involved Japanese IP laws. Only because of a deeper understanding of Japanese IP laws developed during the training was he able to successfully litigate those issues. There were numerous other experiences shared by the participants and each participant appeared to have gained from the training courses. Most importantly, the partici-

pants were utilizing the training received in Japan to the fullest extent in consonance with the objective of such trainings.

The first session was followed by a sumptuous coffee break. It was an opportunity to introduce everyone to some of the Indian snacks rich in spices and color. The content of spices was, however, drastically reduced to suit everyone's palate. Certainly, if the cooks had been given full liberty, the next session would have begun with teary eyes, runny noses and dozens of water bottles for everyone. Thankfully, this possibility of serving such fiery snacks was averted. From the satiated looks, it was apparent that everyone liked the snacks served during the break.

Initially the participants appeared hesitant to provide their suggestions on improvements to the training courses in Japan. Later however, true to the moniker 'the Argumentative Indian' suggested by the renowned economist Mr. Amartya Sen, the participants turned the second session into a very energetic, vibrant and informative discussion.

One gentleman was very concerned with the process of selection of trainees. He also wanted the names and details of candidates, those who attend the training, to be displayed on APIC's website or some other Forum. Officials from APIC made it clear that selection of candidates is a prerogative of the Patent Office of the candidate's country, and neither APIC nor JPO is involved in the process. However, his suggestion of displaying updated profiles of trainees was taken positively.

Another important concern that was common to all the participants was enhancing the level of training. The participants believed that the training, especially on patents, is of a very basic level which should be increased with a greater focus on litigation and drafting. There was also a concern to increase the number of practical exercises during training. These feedback was appreciated with the hope that these would soon be assimilated in future trainings. The participants also expressed their gratitude to APIC for incorporating earlier suggestions into the training sessions.

The second session was followed by a closing speech from Mr. Ogiya and Mr. Isao Honzawa of the Japan Patent Office. Towards the end, the great moments were captured in a group photo before dispersing for the seminar the next day.

(JPO/IPR Training Course for Patent Experts, Aug.-Sep. 2011)

MY FIRST ALUMNI MEETING

Mr. Gunawan Bagaskoro
IP & PVP Consultant,
IPLOID (Indonesia)


Mr. Gunawan Bagaskoro

On February 7th, I received an email from APIC-JIPII notifying me that there would be an alumni meeting in Jakarta, Indonesia. She also sent me a questionnaire to be filled out (luckily it was not that long!).

The meeting was held on February 28th in Jakarta. My office is located outside Jakarta, and although I had originally planned to come early to the meeting, something urgent unfortunately came up and I had to go to my office first. If any of you are familiar with traffic in Jakarta, you should know that it is not easy to move through traffic. In order to make sure that you arrive somewhere on time, in fact, it is sometimes better to leave your car and change modes of transportation along the way! This is exactly what I did, and I managed to arrive in about one hour (which was not bad considering the time of day), although I was around 15-20 minutes late.

The meeting had already started when I arrived, with everyone recalling their memories of the training and how useful it was for them. I must say that I had expected more people to come to the meeting, but only a few came. Fortunately, the few attendees that did come made the meeting lively.

Most of the participants have significant experience in dealing with IP, and I myself was also able to learn about another facet of IP from the Japanese point of view. In principle, IP is the same everywhere. With regard to the details, however, differences do exist between countries. From these exchanges, we are able to learn about the differences between countries in terms of IP practices. These training programs become melting pots, in other words, for different IP practitioners around the world, with each returning home bearing knowledge not just about Japan, but also about other countries..

During the second session, participants made suggestions to the committee ranging from shortening the training course to announcements regarding the training. I believe that the suggestions were made based upon everyone's experiences, and that they are for the good of the training programs.

I enjoyed the alumni meeting last February, and generally speaking, I am glad that I went. However, I must admit that the schedule was very tight, and there was no time for free sessions where people could get to know each other by mingling or discussing things together. I did not know how it was arranged, but it would have been nice if there were such a session included that would allow people to network and make new acquintances.

I wish to every alumni a succesful journey, and to every member of the committee of APIC-JIPII, a high spirit for arranging trainings and taking care of the trainees. I hope that I can

see you again at the next meeting!

(JPO/IPR Training Course for IP Protection Lawyers, Sep.-Oct. 2011)

Messages from Internship Mentors (TMI Associates and SATO & ASSOCIATES)

Internship Training of Ms. Tatiana Carestiato da silva, an Examiner of the Brazil Patent Office

TMI Associates

1. Introduction

At the request of the Japan Institute for Promoting Invention and Innovation, on this occasion, we welcomed Ms. Tatiana Carestiato da silva, an Examiner of the Brazil Patent Office, to our office as a part of "Manpower Development regarding Industrial Property Rights" so as to provide her with internship training programs about the practice of the Japan Patent Law. This was the first time for us to conduct internship training for the examiner of a foreign patent office, and we were thus concerned about how the internship training programs should be proceeded with and were also anxious about whether we would be able to enhance her study experiences.

We were able to find out about Tatiana-san's requests in advance thanks to the Japan Institute for Promoting Invention and Innovation, and so carried out preparations for the internship training programs in order to meet her requests as much as we could.

2. Preparations

An advance interview with Tatiana-san revealed that she was in charge of examinations in the fields of chemistry and medicine at the Brazil Patent Office and also surprisingly found that, since the Brazil Patent Office was in arrears with a large number of unexamined patent applications, speedily and accurately handling such patent applications is an urgent issue. It was also revealed that one of her purposes for the internship training in Japan was to create a new program for new examiners in order to conduct efficient examinations.

In light of the above, hoping that she could gain hints about the promotion of examinations through a review of Japanese examination practice, we made a plan for her to mainly conduct reviews of patent applications for which patent rights have already been registered.

Meanwhile, considering that the number of patent applications from Japanese companies to Brazil has been increasing as a result of Brazil's recent economic development, we asked Tatiana-san to deliver a lecture on the Brazil Patent Law and she readily accepted this offer.

3. Business Studies at Our Office

Tatiana-san attended at our offices to conduct internship training three or four times a week during the period from January 8 (Tue) to February 14 (Thu), 2013.

Her task was to review the examination history of registered Japanese patent applications, mainly focusing on the reasons for rejection and the responses thereto, so as to study Japanese examination practice. More specifically, her task was to study the reasons for rejection as to the requirements on unity-of-invention, description, novelty and inventive step and the responses thereto in Japanese patent practice.

Tatiana-san's impression after such studies was that, taking into consideration the discussions regarding each of the patent applications concerned, the examination practice of Japan differs little from that of Brazil. We felt that the large number of unexamined patent applications existed only because of a shortage of examiners at the Brazil Patent Office.

Comparing the Japan Patent Law with the Brazil Patent Law, it should be noted that making of voluntary amendments to claims after a request for examination is prohibited in Brazil; meanwhile, it is only possible to make voluntary amendments to claims before the issuance of a Notice of Reasons for Rejection as long as the voluntary amendments do not correspond to an addition of new matter. This is a difference in terms of practice. Regarding this respect, Tatiana-san was concerned about the possibility that relevant Japanese examinations would come to naught.

4. Seminar on the Brazil Patent Law

We asked Tatiana-san to conduct a seminar on the Brazil Patent Law since the number of Brazilian patent applications we are handling has been increasing every year.

The seminar presented by Tatiana-san included explanations on culture concerning the cultural similarities/differences between Brazil and Japan and on intellectual property rights in general as well as a brief explanation of the Brazil Trade Mark and Patent Laws. The seminar also included, at the end, a detailed explanation of the patent examination procedure in Brazil. The seminar was very useful.

We were very surprised to hear from Tatiana-san that, in Brazil, the first official notice for a patent application was issued for the filing thereof and that, therefore, the examination may take nearly 10 years to conclude, depending on the case. Through her lecture, we keenly felt not only the need to increase the number of examiners but also the need to create an examiner development program to attain an examination procedure with a certain level of quality in the situation where delayed examinations are needed to be addressed speedily.

5. Conclusion

Tatiana-san is very cheerful and positive, so we were able to communicate smoothly with her in our office. At the beginning, we were anxious about the implementation of the internship training; however, we now hope that the internship training here will be of help in speeding up the patent application examinations in Brazil.

Having heard from Tatiana-san on the last day that she would like to come back to Japan if she has another opportunity, we believe that she was satisfied with the internship training in our office.

Internship for Ms. Zhang Wei, an examiner from Chinese Patent Office

SATO & ASSOCIATES

Our firm had welcomed a trainee, Ms. Zhang Wei, a Deputy Director of Optics and Electronics Technology Invention Examination Department of State Intellectual Property Office of the People's Republic of China (SIPO), through the International Training Team of Asia-Pacific Industrial Property Center of Japan Institute for Promoting Invention and Innovation.

The internship had been scheduled from January 7 to February 15, 2013, a total of six weeks.

The six weeks had been segmented to six phases, and one theme was selected for each phase.

First phase: Patent attorney system in Japan and workflow of attorney firm.

Second phase: Workflow from filing application to patent grant in Japan and exercising drafting of claims

Third phase: Workflow on invalidation trial and litigation in Japan

Fourth phase: Patent search system and search tools in Japan

Fifth phase: Difference between Japanese patent law and Chinese patent law, and difference in patent examination practices and inventive step standard of Japan and China.

Sixth phase: How attorney firm put forward some advice for patent management or strategy in company.

In each phase, our office staff gave lecture on each theme, introducing topics including patent application work management in attorney firms, business related to intellectual properties in Japan, and trends of companies with respect to utilizing intellectual properties in Japan.

Further, a time for discussing on the theme with the lecturer has been set after giving time for the trainee to think back over the content of each lecture, so as to avoid giving lectures unilaterally.

By doing so, the trainee was able to question the lecturer on the matters of concern, as well as to promote a better understanding on the theme. The lecturers were able to obtain feedback from the trainee, as well as to supplement the points that were not fully understood by the trainee. Further, there were times when the trainee had given appropriate advice on the matter.

Specifically, a topic on the attorney firm's challenge of expanding the scope of the business, taking our firm's example of supporting venture companies and local companies, and commercializing business seeds created by universities, was given in a lecture. The trainee, becoming intrigued by this new approach, gave the lecturer examples of the current status of big attorney firms in China, and debated with the lecturer on the future visions and the style of the attorney firms in Japan, China and other countries. As is explained above, the trainee was able to confirm the necessity and importance of the private associations including attorney firms to appropriately propose the patent management and strategy on companies.

Further, the lecturer and the trainee discussed on the difference between the patent examination standards in Japan and China, and between the patent search systems in both countries.

The patent system in China is, especially with respect to patent application practice, overall similar to that in Japan. However, when debating on this topic by actually comparing the two, the differences become apparent. We believe that understanding of such differences existing in the system would contribute to improvement of our professional practice as well as the examination practice of the trainee.

Through this internship, our staff and the trainee were able to have fruitful discussion on patent application management strategies and post-grant strategies. We believe that the internship had been meaningful as well as extremely useful for promoting our firm's business in China and improvement in examination efficiency of the trainee.

Messages from Lecturer

Some Thoughts on Training Programs from the Lecturer's Perspective

Mr. Toshiaki Aoki
Patent Attoney, Madoka International Patent Office


Mr. Toshiaki Aoki

I, as a patent attorney and a former patent examiner of the Japan Patent Office, occasionally have the opportunity to present lectures on patent examination standards in Japan to trainees from abroad in training programs held by APIC. On such occasions, I often emphasize the great benefits of understanding Japan's patent examination standards.

In general, it is said that patent examination standards do not differ so widely in essence, while cultures and legal systems vary greatly from country to country. It is also said that recent advances of economic globalization and increasing momentum toward harmonization of intellectual property systems have been close to bridging the gap.

However, patent attorneys, lawyers specialized in patent and patent examiners, namely, patent practitioners no doubt honestly feel that that there are still large differences between countries in the practical aspects of the patent system, including patent examination standards. Trainees in past APIC training programs might have thought the same when they realized Japan's examination standards are substantially different from those in their own country. This is quite in the natural order of things because patent examination standards intrinsically cover all matters of criteria for judging details associated therewith.

The fact that there are large differences between Japan's examination standards and those in the trainees' own countries may well raise the question: "Is there much point in trainees studying Japan's patent examination standards?" I firmly believe that studying Japanese examination standards is beneficial to trainees in the following respects.

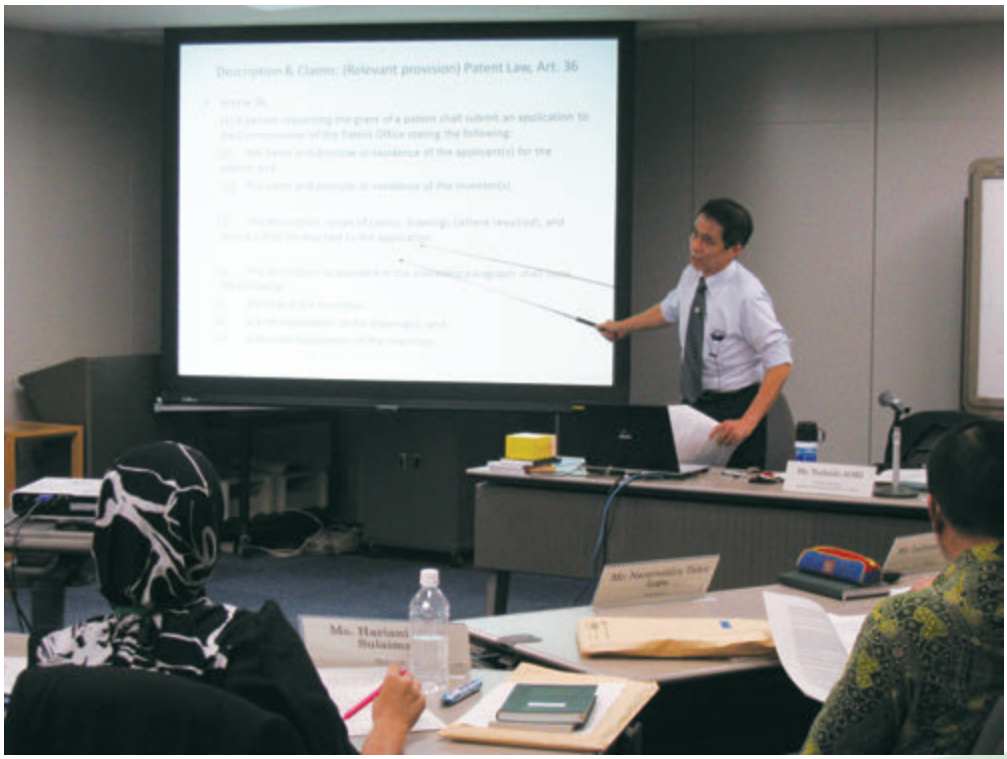
First and the foremost, it will eventually lead to better understanding of patent examination standards in trainees' own countries. As is the case with all things in the world, comparing and contrasting your country's examination standards with those of another country can serve to deepen understanding. An understanding of Japan's examination standards will provide you with more specific understanding of the differences with the standards in their own country. Deep consideration of such differences, in turn, will deepen the understanding of the trainee's own examination standards, and hence, of the patent system in their country.

Secondly, more practical effects can be expected from studying Japan's examination standards. Assume you, as a trainee, are an examiner at the patent office in your country in charge of examining a patent application filed in by a Japanese applicant and that you are to notify the applicant of the reason for refusal. If you have an understanding of Japan's examination standards, you will be able to write a notification of the reasons for refusal more appropriately in anticipation of the applicant's reaction, as the applicant is at home with Japan's examination standards. This will contribute to appropriate and smoother communications with the applicant, and hence, to improved efficiency of the examination.

Or again, assume that you, as a trainee, are a patent attorneys or lawyer and that you have been commissioned by a Japanese client to file a patent application. If you have an under-

standing of Japan's examination standards, you will be able to communicate with the client in an appropriate manner, as the client is at home with Japan's examination standards. This will allow you to win the client's trust and to receive further work from the client. Needless to say, you can certainly win trust from clients based in your country who plan to have a patent application filed with the Japan Patent Office.

In this way, studying Japan's examination standards can offer you great benefits. Every trainee is strongly encouraged to gain a good understanding of Japan's examination standards at training programs held by APIC and make the most use of such knowledge for his/her business in his/her country.



Articles from the former trainees

Compulsory License and Patent Exclusivity

Ms. Shrutibahen Krushnakant Shah
IP Lawyer, Nanavati Associates
(India)

Ms. Shrutibahen Krushnakant Shah

My training at the Asia Pacific Industrial Property Centre (APIC) for the course "JPO/IPR Training Course For IP Practicing Lawyers", held during September 24 to October 12, 2012, was a wonderful and most memorable experience that I will cherish for my entire lifetime.

During my training at APIC, I got to learn about the IP regime in Japan. In addition, the interactions that we had during our lectures allowed me to learn about the IP provisions of various other countries. I noticed very similar Intellectual Property (IP) regimes existing in all participating countries of the WTO and the TRIPS agreement. At the same time, however, I found that there was a vast difference in terms of the interpretation and implementation of the TRIPS guidelines. The exchange of information among different IP regimes regarding various case laws and legal frameworks provided an opportunity to know about experiences and difficulties faced by various countries, as well as to learn from them.

After the training, I came to the realization that there should be one platform through which all participants would be able to share information regarding the legal system and case laws in their respective countries, as well as developments at the global level. My search ended, however, when I learned about the ENISHI Editions. I immediately decided to write about certain legal developments in India, which I believe that others will also find to be interesting and informative.

I noticed that all of my fellow participants seemed to be interested in the case law on India's first grant of compulsory licensing to Natco Pharma for Bayer Corporation's patented drug. Considering the interest of all participants, then, I decided to write on this issue. A "compulsory license" is a non-voluntary and non-exclusive license to use patents against the will of the patent owner. Such license is granted by the government, and even the terms of license—including the royalties to be paid to the patent owner—are decided by the government rather than by the patent owner.

The WTO TRIPS Agreement provides for compulsory licenses, as does the Doha Declaration on TRIPS and Public Health. As per the WTO-TRIPS Agreement, member countries are required to include a provision of compulsory licensing in their Patent Act in order to protect the larger public interest against the unfair monopoly of patents.

While provisions for compulsory licensing exist in most of the TRIPS member countries, the procedure and reasons for granting compulsory licenses differ by individual nation. The broad and common criteria for granting a compulsory license may be described, however, as follows: (1) Non working of patent, (2) Public Welfare, and—in some countries—(3) Exploitation of an improvement invention.

In the USA, 28 U.S.C. 1498 enables the U.S. government to use a patent without license. I have learnt that the U.S. and Japan have an agreement not to issue a compulsory license with regard to improved inventions, except for the correction of unfair competition, or for approval

of public or non-commercial utilization.

Compulsory licenses are not limited to pharmaceutical patents only, however. In the USA, for example, Microsoft was granted a compulsory license in June 2006 to use two patents owned by Z4 Technologies that relate to Digital Rights Management systems used by Microsoft for its Windows and MS Office software programs. Similarly, there is another very famous case wherein the U.S. government claimed its right to use the patent of the Blackberry e-mail service.

However, the major impact of the compulsory licensing provisions are in regard to pharmaceutical products and medicines and the pricing thereof—specifically the matter of life-saving drugs, which is now of great concern worldwide. Even a first-world country like the USA is considering such matters with its "Affordable Care Act" (ACA).

I have noticed that the prices of medicines have risen significantly within the past few years, and medical expenses are going out of reach for common people. This is the case in most countries worldwide. The initiatives of the Indian government in this regard are therefore very encouraging, which is why I am interested to share with you all the new developments existing in this regard.

During my training, I believed that India was first among all participant countries to grant such compulsory licensing, but I was wrong. During my research for this article, I came to know about similar developments in many countries. Indonesia, Malaysia and Thailand, for example, have already granted partial compulsory licensing. Most of the licenses granted in such countries were for use of patenting by the government, however, whereas the Indian case of Natco vs. Bayer is different. In this case, compulsory licensing was granted for Natco's application, and the use of patent by Natco is independent. The study of the Indian provisions below will clarify this matter further.

As we all know, the Indian Company Natco Pharmaceuticals was granted India's first ever compulsory license for Bayer Corporation AG's patented drug NEXAVAR (i.e. sorafenib tosylate, a drug for liver cancer). Bayer had tried hard to cancel this license on various grounds, such as (1) another company Cipla was selling a similar drug at a lower price, and (2) Natco Pharmaceuticals was not complying with the terms of licensing, i.e., that it was exporting the drug under the compulsory license outside of India. In response, Natco's defence was that it was not able to control the product once it had been sold.

Following the recent granting of a compulsory license to NATCO, the Indian government formed a panel to make a decision regarding the issue of compulsory licensing for three additional cancer drugs. Based on a proposal of the Health Ministry, the Department of Industrial Policy and Promotion (DIPP) is now in the process of deciding on compulsory licensing for the three following commonly used anti-cancer drugs:

1) Genetech Pharma's patented drug Trastuzumab (also known as Herceptin), which is used for breast cancer

   Genetech Pharma is a subsidiary of Roche Pharmaceutical. Under a writ petition in nature of public interest litigation (PIL), the government was asked to reduce the price or to develop a policy aimed at overseeing the prices of this drug. The non-availability of this drug due to its high prices caused the death of many patients, causing many organizations to raise their voices against the high prices of this drug. This is also one of the reasons that the government has taken this initiative.

2) Ixabepilone (brand: Ixempra), which is used for chemotherapy

3) Dasatinib, which is used for the treatment of leukaemia/ blood cancer

Both 2) and 3) above are owned by Bristol-Myers Squibb. The three drugs listed above are even more expensive than the drug NEXAVAR, for which India's first-ever compulsory licence was granted. A medicine that cost thousands and even lakhs (hundreds of thousands) of rupees per month is much too far from the reach of ordinary people. Through the granting of a compulsory license, domestic companies can be permitted to manufacture the said drugs, making them cost-effective for the benefit of a huge number of cancer patients. There are a few companies that are willing to manufacture the generic version of the above drugs, but it will be interesting to see which company will get the compulsory license. GlaxoSmithKline Plc, who reduced the prices of its drug Tykerb to a great extent, has been excluded from the above list of companies being considered for compulsory license.

It is also interesting to study the differences between the compulsory license granted to NATCO and the present government initiative for the three drugs listed above. The first compulsory license was granted by the Indian Patent Office (IPO), which is governed by the Department of Industrial Policy and Promotion (DIPP), under section 84 of the Indian Patent Act, 1970; whereas the new three compulsory licensees (as per the news) will be granted under section 92 of the Act.

Section 84 states that following the expiration of a three-year patent grant, any interested person may apply to the controller for a granting of a compulsory licence on any of the grounds listed below:

1) Public requirements with regard to the patented invention are not satisfied by the owner; or
2) The patented invention is not made available by the patent owner at a reasonable affordable price; or
3) The patented invention has not worked in the territory of India

On the other hand, Section 92 includes a special provision for compulsory licensing by the central government itself, through issuing a notification to this effect in the case of a national emergency, extreme urgency, or public non-commercial use. By such notification, the central government may invite companies that are willing to manufacture such patented inventions. After examination, a compulsory license can then be granted to the appropriate company.

An increase in the granting of compulsory licenses will serve as a wake-up call to the large multinational corporations, who are not interested to lower their prices and therefore risk their very high profit margins. Such companies must take the provisions of the Indian Patent Act seriously, however, as was rightly done by GlaxoSmithKline Plc, by beginning direct or indirect manufacturing in India, as well as reducing their prices.

The granting of compulsory licenses, however, will not suffice, as other, more complex issues exist when it comes to the high prices of patented drugs. Data exclusivity of patented research for a few years, for example—which America and several other countries, including Vietnam, are now advising—can lead to the raising of prices. If such data exclusivity will be granted, local companies will not be able to manufacture generic drugs based on the research data of patented drugs, and it will not be possible to obtain cheaper generic medicines in the market. The Trans-Pacific Partnerships (TPP) is another alarming factor in this regard, although India is fortunately not a member. Bilateral treaties between nations need to be signed carefully. A good example in this regard is Thailand, where activists prevented the government from signing such a bilateral treaty one year ago, and similarly in the case of the

India-EU Treaty.

I believe the stance of India is a very balanced one. Recently, the National Pharmaceutical Policy 2012 was announced wherein the provisions were provided for drug and medicine price ceilings. Patented drugs (in the case of both product and process patents) have been exempted from such price ceilings for a period of five years from the date of commercial production in the country, however, if they are:

1) developed through indigenous R&D,
2) registered under the Indian Patent Act, 1970, and
3) not produced in any country other than India.

The above developments, in my opinion, are very balanced. On one hand, the government is promoting the growth of research and development, and encourages innovations in various fields through various means such as excluding patented drugs from price ceilings. The government also provides financial support for research and development, makes efforts for awareness and education, etc. As of now, the Indian government grants up to 75% of the total cost of a patent, including research and development expenses, patent application fees, attorney fees, etc. On the other hand, the government is also keeping in mind that the prices of drugs should not become unreasonably high, making it within the reach of common people. For this, the government is also working on granting compulsory licenses, price ceilings, parallel imports, etc. In addition, credit up to a certain extent reaches the non-profit organizations that keep the government awake by filing various public interest litigation.

After India, even China has amended its provisions by making it easier to grant compulsory licenses. Although provisions of compulsory licensing in Chinese law now exist, however,, there is not a single case to date where a compulsory license has been granted.

Another belief is also that when an innovator invests a great amount of money in research and development, it should be granted exclusivity and rights to economically exploit its innovation. Compulsory licenses do stand against the principle of the monopoly rights of patents, and it does need to be keenly understood that innovations should be encouraged by granting exclusivity. Such encouragement, however, cannot come at the cost of public interest. Moreover, companies cannot be permitted to take unreasonable profit margin in the name of exclusivity.

I hope you all will all agree.

Edit: (As of March 5)

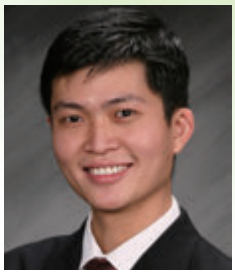
In connection to the same, I came to know that the appeal filed by Bayer has been refused. Though the judgement is still not available on the Appellate Board's website, the said news has been published in one leading news paper. Pls see below link:

http://www.thehindu.com/business/companies/natco-pharma-wins-cancer-drug-case/article4475762.ece

(JPO/IPR Training Course for IP Protection Lawyers, Sep. - Oct. 2012)

Malaysia Commits to Fuller Copyright Protection

Mr. Lim Eng Leong
In-house legal cousel,
Henry Goh & Co. Sdn. Bhd.(Malaysia)


Mr. Lim Eng Leong

To a certain extent, there is an impression that copyright law in Malaysia has always lived in the shadows of the other more prominent areas of intellectual property (IP), such as patents, trade marks and design laws that have received more attention and substantial legal reforms throughout the years. In order to understand this background better, we need to examine some history. Modern copyright law has gone through less historical evolution presumably because of the lack of such rules in ancient local customary laws. For example, literary works like folklores and poetry in our country were traditionally handed down from one generation to the next from memory and by oral presentation. Authorship of such works is often never acknowledged or even completely unknown.

It was not until the early 1900s that the first piece of copyright-related local legislation i.e. Telegram Copyright Ordinance was enacted to provide newspaper proprietors with some protection against unfair competition by rival newspapers. However, copyright laws remained inadequate and piecemeal in implementation until after Malaysia gained independence in 1957. Law reforms in this area of IP only became more tangible with the coming into force of the Copyright Act 1969 that applied to the entire country. Under this Act, the duration of copyright for literary, artistic and musical works was short, i.e. lifetime of the author and only an additional 25 years thereafter. Protection was also limited to works made by Malaysian citizens or residents, whereas foreign works must be first published in Malaysia or published here within 30 days of its first publication elsewhere.

The current and subsisting legislation governing this particular IP area in Malaysia is the Copyright Act 1987. Ever since Malaysia acceded to the Berne Convention in 1990, periodic amendments have been made to the Act as part of the country's obligations to international treaties including the TRIPS Agreement. All this are in tandem to make better the provisions and to reflect developments in different types of works and technology, and also to strengthen the enforcement of copyright. The latest batch of substantial amendments was implemented in March 2012 vide the Copyright (Amendments) Act 2012.

As practiced by other convention countries, copyright is conferred automatically in Malaysia upon a work that has originality, sufficient effort expended by a qualified person and reduced into material form. Article 5(2) of the Berne Convention for the Protection of Literary and Artistic Works provides:

> *The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.*

The lack of formalities for copyright protection can be perceived as a form of administra-

tive convenience but may lead to a sense of uncertainty among copyright owners who prefer a piece of document certifying their IP rights. Many countries allow for voluntary registration of copyright including Canada, China, India, Japan and the USA (where registration is mandatory in order for American copyright owners to bring a suit for copyright infringement). In Malaysia, copyright stakeholders have for years been calling for a more tangible form of protection similar to their peers in trade mark and patent. The new Copyright (Voluntary Notification) Regulations 2012 and Section 26A of the Act can be seen as a fulfillment of such a request.

Copyright owners can now voluntarily notify the Copyright Controller of their claims and deposit a copy of an eligible work with the Intellectual Property Corporation of Malaysia (MyIPO) for recording. The types of work acceptable by notification are various forms of literary, musical and artistic works, including films, sound recordings, broadcasts and derivative works recognized by the main statute – Copyright Act 1987.

The rightful applicant under the Regulations is the author, owner, assignee or licensee of the copyrighted work; but a representative may make such notification on behalf of these persons, especially if the applicant is not a citizen or permanent resident of Malaysia.

A notification shall contain particulars such as details of the copyright owner, details of the author(s), a Statutory Declaration to assert the applicant's *locus standi*, a copy of the work, date and place of first publication, and accompanied by the prescribed fee. The work must be titled and if it is in a language other than our national language (Bahasa Malaysia) or English, the name of that language and its translation must be provided. As the Controller does not take it upon himself to verify the claims made therein, accuracy of the information entered into the Register is dependent on the information provided by the applicant.

One requirement is that the copy of work submitted must be *"clear and of durable quality to the satisfaction of the Controller"*. This vague standard is open to interpretation although there is assurance that the Controller will not be quick to object. Either hard or electronic copies are permitted for submission, depending on the nature of the work in question. Official fees that are payable also depend on how voluminous the work deposited is. If a replacement is required by the Controller, it must be provided within 30 days of the request or otherwise the notification is deemed as withdrawn.

If the notification is in order and upon its successful entry into a register, the Controller shall inform the Applicant in writing. The Applicant may go one step further and request for a proper certificate to this effect by filing a form and paying the prescribed fee.

Although strictly-speaking it is not a registration system, the Copyright (Amendment) Act 2012 nonetheless provides that the Controller shall keep and maintain a Register of Copyright. Moreover, despite its voluntary nature, the notification does have a profound effect on admissibility of evidence. This is because the original presumption of ownership under the Act is maintained because any extracts (certified to be true) from the Register shall be *prima facie* evidence of the particulars therein and shall be admissible in all Malaysian courts.

Should the work in question require modification, an amendment to the notification of copyright can be requested. Similarly, correction of any clerical error is also allowed under the Regulations. In fact, the High Court can order for a correction, expungement or amendment of the Register and the Controller must be served with such a court order. There is also a duty to notify the Controller of any change of address, assignment, license or testamentary disposition to the copyrighted work.

Since there is no substantive examination of the work (for example whether it is original, was sufficient effort expended, etc.) deposited, the process of having the notification recorded

should be quick and painless. Although the notification system is relatively new and entirely voluntary, we can already see publishing houses and recording companies flocking to notify MyIPO of their back catalogues of work. To date, at least 500 notifications have been submitted. Given the low official fees payable and the general ease of the procedures, copyright owners can only have to gain from this new and welcomed system.

Apart from the implementation of the voluntary notification system, on 27 September 2012 Malaysia deposited at World Intellectual Property Organization (WIPO) its instrument of accession to the WIPO Copyright Treaty (WCT) and WIPO Performances & Phonograms Treaty (WPPT). Both treaties came into force locally on 27 December 2012. This is also a fulfillment of the amendments made to the Copyright Act of that same year.

Under the WCT, two subject matters are specifically provided for. i.e. the protection by copyright for computer programs (whatever may be the mode or form of their expression), and compilations of data that constitute intellectual creations. The Treaty also extends the exclusive rights of authors to distribution, rental and communication of the works to the public; subject to certain limitations. Finally, the Treaty obliges contracting parties like Malaysia, to provide legal remedies against the circumvention of technological measures used by authors to prevent the removal or altering of information. This is now part of the new Sections 36A and 36B of our Act.

The general provisions of WPPT are similar to the WCT, but the beneficiaries of rights under this Treaty are performers (actors, singers, musicians, etc.) and producers of phonograms.

The robust developments in Malaysia's copyright laws in the past 12 months can be positively seen as part of the country's continuous commitment to harmonize its copyright laws with international practices. With the relevant laws firmly in place, time will test how effective such measures are for copyright stakeholders.

(JPO/IPR Training Course for IP Protection Lawyers, Sep. - Oct. 2012)

Move from a 'Self-Assessment' to a 'Positive Grant' Patent System in Singapore

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Dr. Liu Yu

The Singapore Patents Act came into operation on 23 February 1995, and was initially based on the UK Patents Act 1977. Since then it has undergone several amendments, including the Patents (Amendment) Act 2012, which is poised to fundamentally change Singapore's patent practice. These changes, which are likely to come into effect within the next 12 months, are aimed at strengthening Singapore's intellectual property (IP) regime, expanding its IP capabilities, and helping develop Singapore to become an Asian IP hub.

One of the most significant aspects of the Patents (Amendment) Act 2012—which I will focus upon in this article—is a move from a 'self-assessment' patent regime to that of a 'positive grant' patent system.

Current Patent System in Singapore

Singapore currently has a so-called 'self-assessment' patent system. This is illustrated in Figure 1, which illustrates a flow chart of the different processes for prosecuting a patent application in Singapore. As can be seen, there are essentially three approaches: the "all-local" approach, the "combination" approach, and the "all-foreign" approach.

Under the all-local approach, the applicant may request a search. Once a search report is established, s/he may request an examination based on that search report. Alternatively, the applicant may request a combined search and examination.

Under the all-foreign approach, the Singapore patent application does not undergo substantive search and examination prior to patent granting. Illustratively, the applicant may furnish the final search and examination results of a *corresponding application*[1] in order to proceed to obtain a Singapore patent.

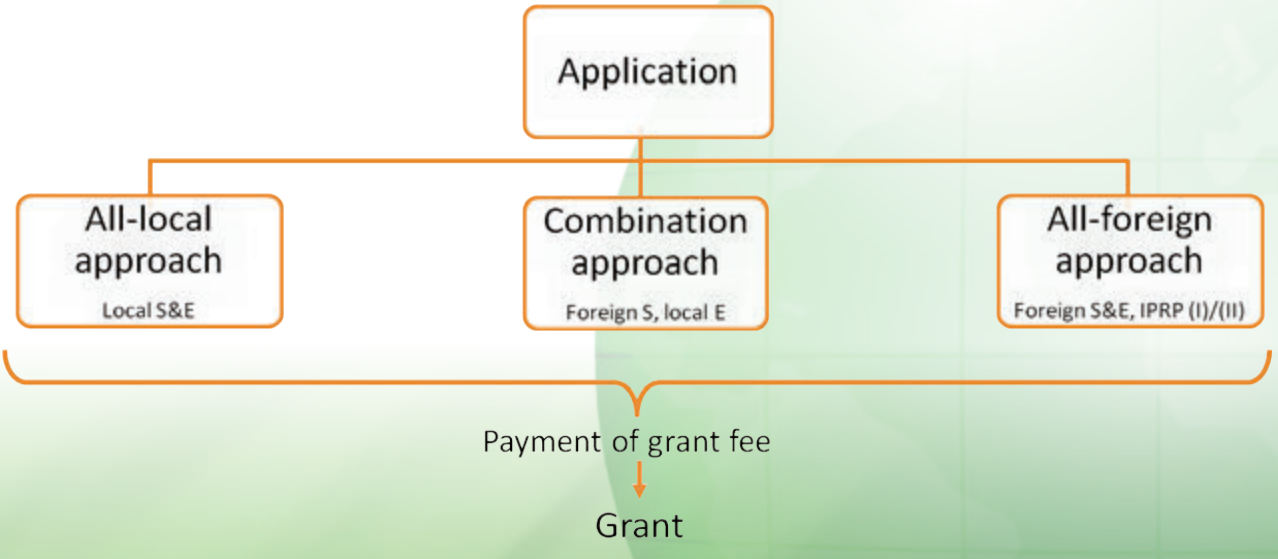

Figure 1: Possible search and examination approaches for patent applications in Singapore at present

Under the combination approach, the Singapore patent application does not undergo a substantive search. For example, the applicant may file a search report from a corresponding application, and request an examination based on that search report.

Under the current Singapore procedures, the establishment of a negative examination report does not prevent an application from proceeding to the stage of being granted. That is, even if the examination report is negative or partially negative, the application may still reach the stage of being granted[2]. It is up to the applicant to decide whether they wish to have a patent granted despite a negative examination report. Hence, the current system is referred to as a 'self-assessment' system. That said, it should be noted that upon receipt of a negative or partially negative examination report, the applicant may do the following:

a) file voluntary amendments of the specification to overcome the objections in the examination report before granting; or

b) file amendments of the specification after granting.

Of course, a patent with a negative report would prima facie be vulnerable to revocation by a third party, and applicants will generally seek a clear report where they have a commercial interest in the invention.

The New Singapore Patent System

The Patents (Amendment) Act 2012 was passed in the Singapore Parliament on 10 July 2012, and sets out amendments to change the Singapore Patent system from one of 'self-assessment' to one of 'positive granting'. The following parts focus on the more significant changes made by the Patents (Amendment) Act 2012.

Figure 2 illustrates a flow chart of the possible search and examination approaches for a Singapore patent application under the 'positive grant' patent system.

There are three key changes made under the 'positive grant' system compared with the current system. Firstly, a patent will only be granted if the examination results are positive. Secondly, a new supplementary examination process is introduced for patent applications that take the all-foreign approach only when the examination results of the corresponding application are positive. Thirdly, a new review process will be available where an examiner establishes a negative examination report, search and examination report or supplementary examination report. This review process will provide applicants with an opportunity to amend the application to overcome outstanding issues and/or dispute the report.

Supplementary examinations do not involve a substantive search and examination, but instead consist of a 4-step examination process that considers:

(i) The basis of the report (that is, the specification under consideration, incorporating any amendments);

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1 In the current Patents Act, a corresponding application with respect to an application in suit must have a priority relationship with the application in suit. That is, the application in suit may claim priority from the corresponding application, or vice versa. Alternatively, the application in suit and the corresponding application may both claim priority from another application. The corresponding application may be one that has been filed with any of the following patent offices: Australia, Canada*, Japan, New Zealand, Republic of Korea, the United Kingdom, the United States of America, and the European Patent Office.*

* = applications filed in English

2 However, in Singapore, unity objection must be resolved before proceeding to the stage of granting.

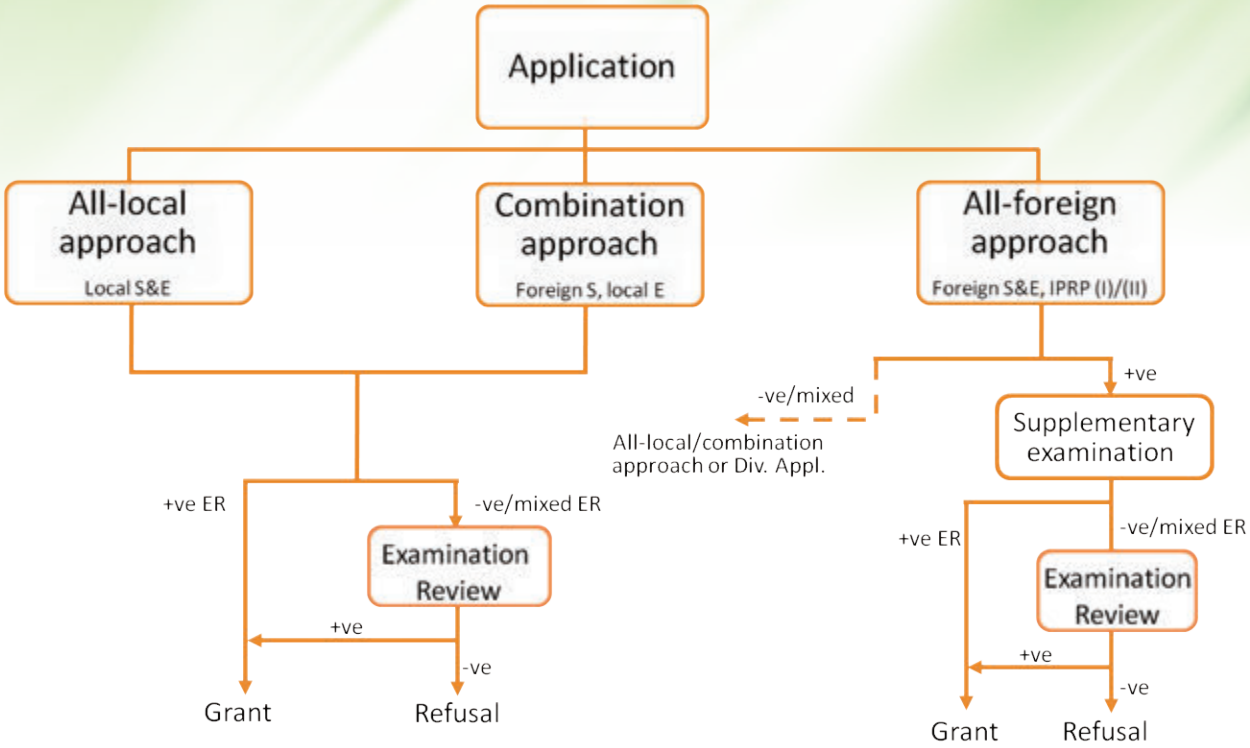

Figure 2: Possible search and examination approaches for a patent application in Singapore in the future

(ii) If amendments have been made, whether they are allowable. Under the Singapore Patents Act, an amendment is not allowable if it results in the application incorporating matter that was not disclosed in the application as filed;

(iii) Whether all claims are *related* to the claims of the corresponding application. A claim is related to another claim if (a) the two claims are identical; or (b) if each limitation in the second claim is identical to a limitation in the first claim, or differs from a limitation in the first claim only in expression but not in content.

(iv) Whether the claims are contrary to morality, define methods of medical treatment (which are not allowable in Singapore) or there is any double-patenting issue.

If the examination results of the corresponding application are negative, the applicant will not be able to rely on a supplementary examination, and will instead need to request an all-local search and examination, or to take the combination approach, which relies on an overseas search report and local examination.

Under the all-local, the combination, and the all-foreign approaches of both the existing and amended Patent Acts, the applicant is given at least one opportunity[3] to address any issues raised by the examiner. The first action by the examiner will generally be a written opinion describing the issues. The applicant may then make amendments or provide arguments in response. If the applicant overcomes the examiner's objections, a positive examination report is established and the case may proceed to the stage of granting. If the examiner's concerns are not overcome, the examiner may establish a negative examination report.

Under the new system, the applicant may request a review of a negative examination report. A review examiner will consider the negative examination report and then establish an examination review report. If the examination review report is positive, the application may proceed to the stage of granting. Otherwise, the patent application will be refused.

3 However, it should be noted that there will be only one opportunity in the case of supplementary examinations.

Under the changes to the Singapore Patents Act, only patent applications that fully meet the patentability criteria willbe granted. Thus, the 'positive grant' patent system will raise the overall quality of patents granted in Singapore, and align the Singapore patent system more closely with that of other major patent offices. It will also strengthen business and investor confidence in Singapore's patent regime.

Currently, all local search and examination work has been outsourced to other patent offices[4]. Aside from the major changes in the PatentsAct to raise the standard of patents in Singapore, it is also noteworthy that IPOS has recently established in-house patent search and examination (S&E) capabilities with the aim of providing world-class S&E services. The S&E team is expected to become operational by mid-2013.

(WIPO/JF Training Course for Patent Examiners in field of Computer Programs, February 2013)

4 Currently, these patent offices are the Austrian Patent Office, the Danish Patent and Trademark Office, and the Hungarian Intellectual Property Office.

Data Privacy Act of 2012

Mr. Anthony B. Peralta
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Mr. Anthony B. Peralta

On August 15, 2012, President Benigno C. Aquino III signed into law the Data Privacy Act of 2012.[1] The new law provides for the creation of a National Privacy Commission, which will monitor and ensure the compliance of the country with international data protection standards. Some of the functions of the Commission include receiving complaints, conducting investigations, facilitating or enabling settlement of complaints through the use of alternative dispute resolution processes, adjudicating, awarding indemnity on matters affecting personal information, preparing reports on disposition of complaints and resolution of any investigation it initiates, and, in cases it deems appropriate, publicizing any such report.[2]

The new law establishes a data protection regime that borrows from the APEC Information Privacy Framework[3] and the 1995 EU Data Protection Directive.[4]

[A] Protected Information

The Data Privacy Act protects only information pertaining to individuals. A "data subject" is defined as an individual whose information is processed.[5]

[1] Personal Information

The Data Privacy Act protects "personal information" which is defined broadly as "any information whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual."[6]

Other categories of information are also within the scope of the proposed Data Privacy Act. These include "sensitive personal information" and "privileged information."

[2] Sensitive Information

The definition of "sensitive information" is much broader than in other data protection laws. Under the Data Privacy Act, "sensitive personal information" includes personal information that is likely to give rise to unlawful or arbitrary discrimination, such as information about an individual's race, ethnic origin, marital status, age, color, and religious, philosophical, or political affiliations, and information as to the health, education, genetic, or sexual life of a person.[7]

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1 Senate Bill 2965 may be found at http://www.gov.ph/2012/08/15/republic-act-no-10173/.
2 *Aquino Signs Data Privacy Act*, Philippine Star, 23 August 2012.
3 For information about the APEC Privacy Framework, see Chapter 10, "The Asia Pacific Region."
4 Available at the website of the European Parliament and Council: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML.
5 R.A. No. 10173, Section 3 (c).
6 R.A. No. 10173, Section 3 (g).

"Sensitive personal information" also includes information on any proceedings for any offense committed or alleged to have been committed, by such person, the disposal of such proceedings or the sentence of any court in such proceedings.[8] It includes, in addition, information that is issued by government agencies such as social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns, or other personal information specifically established by an executive order or an act of Congress to be kept classified.[9]

[3] Privileged Information

"Privileged information" refers to all forms of data that constitute "privileged communications" under the Philippine Rules of Court or other pertinent law.[10] This could include, for example, communications exchanged in confidence between husband and wife, parent and child, attorney and client, or physician and patient.

[4] Personal Information out of the Scope of the Data Privacy Act

The Data Privacy Act carves out of the scope of its application numerous categories of personal information, including:[11]

- The fact that the individual is or was an officer or employee of a government institution;
- The title, business address, and office telephone number of the individual;
- The classification, salary range, and responsibilities of the position held by the individual;
- The name of the individual on a document prepared by the individual in the course of employment with the government;
- Information about an individual who is or was performing services under contract with a government institution that relates to the services performed, including the terms of the contract, and the name of the individual given in the course of the performance of those services;
- Information relating to any discretionary benefit of a financial nature such as the granting of a license or permit given by the government to an individual, including the name of the individual and the exact nature of the benefit;
- Personal information processed for journalistic, artistic, literary, or research purposes;
- Information necessary to carry out the functions of public authority, which include the processing of personal data for the performance by the independent, central monetary authority and by law enforcement and regulatory agencies in the performance of their constitutionally and statutorily mandated functions;
- Information necessary for banks and other financial institutions under the jurisdiction of the independent central monetary authority or *Bangko Sentral ng Pilipinas* to comply with Republic Act No. 9510, as amended, otherwise known as the Anti-Money Laundering Act and other applicable laws; and
- Personal information that was originally collected from residents of foreign jurisdictions in accordance with the laws of those foreign jurisdictions, including any applicable data privacy laws and that is being processed in the Philippines.

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7 R.A. No. 10173, Section 3 (l) [1] and [2].
8 R.A. No. 10173, Section 3 (l) [2].
9 R.A. No. 10173, Section 3 (l) [3] and [4].
10 R.A. No. 10173, Section 3 (k).
11 R.A. No. 10173, Section 4.

[B] Covered Activities

The activities within the scope of the Data Privacy Act are those that fit under the definition of "processing." Individuals or legal persons may perform this processing. Numerous activities are carved out.

[1] Processing

The term "processing" refers to a broad range of activities, including "any operation or any set of operations performed upon personal information, including, but not limited to, the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure, or destruction of data."[12]

[2] Geographic Scope

The Data Privacy Act applies to the processing of all types of personal information and to any natural or juridical person involved in personal information processing including those personal information controllers and processors who, although not found or established in the Philippines, use equipment that is located in the Philippines, or those who maintain an office, branch, or agency in the Philippines subject to the immediately succeeding paragraph, provided that they comply with the requirements of Section 5.[13]

[3] Extraterritorial Application

Section 6 of the Data Privacy Act would extend the application of the Act to a broad range of activities that may be conducted within the country or abroad when they affect a Philippines citizen. Compared with other data protection laws of the world, this provision is unusual. This provision will certainly be a cause for concern to many organizations that are established abroad.

Specifically, the Data Privacy Act applies to any act or practice that is done or engaged in and outside the Philippines and that relates to personal information about a Philippines citizen or a resident if the entity that is responsible for this act or practice has a link with the Philippines. For example, the link may be in the form of a contract entered in the Philippines. The link may result from a corporate relationship, where the foreign entity that has access to the personal information has a branch, agency, office, or subsidiary in the Philippines. It may also result from a commercial relationship. For example, an entity that has access to the personal information carries on business in the Philippines. R.A. No. 10173, Section 6 (b) and (c).[14]

Sen. Edgardo Angara and House of Representatives ICT Committee Chairman Sigfrido Tiñga co-chair the Congressional Commission on Science and Technology and Engineering were the primary proponents of the Data Privacy Act in Congress.

Sen. Edgardo Angara stated that the new law is "an important first step to ensuring competitiveness of the IT-BPO industry. Because the IT-BPO industry and best practice is evolving rapidly, enhancements to existing legislation will ensure that the Philippines remains competitive and in fact leads breakthrough initiatives in best practices for the industry," he

12 R.A. No. 10173, Section 3 (j).
13 R.A. No. 10173, Section 4.
14 R.A. No. 10173, Section 6 (b) and (c).

added.[15]

(IPR Training Course for APEC Economies based on AOTS/JIII for Lawyers, Feb.-Mar. 2002)

15 Lawrence Agcaoili "Data Privacy Act seen boosting investments," The Philippine Star, August 29, 2012.

FY2012 Training Courses Completed

FY 2012 Short Training Courses

IP professionals in the private sector and government officials are invited to Japan for a period of one to three weeks according to the purpose or content of each training program. The programs are aimed at enhancing knowledge in the field of intellectual property.

	Course title	Term	Number of Trainees
1	(JICA) Biological-patent related technology	June 14-20	5
2	(JPO) IP Trainers	June 25-July 13	19
3	(JPO) Advanced IP Protection Practitioners	July 7-27	14
4	(JPO) ASPEC Patent Examination Practices	July 23-Augast 3	19
5	(JPO) Patent Experts	August 27-September 14	19
6	(JPO) Advanced IP Protectionfor Lawyers	September 24-October 12	15
7	(WIPO) Examination Practice of Industrial Property (Intermediate/Advanced Program)	October 22-November 2	20
8	(WIPO) Enforcement of Intellectual Property Rights	November 5-16	23
9	(JICA) Patent Examination Practice for APEC Economies	November 21-December 12	10
10	(WIPO) Use of Information Technology in Industrial Property Administration	December 3-14	16
11	(WIPO) Examination Practice of Industrial Property (Basic Program)	January 21-February 1	22
12	(WIPO) Industrial Property Administration	February 4-8	20
13	(WIPO) Patent Examiners in the Field of Computer Programs	February 13-20	13
14	(WIPO) Patent Examiners in the Field of Lighting	February 21-28	15
15	(JICA) IPR Enforcement (Vietnam Officials)	February 25-March 1	15

FY 2012 Middle Training Courses

Examiners of developing countries are invited to Japan for three months to take part in lectures on treaties/laws regarding intellectual property, examination standards, and prior art search methods, conduct case studies, and receive OJT.

	Patent Practical and Tailored Training Program	August 27-November 9	6

[Year book]
JPO/IPR Courses

IP Trainers

IP Protection Practitioners

ASEAN Patent Examination Practice

Patent Expert

IP Protection Lawyers

[WIPO/JF Courses]

Examination Practice of IP (Intermediate/Advanced Program)

Enforcement of IP

Use of IT in IP Administration

Examination Practice of IP (Basic)

Use of IT in IP Administration

Parent Examiners in the Field of Computer Programs

Patent Examiners in the Field of Lighting

[JICA Courses]

Patent of Computer Software (Malaysia)

Patent Examination Practice for APEC Economies

IPR Enforcement (Vietnam)

[PPTT Course]

Patent Practical and Tailored Training Program

Column: "About Forgetting"

Mr. Takao Ogiya
Director General of APIC

Mr. Takao Ogiya

I have never been a person with a poor memory, but I often cannot remember what has happened in the distant past. In a recent example, my wife talked to me about a family trip we took 20 years ago. "Do you remember during our trip when such and such occurred, and you did such and such," she asked, "and we were really surprised?" In fact, I could not remember it at all, but I listened to her, occasionally even throwing in an appropriate but ambiguous word. My wife saw through my equivocation, however, and coolly remarked, "You've forgotten, haven't you?"

Medically speaking, memory comprises three stages: memorization, retention and recollection. "To forget" refers to the inability to remember what we have memorized. In other words, although the data remains in our head, we cannot call it up. As such, when something triggers our memory, we can recall it, saying, "Oh yes, I remember that was indeed the case…"

I have heard that in order to prevent forgetting something, it is effective to call up and refresh our memories many times, so as to repeatedly overwrite and save information. By doing so, we thereby ensure that our memories can be drawn out of the storage area in our brain. Since our memories continue building up one after another, memories placed lower in the brain's storage area are more difficult to recall. That is why we should recall important memories and reposition them at a higher level.

By the way, memory is a wondrous thing. When we recall a particular memory, it may give an impression or information different from when it was first memorized. Sometimes we do not want to recall a memory that must have been happy, and other times we have a heartwarming feeling when recalling a memory that must have been bitter. This is probably because we have overwritten and saved it with a different impression.

People memorize various experiences that they have gone through in their lives. These memories may vary widely, according to people's attitudes toward such experiences. Likewise, when our past memories are overwritten, they are modified according to our attitudes toward the experiences that we have accumulated thus far. If we have a positive and constructive attitude, then, our memories of various difficult or sad experiences in the past can be replaced with positive and constructive memories—thereby enabling us to learn lessons from such experiences.

During a business trip to the United States in early February, I visited the 9/11 Memorial in New York. It is located at the site of the former World Trade Center complex, which was destroyed by the terrorist attacks on September 11, 2001. The 9/11 Memorial features two pools roughly the size of the World Trade Center, with waterfalls running down their edges. On the pools' external walls, the names of the victims of the terrorist attacks are engraved.

Despite the fact that it was mid-winter, many people were visiting the memorial. As soon

as I entered the premises, I felt that the place was enveloped by a solemn atmosphere. New high-rise buildings were being constructed in close proximity, and such a cityscape could in fact give the misleading impression that no tragic incident had taken place ten years earlier. With the 9/11 Memorial standing there, however, people's memories of the incident become evoked. I entered a nearby shop and found a film playing that showed the images of the World Trade Center during the terrorist attacks, and those who were watching it were all silent. It was if they were overwriting their memories.

There are some things that people should never forget. If we let our memories about an event fade away, we will lose something important. It is also true, however, that we are forgetful creatures. We should therefore make efforts to overwrite our memories, while simultaneously retaining what should never be forgotten.

On March 11, 2011, Japan experienced a disaster that we must never forget. Nowadays, I sometimes feel anxious that Japanese people's memories of the disaster may be fading away. While measures to recover from the great earthquake, tsunami and ensuing nuclear power plant accident in Fukushima are gradually moving forward, I think that information regarding this process is not being so actively disseminated. The incident is in fact still continuing, however, and we should never make it something of the past. In order to ensure that the disaster will never be forgotten, it is necessary that we overwrite our memories of it. In that overwriting process, I believe that we should gradually replace the tragic and bitter memories with positive and constructive ones—thereby allowing us to learn lessons from the experience of the disaster.

I hope that all people around the world will also remember "3/11" as they do "9/11". If this occurs, they will be able to recall the 3/11 disaster several years or decades later as an experience from which the Japanese people learned many important lessons.

Front of the United States Patent and Trademark Office

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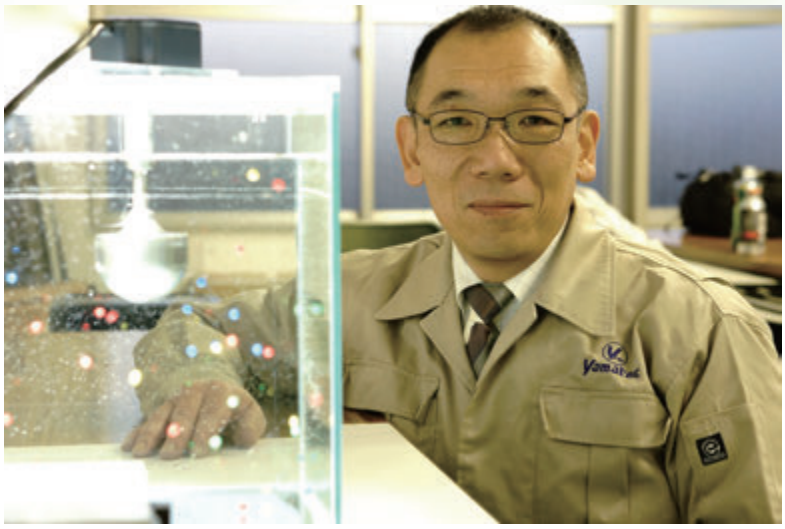


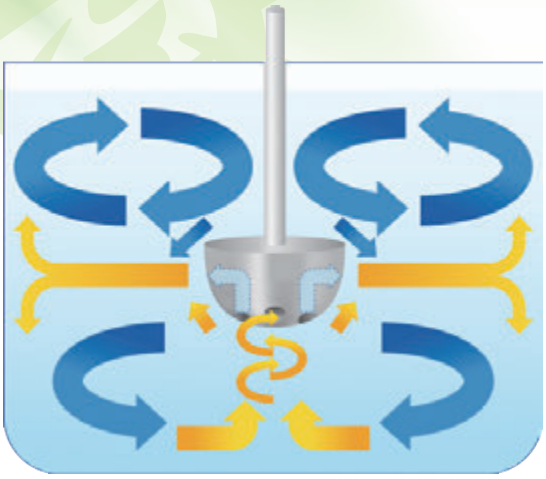
Mr. Kazuhisa Murata
President of Eddy Plus Co., Ltd.

Conventionally, agitators utilizing blades (such as propellers) have been used to agitate paint and other fluids. By contrast, the recent development of an agitator body without blades—which features a hemispherical body with holes—has exhibited an astounding performance in agitation.

Mr. Kazuhisa Murata, President of Eddy Plus Co., Ltd., is an expert in the field of electrical engineering. He has little knowledge or experience with painting, however, and when the paint line began stopping, he struggled to find the cause of the problem. After filtering an amount of paint equivalent to one day's consumption and investigating it using a microscope, he found that a metallic, string-shaped foreign matter was mixed into the paint. Before paint is used, foreign matter is normally separated using a strainer (filter). In the field of electrical engineering, however, it is said that there is no way to eliminate problems after they have occurred. Mr. Murata investigated where the foreign metallic matter came from, and found that there was a problem in the "agitation" process for painting pre-treatment. Conventional agitators have propeller-, crown-, or other-type blades, and the foreign metallic matter was produced when the blades came into contact with the container used in the agitation process. In October 2006, he consequently decided to develop an agitator that did not produce foreign metallic matter.

Mr. Murata tried various methods for developing such an agitator. After he did not achieve success within three years, he gradually became more and more reluctant to continue. Around this time, however, he found a brass hemispherical component with holes in it among some materials that had been supplied from a metal fabricator. As usual, he cut and processed it into a blade shape in order to make a prototype. When he rotated the brass component without processing it, however, he eventually found that the paint could be agitated.

Having only been utilizing propeller processing until that point, he was at first extremely surprised and puzzled to find that a brass component with only holes was in fact able to agitate paint. This motivated him to develop a new agitator, which was put into practical use three months later. It was in this way, then, that the problem of metallic foreign matter was solved using a shape without blades.



(1) When the agitator body rotates, a centrifugal force is applied to the fluid at the horizontal holes.
(2) Since the liquid is discharged from the horizontal holes, liquid is sucked in through the vertical holes.
(3) The eddy flow generated along the agitator body is regulated by the liquid discharged from the horizontal holes to generate a strong agitation flow.

* The yellow arrows show a strong agitation flow generated by the suction of liquid. A large agitation flow is generated as if it were being sucked into the yellow flow (as shown by the blue arrows).
* A flow is generated in a horizontal direction and liquid is sucked in from underneath. Hence, even if the agitation body is close to the liquid surface, very little air is trapped and the liquid does not spatter.

The advantage of this product typically includes its high safety, operability, and agitating performance; as well as its quiet operation, with no generation of bubbles. The extremely simple structure also allows high durability and long life. Thanks to gyroscopic precession, the faster it rotates, the greater the level of safety. In addition, both a turbulent flow and an eddy-like flow resembling a tornado can eliminate deposits right under the agitation body, allowing agitation of every corner in the container. (See figure below)

In coming up with this invention, Mr. Murata did not stick to theories such as hydraulics and fluid dynamics. Instead, he addressed the issues he was facing in a straightforward manner, while also keeping in mind his own policy of "creating products that people are happy to use." These are considered to be the primary factors leading to his success in developing a new agitation body.

Mr. Murata's invention, which has become a revolutionary basic patent for agitators, will surely enhance the reputation of "Cool Japan" within the continuing future development of agitators.

Happenings in Japan

Introduction of Website Feature: Activities of Trainees

The "Activities of Trainees" page introduces articles or papers authored by our training course alumni following their return to their home countries, and published in magazines or other media. Please check this page…and we are also waiting for your articles!!

Editor's Note

The Japanese fiscal year is from April to March. The time this year has passed by very quickly!

We are pleased to announce the launch of our third issue of the "ENISHI" magazine. Mr. AOKI contributed an article to this issue, which we are very thankful for. We feel proud to have been able to work on this great project!

As for the "M-revo®" of Cool Japan, human wisdom still continues to progress forward. Intellectual property rights, and the innovation that they engender, are born from the feeling of consideration that leads us to desire items that bring convenience to our own and others' lives.

Thank you very much for your cooperation this year. We are looking forward to continuing to improve this magazine, so your opinions and ideas in this regard will be greatly appreciated!

Winter is gradually coming to pass, and spring has finally begun to appear in Japan. The most impressive symbol of the Japanese spring are the "sakura", or cherry blossoms. This year, the sakura are blooming earlier than usual. For Japanese people, sakura are not only beautiful, but are also slightly sentimental.

The season of sakura is around the end of March and the beginning of April. March is the season of graduation, and April is the season of new school and company enrollment in Japan. Therefore, sakura appear in the memorial photos from the youth of most people in Japan—as well as within their actual memories themselves. Sakura are always with us at this time of important milestones regarding encounters and farewells, and thus hold a very special place in Japan within people's hearts.

Publication of this Newsletter is consigned to the Japan Institute for Promoting Invention and Innovation by the Japan Patent Office.

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