

No. **29**

November 2021



E N I S H I

## IP Friends Connections

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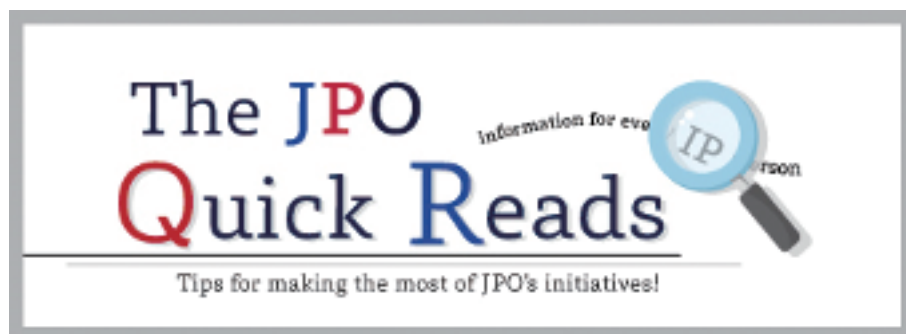
This Magazine is published as part of the Intellectual Property Cooperation  
in Human Resource Development Program of the Japan Patent Office.

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.

# Table of Contents

<b>1. The JPO Quick Reads</b>	3
<b>2. Training Report: FY2021 6th Training Course for Practitioners Specializing in Trademarks</b>	6
<b>Addendum: About Our Training Courses</b>	
<b>3. Training Course Experience in Japan</b>	
<i>Beyond Borders: JPO/IPR Training on General Management of IP Office Goes Online During the Pandemic</i>	Ms. Mary Grace Perez (Philippines) ... 10
<b>4. Articles from Former Trainees</b>	
<b>Patent</b>	
<i>The Backlog Combat Project of the Brazilian National Institute of Industrial Property (INPI-BR)</i>	Ms. Maria Elisa Marciano Martinez (Brazil) ... 14
<i>Artificial Intelligence Issues Related to Patents: The Brazilian Approach</i>	Mr. Rodrigo Vinicius De Carvalho (Brazil) ... 17
<b>Trademark</b>	
<i>Mechanism To Cope with Bad Faith Filing – Legal Perspectives in Cambodia</i>	Ms. Mao Sreymom (Cambodia) ... 21
<i>Collective Trademarks in Peru</i>	Mr. Diego Bedon Salvador (Peru) ... 23
<b>Others</b>	
<i>Botswana Intellectual Property System: The Missing Links</i>	Mr. Kesupemang Pitlagano (Botswana) ... 28
<i>IP Asset Management: A Life-line for Building Value and Growth for Academic Institution in Africa</i>	Ms. Eunice Adu Boahen (Ghana) ... 32
<i>Recent IP Regulatory Updates in Indonesia</i>	Ms. Raniya Ockvalynie (Indonesia) ... 35
<i>Kenya Develops a Model Institutional Intellectual Property Management Policy</i>	Ms. Margaret Wamuyu Muthee (Kenya) ... 38
<b>5. Get to Know Your IP Friends</b>	41
<b>6. Message from Lecturer</b>	
<i>Best Part of the Training</i>	Ms. ASAMI Setsuko ... 44
	Chairperson of Human Resource Development Cooperation Committee, JPO Cooperation in Human Resource Development Professor, Tokyo University of Science
<b>7. From the Director's Desk</b>	
<i>Festival</i>	Mr. OGIYA Takao, Director General of APIC ... 46
<b>8. Discovery of the World's Cultures -the Philippines (Part 2)</b>	... Kay, New APIC Staff Member ... 49
<b>9. Antenna Shops in Tokyo: A Cultural Journey</b>	52
<b>10. Editor's Note</b>	60



In “the JPO Quick Reads”, the JPO introduces its initiatives and relevant information mainly in relation to patent examinations. Its weekly updates would help users to understand various JPO measures and to take advantage of using them. We also hope users feel welcome to the JPO service. We have received some good feedback from our users, through Twitter, saying that the JPO Quick Reads are informative and enlightening with frequent updates. The URL and some popular topics are as follows:

[The JPO Quick Reads]

<https://www.jpo.go.jp/e/news/quickreads/index.html>

Reference: [JPO Official Twitter]

The JPO provides information posted on the JPO English website, including topics of “the JPO Quick Reads”.

[https://twitter.com/JPO\\_JPN](https://twitter.com/JPO_JPN)

[Popular topics]

➤IP attaché (29 June 2021)

IP experts from the JPO are stationed around the world.

Quite a few JPO staff who are well versed in IP rights systems are seconded to a couple of government-affiliated organizations which work to promote mutual trade and investment between Japan and abroad, locating hubs in major economies. Our expatriate experts, as IP attachés, assist the overseas stakeholders to understand IP systems in Japan and also act as liaisons between the IP Offices in charge and the JPO. At the same time, they collect and research a wide range of relevant information on IP-related institutions or practices at the places of their assignment, retaining the services of local law firms.

➤The 14th IP5 Heads of Office Meeting (13 July 2021)

The JPO hosted the IP5 Heads of Office Meeting online late June.

At its 14th Meeting, the heads discussed, aside from the following issues, a key role intellectual property rights play in solving social challenges, which have been drawing global attention in recent years in the context of achieving SDGs.

They agreed on the roadmap for IP5 cooperation in the fields of New Emerging Technologies/ Artificial Intelligence (NET/AI) and confirmed the launch of new projects designed to harmonize patent prosecution procedures and practices.

Also, they reaffirmed future cooperation among the Offices in the post-pandemic era.

➤Mission, Vision and Values (20 July 2021)

The JPO has redefined its Mission, Vision and Values (MVV).

MVV is a profession of an organization's aspirations, duties to be fulfilled, and course of actions.

We have recently revised our previous version after thorough and inclusive discussion, mindful of the rapidly, dynamically changing social landscape and the evolving IP environment, and with a view to administering IP policies going with the times.

The renewed Mission among others is described as follows:

- To achieve a society in which ideas are respected and each individual is encouraged to ignite creativity.

Our MVV serves internally as a banner toward a fully aligned office. It also acts as a vehicle to communicate our goals to all stakeholders involved in IP, soliciting partnerships to that end.

➤Revision of the Design Act in Japan (3 August 2021)

*The Design Act has been revised, and designs for graphical user interface, building and interior have been newly registered.*

The government of Japan fundamentally amended the Design Act in 2019 in order to allow applicants to protect their outstanding designs that contribute to promoting innovations and establishing brands. In this respect, the amendatory law came into force in April last year, additionally covering designs for graphic image not stored or indicated on articles, building and interior as those subject to protection under the statute.

Since it came into operation, two building designs, two interior designs and one graphic image design have successfully been registered for the first time in Japan.

➤Partial Revision of the Patent and other Acts (10 August 2021)

*The bill to amend Patent and other Acts was passed into law and promulgated in May.*

The epidemic of the COVID-19 led society to revolutionize the nature of socioeconomic activities as seen in the rapid development of digitalization, remote work and contactless services. To address



changing situations, the Patent Act and Other Acts were revised noting following perspectives: (i) to develop new procedures viable in pandemicity, (ii) to review the protection of IPRs in digitized society, and (iii) to strengthen the foundation of IP institution.

The amendments include among others:

- Introduction of oral proceedings for trials/appeals by video conferencing [point (i)]
- Exemption from surcharges for expiring prescribed period due to a disaster, etc. [point (i)]
- Relaxation of requirements for reinstatement of rights [point (ii)]
- Review of the fee structure for patent fees, etc. [point (iii)]

➤ Handbook for Trial/Appeal System in Japan (7 September 2021)

Have you ever consulted the book of reference to our Trial and Appeal System?

As previously introduced on this page (posted on 26 January 2021), our Trial and Appeal Department (TAD) is making available a handbook on our website.

TAD plays two major roles: acting as the upper instance of examination, and contributing to an early settlement of IP disputes.

Designed to familiarize applicants or stakeholders with those functions, the brochure sums up the trial/appeal system in Japan as concisely and plainly as practical, for instance, under such headings as follows:

- What can be done with the trial and appeal system?
- What is the role of the TAD?
- Efforts towards the improvement of reliability of trial and appeal decisions
- Dissemination of information overseas and international exchange

## Training Report: FY2021 6th Training Course for Practitioners Specializing in Trademarks

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The Training Course for Practitioners Specializing in Trademarks was held online between September 3<sup>rd</sup> and October 11, 2021. The purpose of this training was to deepen understanding and increase professional expertise regarding trademark practices through lectures and debates on topics including trademark systems, a general outline of the Madrid Protocol, trademark examination standards, usage of trademark-related information, and more.

Requirements for participating in this course included the possession of appropriate knowledge regarding the intellectual property system, at least three years' experience in the field, and experience with trademark practice either at an intellectual property/legal firm, or through intellectual property-related work at a corporation.

A total of 18 trainees participated in the course from 11 different countries: Brazil, Brunei, Cambodia, India, Laos, Malaysia, Mexico, Philippines, Singapore, Thailand and Vietnam. There were a total of 17 lectures during the course, among which five were pre-recorded and 12 were offered either pre-recorded or via livestreaming. With the existing time differences, each livestreamed lecture was attended by at least ten trainees.

According to the feedback that was received, there were positive aspects to both the pre-recorded and the livestreamed lectures, as follows:

### Pre-recorded lectures:

- Available at participants' convenience
- Able to listen multiple times to specific sections of the lectures

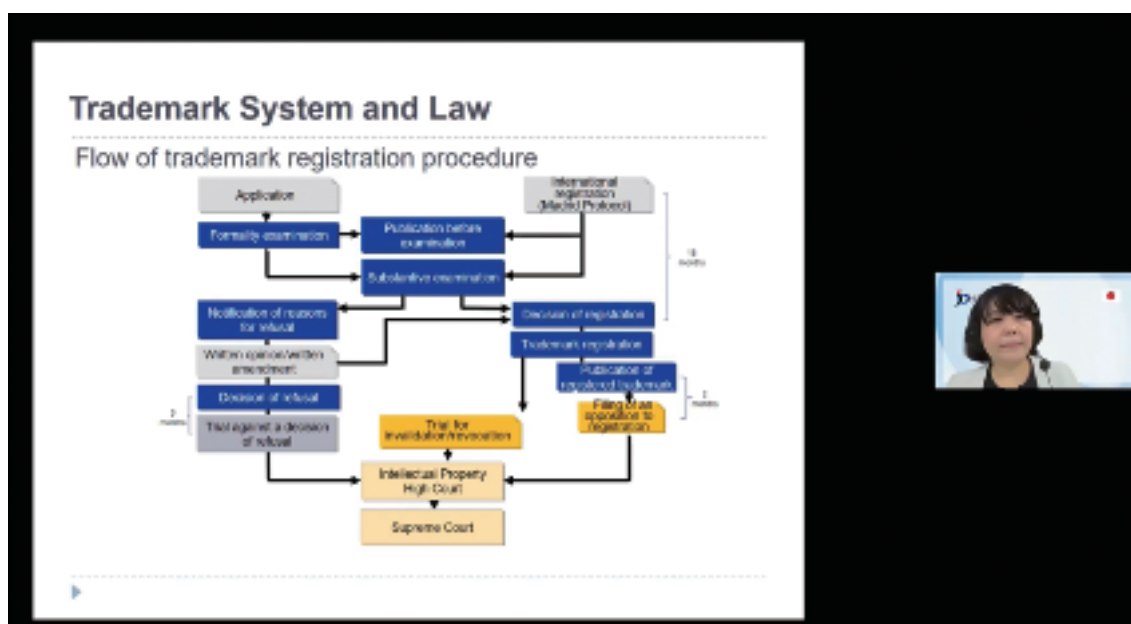
### Livestreamed lectures:

- Able to have Q&A with lecturer on the spot
- Able to see other participants face-to-face

While numerous participants and lecturers alike expressed extreme disappointment at the inability to be together in the same space during the livestreamed sessions, it was also noted with appreciation that the ability to have a Q&A session helped to bridge the feeling of distance.

The lectures titled “How to use WIPO Online Tools (Trademarks)” and “Trademark Strategies of Companies (Sanrio Company, Ltd)” received a particularly high evaluations, with trainees engaging in a lively exchange of opinions during both sessions.

Holding the course in a hybrid manner was unfortunately not possible this time due to the ongoing Covid-19 pandemic. And although every effort was made to simulate the experience of being together, it is impossible to completely bridge the distance due to the reality of being onscreen. For this reason, we strongly hope to be able to gather together in person for the training sessions next year.



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電解機	5	ionization apparatus	09001	698136

## 2. Exercise 1

(1) Trademark cited

**SEIKO EYE**

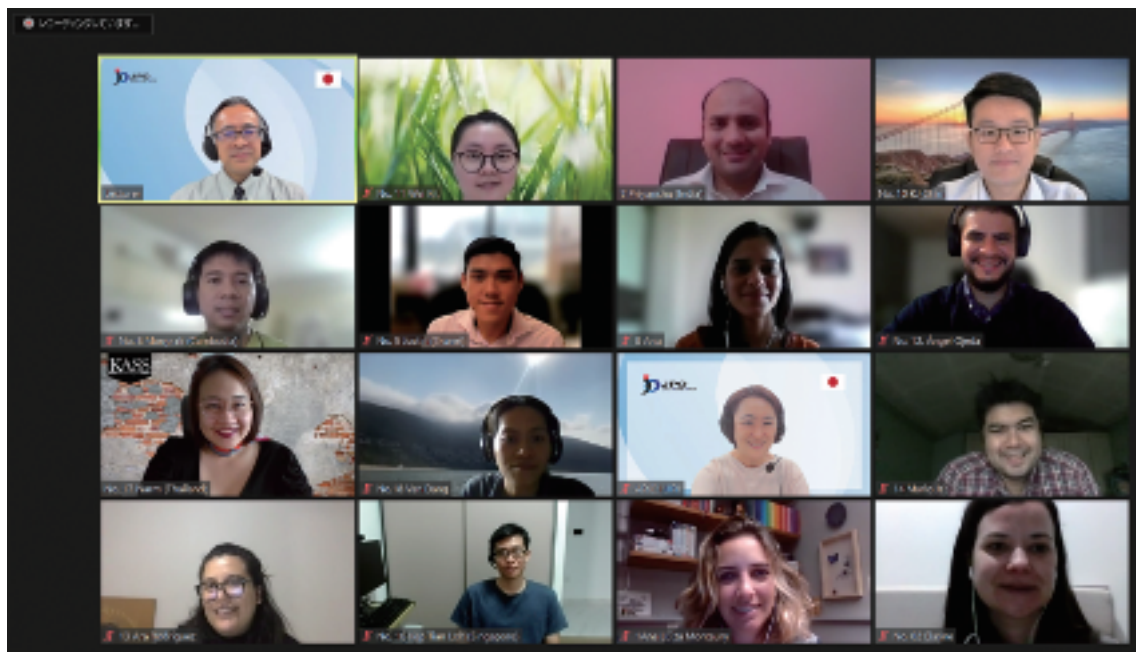
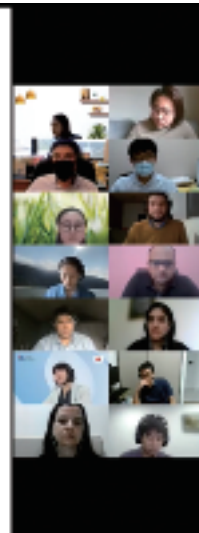
designated goods IC:9 glasses

(2) Trademark applied



designated goods IC:9 glasses

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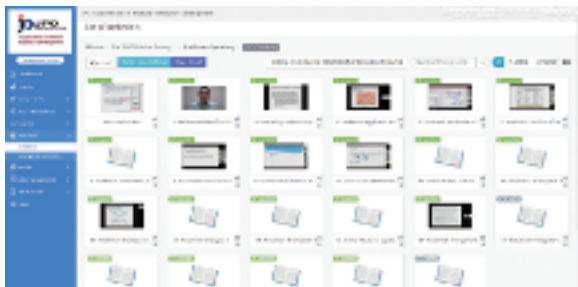




## Addendum: About Our Training Courses

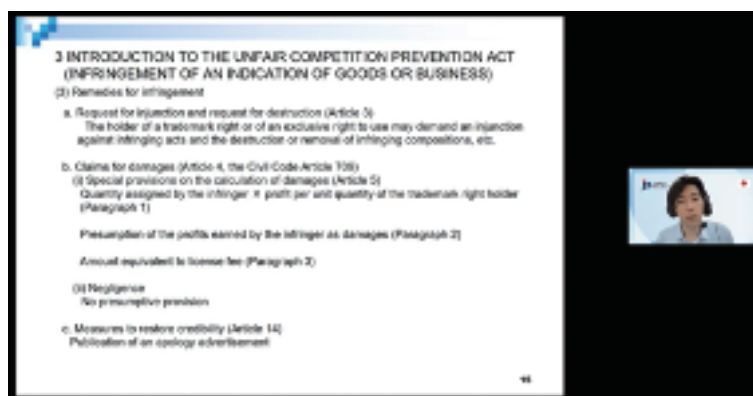
This year, we are continuing to conduct our training courses online.

Using a learning management system, trainees can view lectures, complete surveys and submit assignments while an online meeting tool allows for lectures to be delivered live.



Under these circumstances, with face-to-face course delivery being difficult, in order to minimize the impact of time difference and working hours, lectures can be viewed up to three times on-demand during the course period.

It is also possible to hold live Q&A sessions with lecturers using online tools. These tools also allow for group work to take place as they facilitate information sharing among group members when trainees are divided into groups for group work.



To further improve our training courses, we would greatly appreciate your feedback.  
Thank you very much.

## Beyond Borders: JPO/IPR Training on General Management of IP Office Goes Online During the Pandemic

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**Ms. Mary Grace Celestino Perez (Philippines)**  
Division Chief, Office for Strategy Management  
Intellectual Property Office of the Philippines

*JPO/IPR Online Training Course on General Management of IP Office  
(October 20 – 27, 2020)*

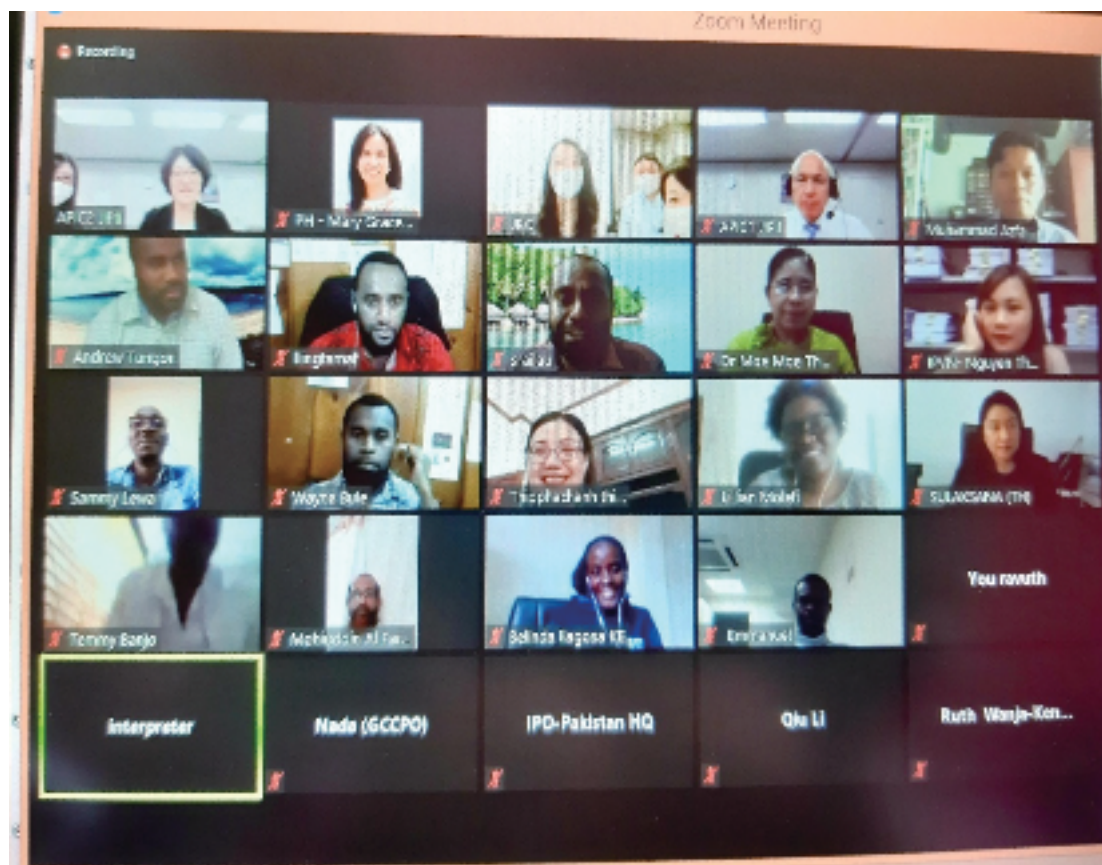


I am Mary Grace C. Perez, Division Chief of the Office for Strategy Management (OSM) from the Intellectual Property Office of the Philippines (IPOPHL). This is about my journey on the JPO/IPR Training on General Management of IP Office (IPGM). I received an email from our Human Resource Development Division (HRDD) last August 20, 2020 informing me that I had been nominated by IPOPHL to attend the IPGM. I felt very happy and humbled because I was relatively new to the organization, but they gave me the trust and confidence to join this program. I immediately complied with all the requirements, and in no time, I was informed by the Japan Institute for Promoting Invention and Innovation (JIPII) and the Association for Overseas Technical Cooperation and Sustainable Partnerships (AOTS) in their letter of September 9, 2020 that I was officially part of the IPGM Program. I was elated when I received the letter of acceptance, and shared the good news with my family.

We all know that 2020 is a different year because of the COVID-19 pandemic. Everything happening in all countries came into a halt. It was a 360° turnaround from the way we had been doing things. Global lockdown, social distancing measures, and fears of being infected by the virus led us to live a life in the “New Normal”. People focused on bare necessities: there was a shift from dine-in to take-out; people stayed home; offices adopted Work from Home (WFH) arrangements; and digital transformation took a big leap forward as people moved toward online channels. JIPII and AOTS were some of the first agencies to adapt to the sudden shift toward the digital transformation. The pandemic did not become a reason for the organization to reach out to other countries and share the JPO’s expertise on Intellectual Property. From the traditional face to face training, the program shifted in 2020 to being conducted via online platform.

The IPGM Program was conducted from October 20-23, 2020, and included participants from the

following 20 countries: Bangladesh, Belarus, Bolivia, Botswana, Brunei, Cambodia, Kenya, Lao PDR, Malaysia, Myanmar, Nigeria, Pakistan, Philippines, Singapore, Thailand, Vanuatu, Vietnam, Zimbabwe, Saudi Arabia and Cameroon. Ms. Kimiko Ueda guided us through the entire duration of the program. JIPII and AOTS organized the logistics and the program flow very well in order to make it easier for the participants, considering that we live in different time zones.



I had mixed emotions when the program started, since there are pros and cons when you conduct a technical training course online versus the traditional face-to-face method. I felt anxious that since the participants did not have hands-on experience regarding the actual operations of JPO, it might be hard for us to appreciate the whole process. However, with the current situation there was no other way but to conduct the course online and make the most of what we have. And the training went well despite the challenges.

Let me share with you the synopsis of the program. The following were the main objectives of the course:

- To study JPO's business processes/workflow of operations in managing an IP offices, from receiving applications through the extinction of rights
- To learn from the challenges that JPO faces considering the size and volume of applications filed, especially during the pandemic
- To learn from the operational issues faced by the participants, including best practices and improvement measures concerning their day-to-day work

JPO's workflow was presented by competent lecturers in four parts, focusing on trademarks and patents. The following were the highlights of the discussion:

1. *Application/Receipt* This discussion covered three areas:

a. Accepting Applications	<ul style="list-style-type: none"><li>• Number of applications received</li><li>• Electronic Filing</li><li>• Receiving applications at the service counter/by postal mail</li><li>• Certification of Filing Dates</li></ul>
b. Managing Data Entry	<ul style="list-style-type: none"><li>• Outsourcing and number of days necessary in order to complete the data entry process</li><li>• Urgent information for managing examinations</li></ul>
c. Quality Management	<ul style="list-style-type: none"><li>• Workflow for accepting applications</li><li>• How to source data entry work</li></ul>

2. *Formality Examination* – In this section, we were able to understand JPO’s Formality Examination System and understand its advantages (i.e., to able to conduct speedy and accurate formality examinations). Also discussed were the formality examination guidelines and measures of Quality Management (i.e., a periodic review of Formality Examination Guidelines).

3. *Substantive Examination* – There was an overview given of JPO’s flowchart for substantive examination. Management of Substantive Examinations at JPO was also discussed, including trends in trademark applications/applications; manpower/training; IT support/outsourcing; the Quality Management System; and initiatives to accelerate the examination process.

4. *Registration/Revocation* – In this section, we discussed the objectives of registration and requirements for completing rights; the flow of data processing by IT systems and the importance of managing patent periods; and quality management initiatives for registration.

The lecturers also thoroughly discussed the importance of the Intellectual Property System in industrial development; promoting intellectual strategies in Japan; and the Japan Patent Office from the perspective of the industrial sector. While we could have appreciated the subject matter more if the participants were able to see their actual operations, the lectures were nevertheless all comprehensive.

My key takeaway from the training on the “General Management of IP Office” was particularly focused on the measures adopted by JPO during the pandemic:

- JPO applied relief measures for the time lost during the pandemic with greater flexibility, including the following: (a) designated periods were uniformly extended to allow more time for affected applicants; and (b) the standard of “reasons beyond the person’s control” and “legitimate reasons” were relaxed, and extensions were easily granted in the event that deadlines were missed. Documents that require evidence, which are normally mandatory in applying for extensions, were additionally waived.
- No specific measure for waiving fees was taken, but the deadline for fee payment was extended.

Based on the discussions and content of the lectures conducted by JPO, the following are the recommended strategies which IPOPHL and the other countries may also consider:



- Implementation of an Emergency Economic Measure Plan like the JPO's, whose aggressive two-stage plan consists of an "emergency assistance phase" designed to protect employment, business and people's livelihoods; and a "V-shaped recovery phase" designed to stimulate social and economic demand after the end of the pandemic. These emergency economic measures were prepared ahead of time and approved by the Cabinet after the declaration of a state of emergency due to the pandemic.
- Flexibility in terms of offering other innovative payment options in the collection of patent fees, such as the following: (a) A blanket payment system, which simplifies payment procedures and accelerates the process of patent registration. Here, patent fees are collected from the deposit account or designated bank account registered automatically by submitting an application or blanket payment without specifying the application. (b) An automatic payment system to prevent lapse of patent rights caused by overdue payments. This involves collecting patent fees from the deposit account or designated bank account, which are paid automatically on an annual basis via an automatically-submitted payment application form.
- Utilization of an Intellectual Property Strategy for the "New Normal". JPO discussed four strategies for this purpose: (a) acceleration of the digital transformation in society as a whole; (b) national government's support for the cultural industry; (c) protection and use of intellectual property, balancing the public interest and private rights; and (d) expansion of the value design practice.
- Promotion of Intellectual Property Strategies in Japan. The Prime Minister commented in his policy speech regarding the government-wide Intellectual Property Strategic Program as follows: "I will set as one of our national goals the translation of the results from research activities and creative endeavors into intellectual properties that are strategically protected and utilized so that we can enhance the international competitiveness of Japanese industries." Similarly, IPOPHL can pursue a "National Intellectual Property Strategy (NIPS)", which includes detailed state policies on the protection of intellectual property and the development of an effective intellectual and industrial property system.

Overall, I was very fortunate to be selected as one of the participants for this training. I might have missed the actual experience of going to Japan, but the teachings I received are invaluable. Maybe, when things become a bit normal again and people will not be prevented from interacting, my time will come to be given a chance to actually visit Japan and learn about its rich culture and traditions. Arigato gozaimasu, mata imashou!

## The Backlog Combat Project of the Brazilian National Institute of Industrial Property (INPI-BR)

Ms. Maria Elisa Marciano Martinez (Brazil)

Industrial Property Researcher  
Institutional Relations Support Section – SP  
National Institute of Industrial Property



*JPO/IPR Online Training Course on Patent Examination (Basic Program)*

*(December 1 –16, 2020)*



Patent backlog refers to patent applications that have been filed and are pending examination. This delay in examination causes problems for those wishing to invest in technology, as it generates legal uncertainty. In other words, neither the inventor/patent holders or the third parties interested in exploring this technology feel comfortable in investing, due to the long periods of uncertainty about whether or not the patent will be granted.

Unfortunately, the National Institute of Industrial Property of Brazil did not classify structural conditions to fulfill this function for a long period of time, resulting in the autarchy's inability to decide at the same speed as patent applications are filed. This, in turn, generated a backlog that was, according to the World Trade Organization, one of the largest and most time-consuming. This backlog had accumulated over decades, with an extremely high number of unexamined applications. For example, in 2018 the average time for the National Institute of Industrial Property in Brazil to decide on an application was 10.23 years. It was even longer in some technological sectors, such as over 13 years for telecommunications and drugs, which were subject to unique scenarios requiring exceptional measures to combat.

In order to substantially reduce this backlog, the National Institute of Industrial Property in Brazil initiated the Backlog Combat Project on August 1st, 2019. The objective was to reduce 80% of the 149,912 patent applications which required examination or pending decisions within a two-year period. To achieve this goal, the plan needed to make adjustments to the exam flow without substantially affecting the quality of the exam. To do so, the first technical exam was divided into a pre-exam or preliminary exam, which was then followed by the technical exam itself.

Firstly, the breadth of the INPI-BR Backlog Combat Project was specified in order to determine which patent applications with the required examination and pending decision would be part of this program.

As a result, it was determined that all patent applications that required examination or remained pending would participate, EXCEPT the following: those that had already obtained the first technical examination carried out by the INPI; requested any type of priority examination at the INPI; included a petition for examination subsidy; belonged to a third party or ANVISA; or applied after December 31, 2016.

The Backlog Combat Project of the National Institute of Industrial Property of Brazil consisted of dividing the first step of substantial examination into two steps: the preliminary examination (dispatch of code 6.21 and 6.22) and the first substantive examination of the invention. The preliminary examination consisted of the search report and a standard requirement for the applicant to adapt the application and/or present arguments regarding the requirements for patentability according to the documents cited in the search report. The difference between dispatch of codes 6.21 and 6.22 is that in the former (6.21), the search report is prepared if limited to the previous documents mentioned in the searches and/or in the technical examination carried out by Patent Offices in other countries, by International or Regional organizations; while in the latter (6.22), the search report is prepared with documents obtained from a search carried out by the INPI, with or without the use of an automatic tool that employs a similarity algorithm.

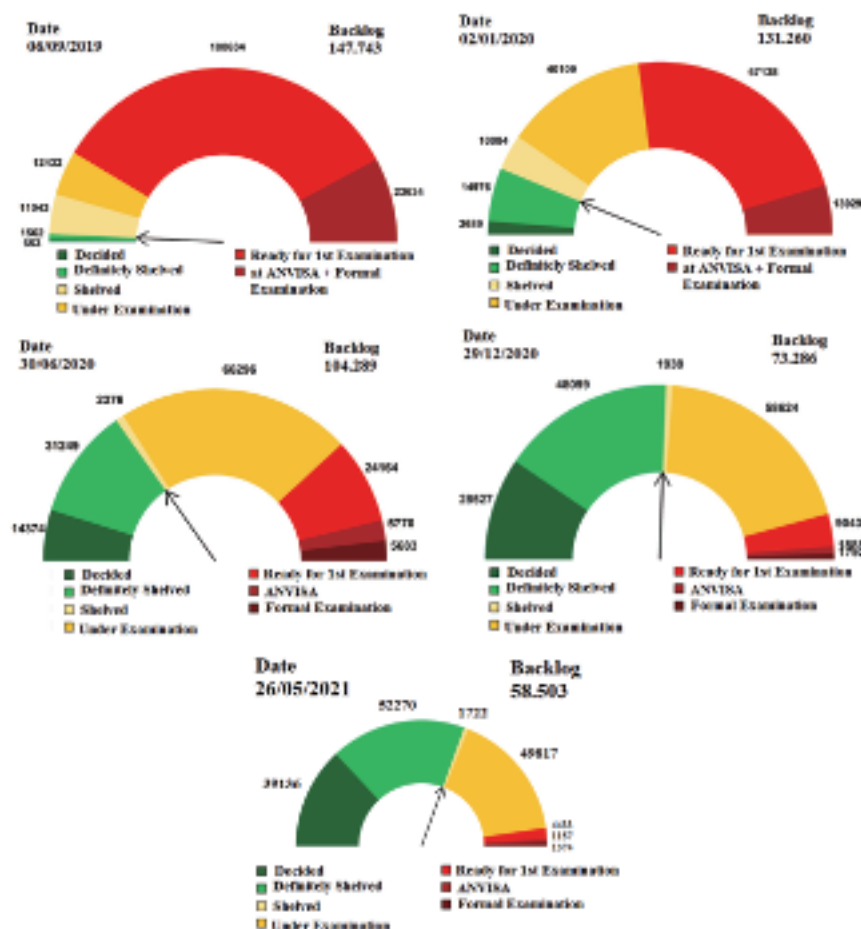
It is expected that in the answer to the preliminary examination (dispatch of code 6.21 and 6.22), a technical discussion of the documents submitted in the search report (including unclassified ones) regarding invention is claimed in this application, highlighting the novelty, inventive activity of the invention as to the documents cited in the search report. It is still expected that if necessary, the request (especially the claim) will be adjusted to the patentability criteria and the provisions of articles 10, 18, 22, 24, 25 and 32 of the LPI (law No. 9279/1996) and the Normative Instructions INPI / PR No. 30/2013 and No. 31/2013. It is worth mentioning that not responding to the preliminary examination (dispatch of code 6.21 and 6.22) within 90 days leads to final dismissal (dispatch of code 11.2); and that the preliminary examination dispatch of code 6.21 may be rejected in the first substantive examination of the matter if the answer does not present claims adequate to the prior art cited as impeditive to patentability, and if arguments regarding the patentability requirements are not presented (INPI/PR Resolution No. 241/2019 article 5th§3o).

As can be seen in the table and figure below, the Backlog Combat Project of the National Institute of Industrial Property of Brazil began on August 1st, 2019 and has had promising results, with a reduction of just over 10% of the backlog at the end of 2019, and around 30% at the end of the first half of 2020. About 50% of the backlog remained at the end of the year 2020, and by the end of May 2021, a total reduction of 61% of the backlog had been achieved. All of these results show that we are well on the way to reducing this very harmful backlog.

Regarding the reduced composition of the backlog, i.e., the time between distribution and being definitely shelved or decided, it is noted that until the beginning of 2020, between 70% and 80% of the reduced backlog came from those that were definitely shelved, due to a lack of interest where the applicant was at fault, probably from outdated technologies. From January 2020, however, the number of those definitely shelved proportional to the total number of decisions has been decreasing, indicating the interest of the depositor in the documents being appointed. For example, in the first half of 2021 only 57% of the reduced backlog was definitively shelved,--a much lower number than the year 2020, which was between 70% and 80%. It is pointed out that in the case of definitely shelved, it is carried out after preliminary examination (dispatch of code 6.21 and 6.22) and before the first substantive examination of the invention. In the case of decisions, there is a first substantive examination of the invention by the National Institute of Industrial Property of Brazil with the same criteria as any other examination, following the legislation of Brazil.

## Backlog Combat Project of the National Institute of Industrial Property of Brazil

Date	Decided	%	Definitely Shelved	%	Reduced Backlog (Decided + Definitely Shelved)	%	Backlog	%
06/09/2019	653	29%	1562	71%	2215	1,5%	147743	98,5%
02/01/2020	3689	20%	14976	80%	18665	12,4%	131260	87,5%
30/06/2020	14374	32%	31249	68%	45623	30,4%	104289	69,6%
29/12/2020	28527	37%	48099	63%	76626	51,1%	73286	48,9%
26/05/2021	39136	43%	52270	57%	91406	61,0%	58503	39,0%



Font: <https://www.gov.br/inpi/pt-br/servicos/patentes/plano-de-combate-ao-backlog/historico-do-plano-de-combate-ao-backlog-de-patentes>

This is not only an effort by the National Institute of Industrial Property of Brazil. Rather, it involves everyone with an interest in patenting, especially the patent attorneys who represent the depositors. Together the backlog is being surpassed, and the Brazilian market is becoming more and more attractive. The success of the Backlog Combat Project of the National Institute of Industrial Property of Brazil has already borne new fruit: for example, the project to cover applications for the year 2017 that now obtain preliminary examination (dispatch of code 6.23) was expanded in 2021 following the rules of dispatch of code 6.21.

In conclusion, then, Brazil's National Institute of Industrial Property is clearly moving promisingly toward the elimination of its patent backlog.



# Artificial Intelligence Issues Related to Patents: The Brazilian Approach



Mr. Rodrigo Vinicius De Carvalho (Brazil)  
 Department Coordinator  
 Mansur Murad Advogados

*JPO/IPR Online Training Course for Practitioners Specializing in Patents*  
 (November 9 - December 11, 2020)



The digital transformation of our daily routines, including work, personal relationships and general activities, is irreversible. More and more, technological solutions are part of our lives. And within this scenario, we are experiencing the development of Artificial Intelligence (AI).

It is difficult to establish a definition for Artificial Intelligence, since the area is in constant transformation and evolution. Put simply, it may be defined as the area of technology which develops computer systems that are capable of emulating human intelligence.

Computer programs work by means of algorithms, which are a logical and finite sequence of instructions to perform a defined action. AI algorithms are designed to find actions by themselves on a “trial-and-error” basis, and to continually improve the process after each realization, since this does indeed constitute the process of learning.

The entire society is being impacted by AI technologies, and intellectual property is no different. This article will briefly discuss some reflexes of AI technology within the patent field from the perspective of Brazilian Law, using two approaches: i) AI as an invention, and ii) AI as the inventor.

## 1. Artificial intelligence as an invention

In this topic is a brief analysis of the legal requirements for obtaining patent protection in Brazil that is directed toward AI technologies.

Computer program developments have been controversial within the patent field in Brazil for a long time, because this technological area is closely related to certain restrictions within Brazilian law. For this reason, the Brazilian Patent Office issued “*Guidelines for Examination of Computer Implemented Patents*”<sup>1</sup> in 2016, which was revised and updated in December 2020.

<sup>1</sup> Brazilian Patent and Trademark Office Ordinance nº 411 of December 23<sup>th</sup>, 2020

The guidelines provide directions to decide whether a particular case can be considered an invention in view of the restrictions of Article 10 of the Brazilian Patent Law<sup>2</sup>, as follows:

Art. 10. The following are not considered to be inventions or utility models:

I - Discoveries, scientific theories and **mathematical methods**

II – Purely abstract conceptions

**III - Schemes, plans, principles or commercial, accounting, financial, educational, advertising, sortition or inspection methods**

IV – literary, architectural, artistic, or scientific works, or any aesthetic creation

**V – Computer programs themselves**

**VI - Presentation of information**

VII – Game rules

**VIII – Techniques and methods for operation or surgeries, as well as therapeutical or diagnosis methods, for application in human or animal bodies**

IX – The entirety or part of human beings and biological material as found in nature, even if isolated, including the genome or germplasm of any natural living being and their biological natural processes

Items I, III, V, VI and VIII (highlighted) are considered relevant for computer implemented inventions. In general, Brazilian guidelines indicate that the invention must be inserted in a technical area, and must clearly include a problem solution with perceptible effects. The key point is that the invention must contain a perceptible technical effect, where such effect is not simply the form as the programing lines is written or the form as the algorithm is designed.

In other words, patent protection is not allowed for the computer program or algorithm *per se*, but for the **technical solution which was implemented by that software**. The same logic applies to AI inventions: It is not the AI algorithm that is protected by the patent, but the technical solution implemented by the algorithm.

Unfortunately, Brazilian guidelines do not cover AI aspects with details. The only express citation to AI is the following: “*Artificial intelligence (AI) techniques, including learning machine and deep learning tools, among others, when applied to the solution for technical problems can be considered an invention*”<sup>3</sup>. A new statement included in the updated version of the guidelines recognizes that the utilization or management of data structures can be considered an invention, which is another relevant aspect to AI technologies.

## 2. Artificial intelligence as the inventor

As seen before, AI technologies are commonly used to assist humans with the automation of repetitive work in a most efficient way. However, with technological improvement, AI systems are currently able to **make decisions and find new solutions without human interference**.

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2 Brazilian Federal Law nº 9.279 of May 14<sup>th</sup>, 1996

3 Guidelines for computer implemented inventions, p. 9.

It is a reality within large corporations that AI is utilized to assist P&D departments with new technical solutions. When a solution to a problem meets the requirements of novelty, inventive step, and industrial application, they are perfectly able to be the subject matter of a patent application.

**The question in this scenario is the following: Who owns the rights over an invention created exclusively by the autonomous action of AI?**

Firstly, we must distinguish between the legal concepts of owner and inventor. The patent owner is the beholder of property and exclusive rights of the patent, while the inventor is the person who in fact created that invention. Sometimes, these positions will be taken by different persons.

In Brazilian Law, the rules for patent owner and inventor are regulated in article 6, as follows:

**Art. 6. To the author of an invention or utility model is secured the right to obtain a patent that grants the author the property, by conditions established through this law.**

§1º. Unless proven otherwise, the applicant is presumed entitled to obtain the patent.

**§2º. The patent can be requested in one's own name by the heirs or successors of the author, by the assignee or the one to whom the law or the employment agreement or service agreement determines that the property belongs.**

§3º When the invention or utility model was developed jointly by two or more persons, the patent can be requested by all or any of them, upon naming and identification of the others, for the reservation of their respective rights.

**§4º The inventor shall be named and identified, being able to request the non-publication of the designation.**

As seen above, the author of the patent (inventor) is the one entitled to obtain a patent as a general rule. On the other hand, the §2º cites other persons that can be entitled to request a patent besides the inventor, which are as follows: the inventor's heirs or successors; or an assignee to be determined by the law or private agreement.

Therefore, the inventor can transfer the rights to a "non-inventor" party who will be entitled to be the patent owner. In this sense, §4º determines that the inventor (the real creator of the invention) must be named and identified in the patent for recognition.

Returning to our question, how the rights can be arranged in the case of an invention created exclusively by the action of an AI? Can the AI be named as inventor or patent owner?

A unique case is currently ongoing wherein the AI machine named DABUS, developed by the researcher Stephen L. Thaler, created 2 (two) inventions during its autonomous activity with no human participation. The inventions are a recipient with a fractal shape that allows a better fit and heat retention; and an emergency light that operates in a pulse frequency to attract more attention from humans.

Patent applications were filed in several countries around the world, indicating DABUS as sole inventor and Stephen Thaler as the patent owner. The logic is that while the invention was exclusively

created by DABUS, the ownership rights over the patent were transferred to Stephen Thaler, since Mr. Thaler is the owner of the IA machine named DABUS.

The applications were rejected in the United States and the United Kingdom, and by the European Patent Office, under the general argument that there is no legal basis to accept an inventor that is not a natural person. The application is still pending analysis in other countries, including Brazil.

In fact, no legal system around the world appears to have clear answers to this problem, mainly because a non-human inventor was unthinkable at the time most of the laws were written.

In the Brazilian perspective, there is no express determination on the legal text that the inventor must be a natural person. For this reason, interpretations on both sides can be accepted, and a possible solution remains uncertain.

### **3. Conclusion**

As exposed, the evolution of AI Technologies impacts almost every aspect of society, and the examples mentioned in patent law are a few points among the several challenges that will arise.

In Brazil, the updated guidelines of computer implemented inventions was a good initiative of the Patent Office. The downside, however, is that AI technologies remain little-explored and detailed. The debate regarding AI as inventor represents a broader theme that involves questioning the logic of the patent system as a whole, which is why this problem must be carefully discussed within the intellectual property community to properly address the theme on an international level.



# Mechanism To Cope with Bad Faith Filing: Legal Perspectives from Cambodia



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*JPO/IPR Online Training Course for Practitioners Specializing in Trademarks  
(October 12 - 30, 2020)*



The Cambodian Trademark Law entails a first-to-file principal, as opposed to first-to-use. Moreover, use (or the intention to use) is not required for trademark applications. Due to this circumstance, there are chances of bad faith filing.

Unregistered well-known marks are on the radar of trademark squatters to exploit, especially in ‘first-to-file’ jurisdiction like Cambodia. Practically speaking, there is a chance of not being caught, and the trademark squatters may establish registration and business in order to take advantage of well-known reputations. In worst case scenario, they might later sell back or enter into financial negotiation with the legitimate trademark owner, who might not wish to spend a great deal of time and resources in court in order to challenge the bad faith registration, which is particularly troublesome. Once the trademark owner becomes aware of this fact, therefore, what legal options are available for them to challenge and win their trademark back? There are opportunities to challenge bad faith applications/registration in Cambodia, and the below is a discussion based mainly on legal perspectives and experience in this regard.

Under Cambodia’s trademark law, the legal options available for trademark owners to challenge bad faith filings include (i) opposition to bad faith applications, (ii) cancellation of bad faith registration, and lastly, (iii) the unpopular no-use cancellation.

By law, opposition can be initiated by any interested party within 90 days from the publication date of the application. This deadline cannot be extended. On the other hand, once the subject trademark matures for registration, any interested third party has the option to file a cancellation. It should be noted that there is no time limit to file a cancellation request, as long as the request is made within the valid lifetime of the trademark in question. Nevertheless, non-use cancellation is known as the most unpopular administrative proceeding chosen by interested parties in Cambodia. This is due to the fact that non-use cancellations can be easily overcome by simply filing an Affidavit of Non-Use.

It is notable that all of the above proceedings, including appeals if there any, are currently handled by the Department of Intellectual Property Rights (DIPR) due to the absence of an Intellectual Property/Commercial Court in the country in the meantime.

What criteria must be met before the DIPR regards a trademark as being filed in bad faith? Below are the factors in determining bad faith filing/registration cited from the Cambodia Trademark Examination Manual:

- Closeness of the two marks in question;

- The reputation of the mark abroad, where applicable (the higher the reputation of the mark, the stronger the possibility of finding bad faith);
- Closeness of the goods and services to that of the foreign proprietor (the closer the goods or services of the domestic proprietor to those of the foreign proprietor, the more likely chances of finding bad faith proven in the domestic proprietor);
- Whether the domestic proprietor has used the mark in trade (if the mark has not been used at all, the case for bad faith becomes stronger);
- Whether the domestic proprietor has established any goodwill in the domestic market (the case for bad faith becomes weaker if the domestic proprietor has traded in his or her goods or services as distinct from the ones of the foreign proprietor);
- Whether there is any obvious exploitation of goodwill or reputation of the foreign owner;
- Honesty in selection and use of the mark;
- The reason and intent of the domestic owner in choosing a particular mark (in cases where the foreign owner can at least show a significant goodwill or reputation, the onus should lie on the domestic owner to prove that s/he has not chosen a name for the exploitation of the foreign mark's reputation).

Accordingly, the burden of proof is on the opposing party at the initial stage, and strong evidence to prove the legitimacy of ownership is required in order to achieve a favorable decision.

It is important to highlight that time is of the essence with regard to opposition and cancellation procedures in Cambodia. As the trademark law does not mention the time limit for an examiner to complete the opposition/cancellation process, in practice it can take 1 to 1.5 years from the initiating stage to obtain a final decision. However, the actual time frame may vary case by case depending upon its complexity. This time frame is arrived at by adding up the time for examining the opposition/cancellation request, issuing a notice to the opposing party, holding rounds of counter arguments (the number thereof is based on the discretion of the DIPR on a case-by-case basis), and last but not least, the stage of hearing. Further, the decision made by the DIPR may be appealed to the Appeal Board of the DIPR and/or the principal court. However, resolving intellectual property disputes in the court is exceedingly rare in Cambodia.

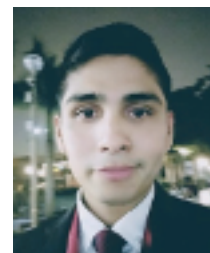
Once bad faith filing is determined and decided upon, the procedure goes on to involve the invalidation, cancellation, and removal from the register of the trademark in question. As one of the most preferred strategies when the mark in question is in order of removal, the legitimate trademark owner is highly recommended to file the said mark in Cambodia as soon as it is practical to do so.

What are the odds for being found to have filed in bad faith? Will the applicant suffer any consequences if bad faith is determined? The Cambodian Trademark Law set out penalties of fines and imprisonment for certain acts, including that of making false statements to the Registrar in an application, opposition, or other documents filed concerning an application or registration. However, whether or not bad faith filing falls into any of these categories is yet undetermined. In practice, apart from the legal consequence of having the mark removed from the register, being fined or blacklisted by the trademark office is extremely rare, and the application of the provision regarding such penalties has yet to be observed.

In terms of a future outlook, it is relatively difficult to bring any infringement action against a registered mark before such mark is cancelled or invalidated, due to the protection offered by trademark registration. Like other 'first-to-file' jurisdictions in the world, the proper strategy to protect trademarks is becoming far beyond crucial for trademark owners. This practically means that preventive strategies such as early registration and/or defensive filing, where applicable, is as much important as keeping a sharp lookout for relevant bad faith filings and taking immediate legal action.

# Collective Trademarks in Peru

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*(November 16 -December 3, 2020)*



## 1. Introduction

In order to prevail within a globalized market with a lot of competition, indigenous people and local communities in Peru are searching for ways to protect their traditional knowledge. Since the classic definition of trademarks only allows for protection of individuals, however, while focusing on indicating the commercial source or origin of the goods or services, they must seek protection from alternative intellectual property rights such as geographical indications, appellations of origin or collective trademarks. These offer benefits such as being collectively owned, guaranteeing the quality of the goods and incorporating a set of rules of use, while identifying the maker or supplier of the goods or the provider of the services as a member of an organization, association, union or other group.

## 2. The promotion of Collective Trademarks

Peru and Japan are two countries that encourage the use of “collective trademarks” by manufacturers, traders, producers or professional bodies, since this type of brand can help to strengthen social, cultural and economic development of the right holders by improving the position of the association in the market, such as protection against unfair competition or illegal copying and building reputation.

Collective trademarks are distinctive signs that individualize and differentiate among products and services in the market, advertising to the consumers that they belong to companies or people who are different from each other, but who, at the same time, are part of the same organization and that they have a common characteristic, like the input, the technique, the process, the origin, etc.

Due to the serious effects caused by “El Niño Costero” in 2017, a natural phenomenon emerged from anomalous warming of the waters of the equatorial Pacific Ocean in the vicinity of the South American coasts. Among other things, this resulted in floods, overflow, alluviums, riverbed changes, population isolation, food shortages, and disease epidemics in the coastal regions of Peru. The Peruvian National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) launched a Promotion Program related to Collective Marks by passing the Supreme Decree D.S. 086-2017 / PCM, on August 28, 2017, which was focused on helping potential collective trademark owners who were

harmful by that natural phenomenon so that they could register their brand rapidly.

In an ongoing effort to promote agricultural products so that they become more competitive, INDECOPI began in 2017 to train more than 2,000 producers, and provided for free more than 4,000 consulting services, while trying to shorten the application process for registration to 38 business days, thanks to the implementation of simplification measures and tax exemption.

This strategy of INDECOPI was extended in time (by passing the Supreme Decree D.S. 092-2018 / PCM on September 5, 2018) beyond the phenomenon impact, and also with respect to the scope of beneficiaries. It was expanded nationwide, resulting in an impressive escalation of registration among collective trademarks from 42 in 2017 to 849 in 2018 and 3,579 in 2019.



This distinctive sign requires a previous association between several people working together. At INDECOPI, we are committed to promoting the use and registration of collective trademarks among farmers, agricultural producers, fish farmers, artisans, etc., which form the rural productive sector and require the greatest support from the Peruvian state.

The goal is to facilitate their access to markets in a competitive way, allowing them to become known through collective brands. It is not enough to get the collective mark or certificate; rather, the brand must be able to compete within the market to be recognized as having added value. The advantages offered by collective brands are various. They promote a strategy of collaboration among producers, allowing them to share expenses and costs, since it is much more expensive to invest only in the market than to do it as a team. It also encourages the standardization of products, because when you have a collective trademark, everyone is obliged to ensure that the product complies with quality standards. By using a certain input and achieving a certain technique, no one can get out of what the regulations establish for use of that collective mark. In practice, it is a mechanism of articulation between families to be able to get ahead economically.

Given the current crisis that has been affecting international trade due to the Covid-19 pandemic in Peru, and the fact that intellectual property has acquired an essential role in economic reactivation, INDECOPI is encouraging the registration of trademarks—particularly collective trademarks, since



those distinctive signs will allow the products of the Mypes (small enterprises), entrepreneurs, native communities and civil associations, breeders, producers, agro-industrial businesspersons and exporters to earn a certificate that supports the ownership of the name. This way, they can compete within the national and international market.

### 3. Collective trademark applications

Collective trademarks identify products and services that come from a community or a group of producers. Applications for registration must be accompanied by a copy of the statutes and articles of the organization, together with the list of members who will be able to use that sign and the internal regulation for the use of the collective trademark. This determines the conditions and rules that every product has to respect to be able to use that brand in order to maintain a constant level of quality and preserve the traditional manufacturing method of the product.

The Directorate of Distinctive Signs of INDECOPI has 15 days to review the application and determine if it complies with the requirements specified. If it doesn't, they will give the applicant 60 days to remedy those defects. If they cannot fulfill those requirements, the application is rejected. If there are no objections, the office will perform the examination of registrability and conclude the granting or refusal to register the trademark.

This registration grants the members of the association the exclusive right to use the collective trademark on their products. Meanwhile, measures can be taken against illegitimate use by a third-party.

#### 4. Differences with Geographical Indications and Apellations of Origin

The TRIPS agreement (Trade-Related Aspects of Intellectual Property Rights) celebrated with the members of the WTO (world Trade Organisation) establishes that geographical indications are signs used on products that have a specific geographical origin, and that possess qualities or a reputation due to that origin.

Apellations of origin are a type of GI, but they require that the process of production, preparation and processing of goods shall be entirely carried out in the designated place of origin. Bot are usually composed of a geographical name (region or locality).

Apellations of origin assure to the public that the goods hold a certain number of characteristics and qualities, which are ensured by a body responsible for its control, such as an IP Office.

The collective trademark is different from GIs and apellations of origin because it is owned by a trade association of producers or manufacturers and points out a link between that association and the products or services. The other two, however, try to inform consumers about the existence of the link between a product and a particular geographical region.

The key to collective trademarks is the fact that they indicate that the person who uses that brand is a member of that collectivity, so it fulfills a membership function.

Persons who are not members of the association are not entitled to the use of name, device or symbol adopted or used by such associations as a collective trademark.

### 4. Differences with Japan's Regional Collective Trademarks

The Japan Patent Office (JPO) promotes regional collective trademarks in order to support the revitalization of local economies and encourage collective action so that the associations or producers can raise their skill level.

Article 7-2 of the Japanese Trademark Law Act establishes certain requirements, such as the



following:

- 1) Applicants must meet eligibility requirements for regional collective trademarks;
- 2) The collective must intend to allow its members to use the trademark;
- 3) The trademark must be well known among consumers;
- 4) The trademark must consist solely of the name of the region and the name of goods (services); and
- 5) The name of the region in the trademark must have a close relationship with the goods (services).

On the other hand, Article 182 of Decision 486 of the Commission of the Andean Community<sup>1</sup>, which is the applicable IP law in Peru, does not require the trademark to be well-known or to be made up solely of the name of the region and the name of the goods.

## 5. Examples of Peruvian collective trademarks


Finally, I would like to mention some examples of collective trademarks from my country of Peru:

Collective trademark	Description	Holder
 <p>Certificate N° 42</p>	<p>This trademark identifies custard apples from the district of Cumbe, located in the city of Huarochiri.</p>	<p>El pueblo de Santo Toribio de Cumbe</p>
 <p>Certificate N° 157</p>	<p>This trademark identifies edible dried mushrooms from the district of Incahuasi, located in the department of Lambayeque.</p>	<p>Asociacion conservacionista agropecuaria forestal de marayhuaca</p>

<sup>1</sup> Article 182. - An application for registration shall specify that it is for a collective trademark, and shall be accompanied by the following:

- a) a copy of the articles of association of the organization, association, or group of persons applying for registration of the collective trademark;
- b) the membership list; and,
- c) a statement of the conditions on and form in which the collective trademark shall be used in connection with the goods or services.

Once registration of the collective trademark has been obtained/granted, the association, organization, or group of persons shall inform the competent national office of any changes that may have been made in any of the documents referred to in this article.

 Certificate N° 142	This trademark identifies native potatoes from the province of Tayacaja, located in the city of Huancavelica.	Cooperativa Agraria de Produccion Agricola Sumaq Sunqu LTDA.
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# Botswana Intellectual Property System: The Missing Links



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for African Countries in cooperation with WIPO  
(February 22 – March 2, 2021)*



Botswana is a landlocked country in Southern Africa nestled amongst South Africa in the South, Zimbabwe in the East, Namibia in the West and a small part of Zambia in the North. Botswana has an estimated population of 2,154,863<sup>1</sup> and a geographical area of 581,730km<sup>2</sup>. Botswana gained independence from Britain on 30<sup>th</sup> September 1966. Since then, Botswana has been using the British intellectual property laws. The Parliament of Botswana enacted the first Industrial Property Act, Chapter 68:03 of the laws of Botswana in 1996, followed by the Copyright and Neighbouring Rights Act, Chapter 68:02 in 2006. It took thirty (30) years since independence for Botswana to enact its own legislation on Intellectual Property. Relying on Robert M. Sherwood's words that "a patent system should be part of a country's infrastructure from the outset, rather than something thought about after reaching a fairly advanced state of development"<sup>2</sup>, one could say Botswana long delayed in enacting intellectual property laws.

The Industrial Property Act protects signs and symbols used in commerce, industrial designs, innovations, and inventions. The Act was revised and enacted in 2010<sup>3</sup> to extend protection to geographical indications, traditional knowledge and handicrafts. The new Act also provides for the international filing of marks through the Madrid Protocol, industrial designs through the Hague Agreement and patents through both the Patent Cooperation Treaty and the Harare Protocol. The Copyright and Neighbouring Rights Act, on the other hand, protects original literary and artistic works and persons or entities such as broadcasting organizations, performers, and producers of sound recordings and audio visual work who contribute to or invest in making the works available to the public.

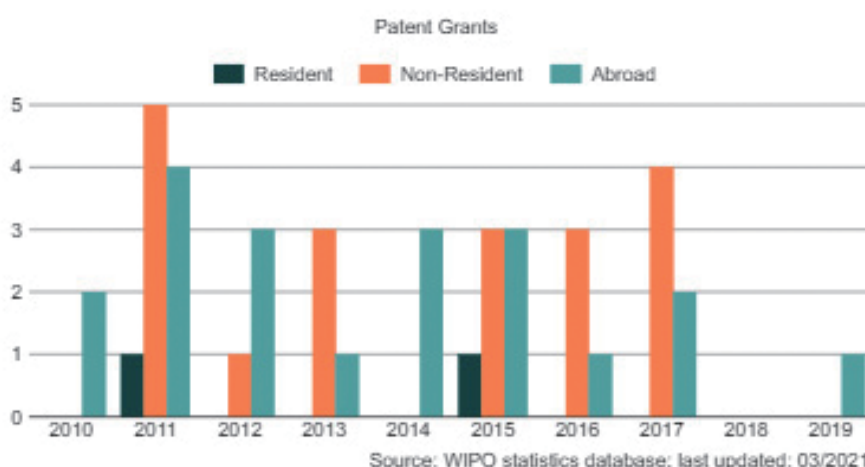
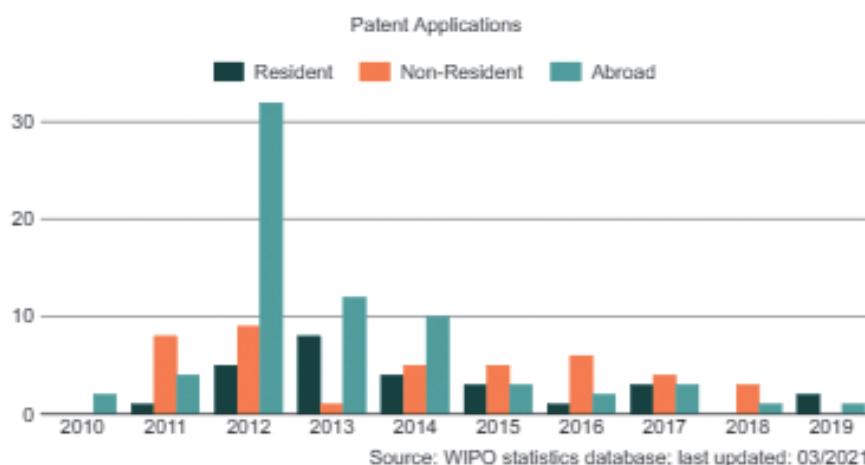
At international level, Botswana has ratified and is a signatory to several intellectual property treaties

- 1 <https://www.statsbots.org.bw/sites/default/files/publications/Botswana%20Demographic%20Survey%20Report%202017.pdf>
- 2 [https://ipmall.law.unh.edu/sites/default/files/hosted\\_resources/jorda/Jorda%20Speeches/19960618\\_CEDI%20QUIFABuenosAiresWhatGoodPatentLaw.pdf](https://ipmall.law.unh.edu/sites/default/files/hosted_resources/jorda/Jorda%20Speeches/19960618_CEDI%20QUIFABuenosAiresWhatGoodPatentLaw.pdf)
- 3 <https://wipo.lex.wipo.int/en/text/505451>



administered by the World Intellectual Property Organization (WIPO). Such treaties include the Berne Convention, Paris Convention, WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty, Marrakesh VIP Treaty, and the Beijing Treaty on Audiovisual Performances. At regional level, Botswana is a member of the African Regional Intellectual Property Organization (ARIPO) and is signatory to the Harare Protocol on Patents and Industrial Designs and the Banjul Protocol on Marks administered by ARIPO. The Articles of the said treaties have been domesticated into the Botswana laws and are in full force.

Despite having enacted intellectual property laws, being a member of both WIPO and ARIPO and having ratified several intellectual property treaties, Botswana remains a minor player in the intellectual property domain. As a result, intellectual property protection in Botswana is inward<sup>4</sup>. Most intellectual property rights applications and grants are in the names of foreign nationals and companies. From 2010 to 2019, patent filings in Botswana by residents have never exceeded ten (10) in each year<sup>5</sup>. Patents granted to residents for the same period stand at only two (2). One was granted in 2011 and the other in 2015. Consequently, foreign nationals benefit more from the intellectual property laws of Botswana than residents.



4 [https://www.researchictafrica.net/countries/botswana/BNRST\\_Final\\_Report\\_2005.pdf](https://www.researchictafrica.net/countries/botswana/BNRST_Final_Report_2005.pdf)

5 [https://www.wipo.int/ipstats/en/statistics/country\\_profile/profile.jsp?code=BW](https://www.wipo.int/ipstats/en/statistics/country_profile/profile.jsp?code=BW)

The question is what could be missing? What more should Botswana do to become a significant player in the intellectual property field like other countries?

The Botswana - Determinants of the Innovation System Report published in 2010<sup>6</sup>, points out two challenges hindering Botswana to be a notable player in the intellectual property space. First, there is inadequate awareness about intellectual property rights protection among the citizens. Secondly, there are inadequate support structures for the acquisition, effective management and commercialization of intellectual property rights.

The National Policy on Research, Science, Technology, and Innovation of 2011<sup>7</sup> also provides insights into the missing links in the Botswana intellectual property system. Intellectual property professional and funding bodies are not available to provide technical assistance and support to inventors and research institutions regarding acquisition of patents and other industrial property rights. Intellectual property education is also inadequate as no academic institution in Botswana offers a fully-fledged intellectual property curriculum. As a result, Botswana does not have the critical mass of experts to draft patent applications, conduct patent information search and analysis and to do intellectual property valuation to facilitate informed intellectual property transactions.

Furthermore, Botswana does not have a national policy on intellectual property to provide guidance on the management and commercialization of intellectual property<sup>8</sup>. Lack of intellectual property policies is also common in academic and research institutions. Only a few research and academic institutions have institutional intellectual property policies aligned to the Botswana intellectual property laws. There is no intellectual property policy at national level to align the institutional intellectual property policies to.

In addition, Botswana does not have legislation promoting the effective acquisition, management and utilization of intellectual property emanating from publicly funded research and development. Examples of such legislation are the Bayh-Dole Act of the United States of America and the Intellectual Property Rights from Publicly Financed Research and Development Act of 2008 of the Republic of South Africa. Brazil, Japan, Russia, China, Malaysia, Singapore, Denmark, Mexico, Finland, Norway, South Korea, Germany, Philippines, United Kingdom and Italy are examples of countries that have similar legislation to the Bayh-Dole Act<sup>9</sup>. The Bayh-Dole Act and similar legislations have been found to promote effective intellectual property management, protection and commercialization for the good of the society.

The South African Act, for example, provides for the establishment of a National Intellectual Property Management Office (NIPMO), Technology Transfer Offices and the Intellectual Property Fund to mention but a few. According to the Act, all recipients of public funds for research and development are bound to protect and ensure that the resulting intellectual property benefits the people of South Africa. This promotes a culture of protecting and commercializing intellectual property which, currently, is missing in Botswana. The Intellectual Property Fund supports recipients of public funds for research and

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6 [https://www.researchgate.net/publication/328917085\\_Botswana\\_-Report\\_of\\_the\\_Determinants\\_of\\_the\\_Botswana\\_Innovation\\_System](https://www.researchgate.net/publication/328917085_Botswana_-Report_of_the_Determinants_of_the_Botswana_Innovation_System)

7 Not available online

8 National Policy on Research, Science, Technology and Innovation (2011)

9 <https://autm.net/about-tech-transfer/advocacy/legislation/bayh-dole-act>

development to protect and maintain their intellectual property rights. In Botswana, institutions receive research budgets from the Government and there is no legislation and no policy that binds them to protect and commercialize the resultant intellectual property. In other words, there is no regulatory framework to ensure better practice and returns from generated intellectual property<sup>10</sup>. There is, however, some progress on intellectual property funding as innovators and research institutions may receive patenting support from the Botswana Innovation Fund<sup>11</sup>.

Appreciation of the value of intellectual property and effective exploitation of intellectual property rights do not only come with the enactment of intellectual property laws and the establishment of an intellectual property rights office. Relevant structures to provide technical and financial support to innovators must be established. Intellectual property policies both at national and institutional level are necessary. Education and awareness are indispensable. Least developed and developing countries should take advantage of the World Intellectual Property Organization's (WIPO) programmes such as Intellectual Property Training Institutions, Technology and Innovation Support Centers, Professional Development Program and fully exploit training opportunities offered by the WIPO Academy. Such countries should take part in training opportunities like the JPO/IPR Online Training Course on IP Asset Management and implement lessons learned from there for the betterment of their respective intellectual property systems.

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<sup>10</sup> [https://www.researchictafrica.net/countries/botswana/BNRST\\_Final\\_Report\\_2005.pdf](https://www.researchictafrica.net/countries/botswana/BNRST_Final_Report_2005.pdf) page 49

<sup>11</sup> <https://www.bih.co.bw/wp-content/uploads/2019/09/Botswana-Innovation-Fund-Guidelines.pdf>

# IP Asset Management: A Lifeline for Building Value and Growth for Academic Institutions in Africa

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*African Countries in Cooperation with WIPO*

*(February 22 - March 2, 2021)*



Creation and dissemination of knowledge is an activity at the heart of every academic institution in Africa. However, realizing how this knowledge generated can best be utilized as intangible assets to create maximum value and growth remains a significant challenge. No wonder, then, that achieving top global university rankings has also become a nightmare for African academic institutions. This is because one of the criteria for ranking such academic institutions is that of Intellectual Property (IP) asset management and exploitation. According to the Times Higher Education, no African academic institution has been ranked among the top 100 universities in the world during the last ten years.

The country reports presented by participants in the JPO/IPR Training program on IP Asset Management for African countries in cooperation with WIPO indicated that most of the challenges facing these African academic and research institutions result from low IP awareness; a lack of industry-academic linkages, which results in basic research instead of applied research; and premature disclosure of IP assets, leading to IP benefits going to third parties, among others. To this end, managing IP assets has become an urgent matter, and a lifeline for building value and growth for academic institutions in Africa. The compelling question here is: Why and how should academic institutions in Africa manage their IP assets?

As stated in one of our local proverbs, “The one behind learns from the one in front”, African universities can learn from Japan’s experience, including cases at Yamaguchi University as presented by Prof. Yoichiro Sata, the Director/Patent Advisor at the Yamaguchi Technology Licensing Organization.

Professor Sata pointed out some of the strategic measures put in place by Japan’s government and institutions in the management of their IP assets. One of the strategies is the four pillars adopted by the government (administration, legislation, justice, academia) as a combined effort to use IP as a weapon to reconstruct the country’s decline in international competitiveness. As stipulated in the Japan Intellectual Property Act of 2002, the dissemination of research results is the responsibility of the universities. Through these interventions, research and academic institutions in Japan saw patenting as an effective measure for returning results to society as the end product of their research instead of paper publication



and reports. This led to industry-academia collaborative activities that generated income for the universities, and employment for the community. It also led to solving social problems and adding value to already existing products, such as the rubber added to ‘tabi’ footwear.

It is evidenced from Japan’s experience that IP makes innovation possible, ensures quality, and improve lives within the community. Therefore, effective IP asset management coupled with proper IP implementation strategy can add value and growth to academic institutions in Africa.

First of all, African countries must have a national IP policy strategy coupled with an institutional IP policy to serve as a guideline or blueprint in the effective management of IP assets on the part of research and academic institutions. This will assist academic institutions with building an IP database or portfolio in order to better protect and enforce their IP rights in case of infringement.

Second, IP asset management is important in the audit, valuation, protection, commercialization and acquisition of IP assets. Having knowledge on university IP and its value is critical in order to determine the type of IP assets to acquire and maintain. It also helps to prioritize those IP assets that the university can exploit.

Third, proper management of IP assets can facilitate the formation of joint ventures, strategic alliances, and partnerships between universities and industry. Most academic institutions in Africa depend largely on subsidies from their governments. However, the prevailing economic conditions in recent years have led governments to commit very little funding. This has crippled the operations of the academic institutions, compelling them toward new business models. In this regard, academic institutions can rely on their patentable IP assets and other IP rights, such as utility models, trademarks, plant varieties, etc. to increase their value through spin-offs, startups, joint ventures, strategic alliances, or partnerships with industries. The outcome of these joint ventures in IP exploitation can help academic institutions obtain profits that could lead to extra revenue in sustaining the university.

This could generate further extra income and reduce their burden of depending on government subsidies. Eventually, this could lead to the academic institutions becoming more self-reliant on financing their day-to-day operations. Thus, university IP assets can also help in collateralization.

Equally important, a well-managed IP portfolio of an academic institution can be used to obtain funding and loans from external sources such as banks. Lenders such as banks can use IP assets to determine the value and worthiness of an academic institution, and through this process, academic institutions can obtain loans and other funds from banks through the value of IP assets that are properly managed and exploited.

In view of the foregoing, it is evident that establishing a culture of managing IP assets for academic institutions in Africa is beneficial. IP asset management can help academic institutions increase revenue, gain competitive advantages over their competitors, position them well within academic rankings, and build a good reputation. Research outcomes can also be donated in order to better the lives and standards of people living in different communities. These strategies may also help to generate employment, create more incentives for researchers or inventors through royalties, and finally, increase the overall value and growth of academic institutions in Africa.

I am therefore grateful to JPO and WIPO for the opportunity to be part of this training, and for the knowledge gained in IP asset management, which will support the establishment of an IP Unit for KNUST. I am also very excited and privileged to be part of IP Friends, Japan.

I am looking forward to more such educative training in the future in Japan, and to experience your beautiful and rich culture.



Photo provided by KNUST

# Recent IP Regulatory Updates in Indonesia



**Ms. Raniya Ockvalynie (Indonesia)**

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*JPO/IPR Online Training Course for Practitioners Specializing in Trademarks  
(October 12 - 30, 2020)*



For over a year, the Indonesian government has published a series of new regulations to adjust the legal framework conditions to the current situation for all stakeholders in society. In this overview, I will present and inform regarding new regulations with relevance to the Intellectual Property sector.

## 1. Regulations on Management of Royalties for Songs and/or Music

In early 2021, the Indonesian government issued Government Regulation No. 56 of 2021 on Song and/or Music Copyrights Royalties Management (“GR 56/2021”) in response to the music industry’s rapid development in today’s digital era, where stakeholders have long complained about the unclear management of creators’ economic rights, causing a long polemic. This regulation, which serves as the implementing regulations of Law No.28 of 2014, has promised to provide clearer guidelines on royalties distribution management for copyright owners (national and international copyright owners), specifically from the song/music industries.

Among the notable provisions of GR 56/2021 are the following:

- **Establishment of Music and/or Song Database (Database):** GR 56/2021 mandates the government, in this case the Ministry of Law and Human Rights (MLHR), to establish a Music/Song Database. This database will serve as the basis of royalty distribution for the commercial use of the songs recorded within the MLHR’s database, which will be updated on a three-month basis. The database will automatically include any song and/or music that has been previously recorded at MLHR. The database must be built within two years of the issuance of GR 56/2021.
- **Establishment of Song and/or Music Information System (“SILM”)** Under GR 56/2021, in addition to the establishment of the database, the National Collective Management Organization (“LMKN”) is required to established a SILM. This will serve as a data and information system used to distribute music and/or song royalties. The SILM will be managed by the LMKN, and must be operated within two years of the issuance of GR 56/2021.
- **Royalty Management:** GR 56/2021 provides clearer guidance on the royalty of management for song and/or music integrated within the database. Any commercial use of music and/or songs will be integrated within the database, while for the enforcement of the license agreement, the use of song and/or music must be reported to LMKN via SILM. In addition to setting up reporting

requirements, GR 56/2021 also provides a provision on royalty distribution which may be divided into the following: a) royalties distributed to copyright holders/creators and neighboring rights holders; b) operational funds; and c) contingency funds. This provision also regulates that royalties of a copyright whose holder is unknown may be kept by LMKN for two years, or will otherwise be distributed. In addition, any dispute on distribution royalty may be reported to the Directorate General of Intellectual Property to be settled via mediation.

Despite the issuing of royalties that remain to be managed and regulated by the Ministry of Law and Human Rights, GR 56/2021 provides clarity on the authority of LMKN to collect, pool, and distribute royalties based on commercial purposes. GR 56/2021 also regulates the type of commercial use that covers (among others) radio and TV broadcasting, which is a list that may be expanded further based upon Ministerial regulations.

## 2. The Enactment of Job Creation Law From an IP Perspective

On November 2, 2020, the Indonesian Government enacted Job Creation Law No. 20 of 2020 (“**Job Creation Law**”), which came into force on the same date.

The purposes of this law is to encourage economic growth through creating jobs, as well as improving investment and productivity. The enactment of this legislation influences and amends a number of laws, including law No. 13/2016 on Patents, and Law No. 20/2016 on Trademarks and Geographical Indications.

Among the notable provisions of GR 56/2021 are as follows:

- **Trademarks:**

The Job Creation Law reduces the trademark substantive examination to only 30 days from its original 150 days, given that there are no further third party challenges. In the event that there is a challenge, the substantive examination process will be completed within a maximum period of 90 days commencing 30 days after the rebuttal filing period has ended.

I am convinced that such reduction is workable, and that this remarkable change will hopefully mean that Indonesia has one of the fastest trademark registration processes in Southeast Asia. This will require, however, that the law be properly implemented and enforced within the Indonesian Trademark Office.

- **Patents:**

The amendments to the patent law have been controversial, and criticism has been reaped upon the enactment of the Job Creation Law.

The previous Article No. 20 of the Patent Law states as follows:

- “(1) The Patent Holder is obliged to manufacture the product or use the process in Indonesia.  
(2) Manufacturing products or using the process referred to in paragraph (1) must support the transfer of technology, investment absorption and/or provision of employment. ”*

Whereas in the current version of the law, Article 20 is amended to read as follows:

- “(1) Patents must be used in Indonesia.  
(2) The use of Patents as referred to in paragraph (1) is as follows:  
a) Product-patent implementation which includes the creation, importing or licensing of patented products;  
b) Process-patent implementation, which includes the creation, licensing or importing of products resulting from a given process patent; or  
c) Method-Patent systems and use implementation which includes the creation, importing, or*



*licensing of products that result from patented methods, systems, and usage.”*

According to the above provision, the Job Creation Law has eliminated the obligation to transfer technology and provisions of employment which the government considers burdensome and inhibits foreign investment.

Although I understand that the Job Creation Law is intended to improve the investment climate in Indonesia, the public fears on the other hand that Indonesia - as a developed country - may lose its chances and warranty for technology transfer and the provision of employment, which is a change that is projected to bring more negative impact than good.

In light of the above, since technology transfer in patents is still considered important by many, I share the view that instead of removing the obligation to transfer technology and provision of employment, the provision should be divided into two groups: patents that are obliged to perform technology transfer and the provision of employment, and those that are not required to consider the public benefit.

Despite the criticism, however, I do believe that if the law is properly implemented, such amendments to the IP laws through the Job Creation Law will likely improve the investment climate in Indonesia, especially in the aftermath of COVID 19. This change is very beneficial and can certainly facilitate patent and trademark holders from abroad, while the registration processes for patent and trademark applications have become faster and easier.

# Kenya Develops a Model Institutional Intellectual Property Management Policy



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*JPO/IPR Online Training Course on IP Asset Management  
for African Countries in Cooperation with WIPO  
(February 22 – March 2, 2021)*



Kenya's long-term development blueprint, dubbed "Vision 2030", aims to transform Kenya into a newly-industrializing, middle-income country providing a high quality of life to all of its citizens in a clean and secure environment. Implemented through successive five-year medium-term plans, the country is currently pursuing its development agenda under the Third Medium Term Plan (2018-2022). The theme of the current plan is "Transforming Lives: Advancing Socio-economic Development Through the Big Four", whose initiatives comprise the following: food security, affordable housing, manufacturing and affordable healthcare.

The realization of the Vision 2030 and the specific national development goals is premised on the existence of a robust intellectual property management (IPM) regime for the protection and promotion of intellectual property rights (IPR), which include patents, trademarks and copyrights. There has been considerable growth in the legal and institutional framework governing IPM. Adoption of the Constitution in 2010 gave a strong impetus toward the recognition of intellectual property (IP) through various provisions to support enforcement of existing legislation.

With a rapidly growing national innovation ecosystem, as well as many players in the public, private and academic sectors, the development and implementation of institutional-based IPM policies has become necessary in order to encourage research, innovation and commercialization to achieve rapid growth and development. In November 2019, stakeholders gathered for a meeting whose theme was "Mainstreaming Intellectual Property Management, Access and Benefit Sharing on Genetic Resources and Traditional Knowledge in Universities and Research Institutions". Here, it was agreed that a model IP policy is an important tool in order to enable institutions to formulate and/or review their own IP policies and IPM systems.

It was further found important to develop National Guidelines on Intellectual Property Policy for Research and Development. The purpose of such guidelines is to present best practices for establishing effective systems to streamline IP and manage IP assets derived from research, science technology and innovative activities based on the existing national policies and legal framework. The guidelines will

further enable institutions to establish instruments and structures for identification, management and commercialization of intellectual assets (IA).

The Model Institutional Intellectual Property Management Policy and Guidelines mainly target universities and research institutions due to their research and development engagements, as well as the innovative activities whose outputs and outcomes have the potential to be commercialized—hence, the need to protect the resultant IP. The model provides a compendium of key elements that are essential for IP policy, including ownership, incentives, confidentiality and publication, IP management and commercialization, recording and maintenance of IP, and IP-related conflicts of interest. It provides a coherent set of clauses that comprise an effective IP policy, which may be used as is, or as customized to the needs of the respective universities or research institutions.

The model identifies broad goals to guide institutions in defining more specific objectives that are relevant to their work environment, mandates and functions. These include promoting the responsible commercialization of IP arising from activities that have commercial potential; recognizing and providing incentives for personnel, students and partners whose IP generates a demonstrable socioeconomic benefit; promoting academia-industry collaboration; advancing research and development; protecting the rights of the institution, researchers, inventors, breeders, partners and the public; and promoting transparency and accountability in the management of IP assets.

On IP administration and implementation, the model recommends the establishment of an IP Committee and IP Management Office (IPMO). The purpose of the IP Committee is to oversee the implementation and evolution of an IP policy, and to provide strategic guidance to IPMO. The Committee shall comprise 5-9 members, chaired by a Senior Officer responsible for research in the institution appointed by the Chief Executive Officer or Vice Chancellor (in the case of universities). It will determine IP management and commercialization strategies for particular types of IP.

The responsibilities of the IPMO shall include outreach, awareness and relationship management with creators and other stakeholders; IP management; technology marketing and IP contract negotiation; IP contract management; and IP costs and revenue distribution.

There are distinctive provisions in the Model which relate to IP ownership and rights of use applicable to the four categories of users. For staff members, it is provided that the institution owns all IP created in the course and scope of his/her employment or making substantial use of the institution's resources. However, it also provides that staff members will own/co-own the IP they have created when such IP is outside the course and scope of their employment and without substantial use of the institution's resources; or vests in scholarly works; or other IPRs, as required by law, or for which the institution cannot or does not wish to claim ownership, and whereby the institution has communicated as such in writing.

IP created by a student in the course of study at an institution (including theses, dissertations and other scholarly works) will be owned by the student. This is not applicable to students involved in research projects, however, whose IP will be owned by the institution.

Visiting scholars or researchers will be required to assign to the institution any IP created in the course

and scope of their appointment; or created by making substantial use of the institution's resources. This will, however, be subject to the terms and conditions that are agreed upon prior to their hosting at the institution.

The model provides more areas to guide institutions in the formulation of comprehensive IP policies and other instruments to govern the generation, protection and management of IA. This is expected to enhance the quantity and quality of creativity, research, technology and innovation; and to provide a basis for compliance to licensing and permitting procedures. Consequently, there will be an increase in the national IA portfolio that will enhance economic performance and increase the country's global competitiveness. It will further contribute toward the realization of the Vision 2030, as well as regional and global commitments such as the African Union (AU) Agenda 2063 and sustainable development-related goals.





This is the second part introducing the answers to a questionnaire survey for those trainees who contributed to the Enishi Magazine this year. Thank you for your cooperation! The foods from your countries sound delicious. We would like to try them if we ever get to go there!



**Q1 : Please tell us about your country's specialties (products, food, etc.) that you are particularly proud of.**

- Nyama choma and ugali (roasted meat BBQ and a dough made of maize flour), African wear Kikoi, Kenyan coffee and flowers. *(Kenya)*
- Thai authentic food, coffee (specialty) *(Thailand)*
- Food (I like seswaa, traditionally pounded meat), various traditional dances associated with our ethnic groups. *(Botswana)*
- Tourism, especially historical places and Cappadocia *(Turkey)*
- Brazil has very diverse fauna and flora, in addition to many places of incredible natural beauty, such as the beaches on the island of Fernando de Noronha, the waterfalls of Foz do Iguaçu, the Pantanal and the Amazon. *(Brazil)*
- Bulacan is the province in the Philippines where I came from. Bulacan is particularly known for excellent craftsmanship in making buntal hats (from the fiber of large palm trees), jewelry, traditional furniture and garments (all handmade), and fireworks/ pyrotechnics. *(Philippines)*
- Natural food products, mango, fish, nuts *(Philippines)*
- I'm proud of the Peruvian food, because it is very delicious and known around the world. *(Peru)*
- I am very proud of the vision we have in Mexico about death, to the point that we celebrate it in November. The food is exceptional and different in each state of the country. *(Mexico)*
- I am proud of Brazilian culture, including popular music. Thinking of my country's specialties I point out: cheese bread, sweet milk, tapioca and caipirinha (sugarcane-based cocktail). *(Brazil)*



- "Machipuchu" is located in Cusco, Peru. It is magical for its architecture and customs. Also, the Peruvian gastronomy: cebiche, lomo saltado (potatoes and meat) and pisco (brandy) (apellation of origen). *(Peru)*
- Tea, coffee, horticultural produce such as fruits, vegetables and flowers, locally produced curio products, roasted goat meat (popularly known as nyama choma, ugali (made of corn/maize flour) *(Kenya)*
- Our traditional cloth (Kente) *(Ghana)*
- Tunisian houli, khomsa, handcrafted ceramics, Tunisian traditional bags (known as koffa arbi), Berber tattoos, assidat zgougou (a dessert). *(Tunisia)*
- I am particularly proud of our naturally harvested rice, pepper, palm sugar, all traditional dishes and hand-made crafts. *(Cambodia)*
- Our foods, traditions and diverse culture are very interesting. Not to mention the incredible nature areas. *(Indonesia)*
- We have rich cultural sites, sea, rivers as waterways for business, and rich national resources. The government is also strengthening the policy of "One Village, One Product". We are an agricultural country where 85% of the population is working in agriculture. *(Cambodia)*
- Proud of the hospitality, solidarity and openness of the people of my country, also of our different national dishes such as thiebou dieun (rice and fish). *(Senegal)*



## Q2 : What are your favorite dishes from your home country?



- Nyama choma and ugali (Roasted meat BBQ and a dough made of maize flour) *(Kenya)*
- Som tum (spicy green papaya salad), Khao Soi (Thai coconut curry noodle soup) *(Thailand)*
- Pap and seswaa or samp with beef stew. During ploughing season, I like pap with some traditional vegetables collected from the veld, namely: thepe, rothwe and delele. *(Botswana)*
- Pestil: This is a fruit leather that is made by pounding fruit into a thin layer, which is then left to dry.
- İskender kebab: A specialty of the city of Bursa, İskender kebab is named after a butcher called İskender Bey, who first prepared this flavorful dish. It consists of thinly sliced lamb that is grilled and combined with a spicy tomato sauce and pita bread, while melted sheep butter and yogurt are traditionally drizzled over the dish at the table. It is recommended to pair this kebab with şıra, a Turkish beverage that is known to aid digestion.
- SAHLEP: Turkish sahlelep is a hot creamy drink that warms you up in winter. It is made with milk, sugar, and orchid bulb powder. *(Turkey)*
- I love a family barbecue. However, a very Brazilian dish that I really like is açaí. *(Brazil)*
- "Sinigang na Hipon" is one of my favorite dishes from the Philippines. It has a tamarind soup base with the following ingredients: shrimp, eggplant, string beans, okra, kangkong (water spinach) leaves and radish. It is a complete meal in itself. *(Philippines)*
- Adobo, grilled meat and fish, rice cakes *(Philippines)*
- Ceviche, lomo saltado, tacu tacu. *(Peru)*



- I like mole and chocolate from Oaxaca, cemita from Puebla, tequila from Jalisco ... Every state in Mexico has something that I like. *(Mexico)*
- My favorite dishes from my home country are Brazilian barbecue and Brazilian pizza. *(Brazil)*
- Cebiche and lomo saltado (potatoes and meat) *(Peru)*
- Roasted goat meat (popularly known as nyama choma, ugali (made of corn/maize flour and vegetables such as kale, spinach, cabbage etc, a cup of Kenyan brewed tea and coffee. *(Kenya)*
- Fufu, yam and palava sauce *(Ghana)*
- Mloukhiya, tajine, couscous bel osbane, couscous with besbes (known as farfoucha), assidat zgougou*(Tunisia)*
- Nom banh chok (Khmer noodles) *(Cambodia)*
- Rendang, nasi goreng *(Indonesia)*
- We are famous for a local food called amok, made of river fish with fresh coconut and vegetables. *(Cambodia)*
- Thiebou dieun (rice and fish), yassa and meat or with chicken or fish, etc.*(Senegal)*



## Best Part of the Training

**Ms. ASAMI Setsuko**

Chairperson of the Human Resource Development Cooperation Committee,  
JPO Cooperation in Human Resource Development  
Professor, Tokyo University of Science



For about 30 years beginning in 1982, I was in charge of examinations and appeals for chemical patents at the Japan Patent Office. My first involvement in cooperation with developing countries was in 1991, when I was sent to the Vietnam Patent Office as an expert of the Japan Fund of WIPO. At the time, Hanoi's infrastructure was still inadequate due to the effects of the Vietnam War. However, as the first Japanese to visit the Vietnam Patent Office, I was given a warm welcome. The Vietnam Patent Office had a total of 70 staff members, including about 10 patent examiners. I was overwhelmed by the enthusiasm of the staff members, who asked me not only about patent law, examination guidelines, and search methods, but also about the reasons for Japan's economic development. Later, when they were invited to Japan as trainees, we renewed old friendships. And when I visited Hanoi in 2013, I was amazed at the development of the city and had a great time talking with the staff about the past.

I also have experience as a training instructor at APIC. When examiners from ASEAN countries gather to discuss patent examination cases, various opinions are expressed depending on the country, the technical field, and the experience of the examiners. We proceeded with the discussions by asking each other questions about why we respectively think the way we do, and it was meaningful for us to deepen our understanding of each other through the training.

In 2014, I visited Nay Pyi Taw as one of the JICA expert members to support the establishment of an IP Agency in Myanmar. At that time, I had a discussion with the IP Agency establishment preparation team regarding what kind of organization and human resources were needed.

Looking back on the activities I have been involved in, I feel that cooperation with developing countries is a very rewarding job. Because trainees respond to the guidance with enthusiasm and they appreciate the benefits of their training.

When IP systems are developed and properly operated in a developing country, the country can attract foreign investment. This can also lead to the development of industries by protecting products,



technology, and brands in the country. To this end, it is important not only to create IP systems, but also to operate them properly. To carry this out, it is essential to develop human resources who are skilled in intellectual property. I hope that the trainees will engage in their training with the conviction that becoming IP professionals will lead to the development of the industrial economy in their countries.

As face-to-face training became difficult starting last year due to the COVID-19 pandemic, APIC was quick to adopt remote training. From the beginning, much of the training is accessible on demand, and there have been recent revisions such as increasing interactive training, and providing opportunities for communication among trainees. The Human Resource Development Cooperation Committee will continue to come up with ideas to provide meaningful training, and encourage all related parties to further enhance the program.

Although it has become easier to connect remotely with people from all over the world, I still feel that it is not as good as being present in person and experiencing everything with their five senses. I sincerely hope that the COVID-19 pandemic will be settled soon, and that deeper exchanges will be restored wherein trainees will be able to stay in Japan.



JPO/IPR Patent Examination Practices for ASEAN Countries (August, 2014)



## Festival



Mr. OGIYA Takao  
Director General of APIC



From April 2001 to March 2003, I was assigned to the city of Kyoto for two years. Kyoto is located in an inland basin which has days of intense heat in the summer, and bitter cold in the winter. Such a city was the capital of Japan from the end of the 8th century AD to the middle of the 19th century, and a festival known as the Gion Matsuri (*Photo 1*) began here in 869 AD.



Photo 1 : Gion Festival

Around that time, many casualties in Japan were caused by epidemics, eruptions of Mt. Fuji, tsunamis and earthquakes. The Imperial Court held a festival in order to calm evil spirits causing social anxiety, which is the origin of the Gion Matsuri. During the festival, the Imperial Court built Yamahoko floats featuring decorative halberds, played instruments, and danced through the city as part of a purification ritual to appease the gods. Over the years, people began to participate actively in the festival, and the Yamahoko floats were gracefully decorated with

tapestries brought in through the Silk Road and domestically-crafted ornaments. Eventually, this dazzling festival that was held in the capital, Kyoto, became known all over Japan.

On the contrary, the Nebuta Matsuri in Aomori Prefecture (*Photo 2*) is said to have evolved from the Tanabata Matsuri, which came from China in the 8th century AD, along with traditional events that had

been held in the region for a long time. Initially, lanterns were thrown into a river or the sea as an act of prayer for good health and to wash out impurities, which was known as *misogi* (purification). The size of lanterns became larger during the Edo period, however, and there is a theory that the Nebuta Matsuri was influenced by the Gion Matsuri since the original lanterns resembled the Yamahoko floats.

One of the traditional worldviews of Japanese people, which was discovered by Japanese ethnologist Kunio Yanagita, is "*hare* and *ke*." *Hare* represents extraordinary ceremonies, annual events and festivals; and *ke* represents the ordinary that is everyday life. The meaning of *hare* still remains today, and represents a situation so important that it happens almost only once in a lifetime. This is known as "*hare no butai*," and clothes worn at weddings

and the coming-of-age ceremony are called "*hare-gi*." Festivals are *hare*, that is, extraordinary.



Photo 2 : Nebuta Festival

In Japan, festivals are held throughout the four seasons. Those that have been celebrated for a long time show a reflection of farming customs, since our country has agricultural roots.

Spring is the time to plant rice, and thus festivals in spring are for praying for good harvest and good health for the year. Summer is the time to be concerned about typhoons and pests, and so festivals in summer are held to offer prayers for protection. Plagues often spread in urban areas, and so festivals are held for driving off disease and bad luck. Autumn is the time to harvest rice, so festivals held in this season offer gratitude for harvesting and protection. Finally, winter is the time of the agricultural off-season, so festivals in winter combine elements of the thanksgiving of autumn festivals and the good harvest prayers of spring festivals. There are also many festivals to celebrate the New Year.



Photo 3 : Bon Festival Dance

In recent years, however, the original meaning of these festivals is being lost. Particularly with summer festivals, for example, the Bon Odori (dance festival) held throughout Japan (*Photo 3*) has become an event to reunite people who have returned home during the summer vacation, and to deepen relationships in the community.

Some festivals have become more colorful and contemporary-like, and are even featured on TV and other media. Local governments also share their festivals on their websites to attract tourists.

In any case, due to the extraordinariness of *hare* festival days, many people act without restraint. Some drink too much, some fight, and some even fall in love. Because festivals are special, people can do things that they normally do not do.

In some cases, organizers have become more excited and changed the content of the festival to be more flashy, attractive and prominent. As a result, there are many festivals that have lost their original meanings connected to farming.



During *ke* (ordinary) days, people spend their daily life patiently without much change until the day of *hare* comes.

I have a friend who is from Kishiwada City, Osaka Prefecture, where the Danjiri Matsuri is held every October (*Photo 4*). He told me that he applied for vacation long before the festival in order to ensure the day was free from work. Meanwhile, he asked his colleagues and associates for their understanding and cooperation, and worked harder on normal days.

Because the *hare* element of festivals uplifts people's spirits, it becomes harder for people to go back to everyday life. Some people therefore feel depressed, burnt out or indescribably lonely, or even go travelling through the country in search of the next extraordinary festival or stimulation afterwards. However, such extraordinary days do not last forever.

These people should accept their true feelings and care for themselves gently instead of trying to deny their depressed, burnt out, or lonely feelings. They should try to regain their motivation and energy, which should enable them to sleep soundly overnight and return to their normal routines the next day.

*Hare* is extraordinary because there is the ordinary quality of everyday life, *ke*. Extraordinary should never be the standard. Spending your everyday life waiting for the day of *hare* is not a bad thing. However, finding joy in our everyday lives will lead us toward more fulfilling days. It may be more important for human beings to find purpose in their daily work and family life, to discover a little joy in their free time, and to deeply appreciate the transition of calm days. In such fulfilling days, I think that taking advantage of the occasional hare days is a healthy experience of ordinary life.



Photo 4 : Danjiri Festival



## Discovery of the World's Cultures



-the Philippines-

Part. 2



Kay

New APIC Staff Member



### Coconuts

I remember that the Philippines, especially Dapitan and Davao where I was staying, had many coconut trees growing, and industries using coconuts were thriving. Even if left alone without fertilizer, coconut trees will produce fruit all year round for several decades, and there is nothing to throw away. Moreover, even in the event of a strong typhoon, the tree only loses its fruit and leaves, but its trunk remains unbroken and continues to live strong.

There are so many different ways to use coconuts, like the following:



[Fig 1]

- Eating the fruit as it is
- Drinking the juice
- Processing the fruit to make coconut milk
- Using the lees after processing the fruit to feed livestock
- Creating decorations using the stems
- Using the dried skins as fuel
- Drying the husk and using it as a cleaning tool (the cross section becomes like a sponge).
- Extracting oil from the dried coconut
- Fermenting the sap to make liquor

I guess it's not an exaggeration to say that the coconut is one of the foundations of life for people in

the Philippines, and the ingenuity with which one thing can be used to its fullest from different angles is remarkable.

By the way, in Japan, there are a lot of products claiming to be "made with coconut oil", which has a certain popularity. Coconut oil is rich in MCTs (medium chain triglycerides) and MCFAs (medium-chain fatty acids), and is considered to be good for one's health. It is an efficient source of energy, and is digested and absorbed more quickly than ordinary vegetable oils. It is not easily oxidized, does not deteriorate even when exposed to high heat, has antioxidant properties that prevent aging of the body, and its efficacy remains unchanged even when used for frying.

...big up to coconuts.

## **Lechon**

One day, the chief of the village where I was staying invited me to dinner at his house to celebrate his daughter's marriage the following month. At the dinner, they served us a whole roasted pig dish called "lechon". Lechon is a dish that originally came from Spain, and means "piglet loin". In addition to the Philippines, it is also eaten under the same name in Latin American countries that were formerly Spanish territory.

The cooking methods are a little different in the northern and southern Philippines. In the north, the pig is roasted without stuffing and eaten with sweet and spicy sauce. On the other hand, in the south (where I was), they stuff the stomachs and eat them with vinegar to add flavor.

We dipped the savory meat, which was soaked in the herbaceous flavor of the stuffing, and the skin, which was slightly greasy but became more flavorful the more you chewed, together with vinegar. And the flavor...it was probably the best pork dish I've ever had!

I heard that the local people treat lechon as a luxury item and often outsource it. The parts that are removed before baking are also reused. A sauce is made from the juice which is squeezed out of the crushed roasted liver. "Dinuguan," a stew made from blood and offal, is also made from this process. From the tip of the head to the tip of the tail, all of the internal organs and blood are used to the fullest. I happened to notice a common saying in Okinawa, the southern islands of Japan: "Pigs have nothing to throw away except their squeal".



## **Rum**

Various people kindly provided me with a place to sleep while I was staying in the Philippines, and what I noticed in many households there was a culture of "passing the bottle around". Every time, someone would bring rum and chasers (mostly soda or cola) to pass around, which was a ritual called "Tagay Tagay". When it's your turn, you chug the rum until the bottle is empty. I'm getting drunk just thinking about it now, but I remember feeling like I belonged to the community (maybe temporarily) by joining the Tagay Tagay circle.

One night, after a long night of drinking rum at Tagay Tagay, the patriarch of the house where I was staying took me to the outskirts of the village, saying "I'll introduce you to my friends." Gradually, the

distance between the street lights became wider and wider, and as the road we were walking on changed from a "road" to a "beastly road", I sobered up and started to feel a little scared. Then, I saw a lantern in front of me.

I was relieved to see that a sign of people, but then I was surprised to see guns in their hands. A man with a rifle came up to me with a smile on his face, and I was thinking, "Oh, I'm going to be on the news for my death". They told me that they were a political group based on the ideology of a certain religion, and they brought me here because they had heard that there was a foreigner (which is me) in the village. I was freezing from too much information, and then the man pulled out a single glass, soda, and a bottle of rum.

There is a Japanese idiom, "杯を交わす (Sakazuki wo kawas)", which roughly means "exchanging cups". This phrase actually has two meanings: one is literally "to drink together with a cup in one's hand", or "pouring saké at a bar". The other refers to "exchanging cups and drinking alcohol in order to keep an important promise." The ritual of the groom and bride exchanging the 三々九度 (san san kudo, which roughly translates to three cups of sake) in front of their relatives and guests at a Japanese wedding ceremony is an example of this ritual. The marriage ceremony is an act of making a "firm promise" of the connection between house and home, as well as an act of expressing the intention not to betray each other.



Maybe it was the tense atmosphere or the rum, but I don't remember much about that night when I was surrounded by men with guns. However, I still remember the unforgettable experience of sharing the same space and time with people of different backgrounds and ways of thinking.

And wow! I'm glad that I'm still alive!

## Antenna Shops in Tokyo: A Cultural Journey

Hello Alumni! This is the editorial team at Enishi – IP Friends Connections. This year, we will share some highlights of traditional Japanese culture from our unique perspective.

On a clear day in October, the Enishi magazine editorial team left our office and headed to Ginza to visit the antenna store<sup>1</sup> of Shimane and Kumamoto prefectures.

Tokyo has many shops where you may find and enjoy the culture of other parts of Japan. These so-called “antenna shops” serve as ambassadors of local culture to the metropolis. This second edition of our antenna shop series focuses on both the Shimane Prefecture shop, located in the basement of Hibiya Chanter department store, and the Kumamoto Prefecture shop, which has its own building. Both are located in the Ginza/Hibiya area, where many of these shops are found.

### About Shimane

Do you know where Shimane Prefecture is located?

It is in the Chugoku region, with Hiroshima Prefecture to its south, Tottori to its east, and Yamaguchi to its west. The Japan Sea borders it on the north.

In Japan, October is called Kannazuki, or the “month with no gods”. It has been said since ancient times that this is the month when the gods of Shinto (a unique Japanese religion) leave their shrines from all across Japan to gather at Izumo, in Shimane. Therefore, only in Shimane, October is known as Kamiarizuki, or the “month with gods.” This year too, there are many ceremonies in Izumo and around Shimane to welcome the gods. They have arrived from as many as 85,000 shrines around the country. This year, they are surely discussing how the world might exist calmly and peacefully during the COVID-19 pandemic.

<sup>1</sup> An “antenna store” is opened by a company or a regional government to introduce its own local products to the public, and to seek consumer responses. This time, we look at antenna stores run by local governments, which not only sell local specialties, but also have a tourist information corner where you can learn about local products, sightseeing, and places where locals shop for food from their hometown!



## Shimanecko



Fig. 1: Shimanecko<sup>®</sup>  
 license agreement  
 SHIMAKANREN  
 No.6862

Local towns and regions all across Japan are known for their promotional mascots known as yurukyara—a word derived from yurui, meaning “loose” or “relaxed”—and kyara, or “character”. They showcase local foods and souvenirs, appear in events, and are utilized in various capacities by local organizations. Shimane is famous for its Shimane Tourism Mascot Shimanecko (Fig. 1) yurukyara. With a hat like a taisha-zukuri style shrine roof, and a scarf of shimenawa rope as used in Shinto, it is the perfect symbol for Shimane, where the gods gather, and is often used in tourism promotion.

## Historical sights



Fig. 2: Iwami Ginzan Silver Mine

Shimane is famous not only for being where the gods gather, but it also has many other attractions, and is home to numerous opportunities to come in contact with Japanese history and culture. These include the Iwami Ginzan Silver MineBA (Fig. 2), a registered world heritage site; the Oki Islands, recognized as a UNESCO Global Geopark; the Adachi Museum of Art, known for its Japanese garden and collection of Modern Japanese paintings; Iwami Kagura (Fig. 3), officially recognized as a vital piece of Japanese cultural heritage (kagura is a Shinto ceremonial dance); and Matsue Castle (Fig. 4), listed as having one of the top twelve castle keeps in Japan.

Naturally Shimane is known for the seafood caught along its border facing the Japan sea, in addition to the shijimi clams of Lake Shinji, famous throughout Japan. The castle town of Matsue carries on traditions that include Japanese sweets and green tea. Izumo soba, which is popular among health-conscious people, has also recently become a special product unique to the area. There

are also many places where you can enjoy hot springs, one of them being the Tamatsukuri Onsen, which has been believed to provide benefits to the skin since ancient times.



Fig. 3: Iwami Kagura



Fig. 4: Matsue Castle

### Hibiya Shimane Kan



Fig. 5: Inside Hibiya Shimane kan  
(Product range may differ depending on the season.)

If you cannot make it to Shimane Prefecture, Hibiya Shimane Kan (Fig. 5) is a great alternative. It is packed full of specialty products from Shimane and there is a tourist information counter where you can ask about all the fascinating areas of Shimane. Hearing the stories, you will be overwhelmed by the number of charming spots in Shimane, and will definitely want to experience them firsthand. Having never visited Shimane myself, I would love to visit once the pandemic slows down.

## About Kumamoto

Have you heard of Kumamoto? One interesting name of the prefecture is the “Land of Fire” because of Mt. Aso (Fig. 6), one of the world’s largest calderas. Visitors are enchanted by the magnificent nature and scenery created by the local active volcanoes, as well as beautiful mountains and grasslands. The history and culture of Kumamoto people span tens of thousands of years, including many places associated with sacred myths like the ancient Shinto shrines of Aso.



Fig. 6: Mt. Aso

Kumamoto is also known as the “Land of Water” for the abundant water resources sprung from the geological formation born from the eruption of Mt. Aso. This rich geology has also fostered a unique food culture.

## Savory Food Culture

For those who enjoy good-tasting liquor, we recommend Kuma Shōchū, distilled from rice. Shōchū is a traditional spirit typically made from rice, barley, sweet potatoes, buckwheat, or brown sugar. Given its mild sweetness and refreshing grain aroma, Kuma Shōchū is a representative rice shōchū. What’s more, the elegant flavor derives from top-quality water from Kumamoto—aka, the Land of Water—which also accounts for superior rice drawn from abundant water. Given these sources, it is not surprising that Kuma Shōchū was awarded GI certification in 1995. But don’t take our word for it or that of the award: taste for yourself the result of 500 years of distillation for a spirit that is sure to delight your palate!

Another enticing treat for your taste buds are local delicacies. Karashi Renkon (Fig. 7), a particular Kumamoto dish, is lotus root stuffed with spicy miso paste, coated with yellow batter, and deep fried in oil. Other choices worth tucking into are the following: Aso red beef, with its light lean flavor; Kumamoto ramen—noodles served with garlic chips in a marinade, which is a favorite of our editorial staff in Kumamoto; Ikinari Dango, a local confection wrapped in sliced sweet potato and bean paste inside a rice-cake dough, and then steamed; and many more delicious treats. You’ll discover there’s no end to the variety of local dishes that are popular in Kumamoto, making this southern region of Japan a gourmet paradise.



Fig. 7: Karashi Renkon



## Sights to See



Fig. 8: Sakitsu Village

Among Kumamoto's many charms is the variety of sightseeing options, whether you want to be overwhelmed by magnificent nature or refresh body and soul by immersion in one or more several onsen (Hot springs). We could recommend several other tourist hot spots—Kumamoto Castle, Aso Farmland, Nabegataki Park—but space here is limited.

However, another must-see is Sakitsu Village (Fig. 8), inscribed as a World Heritage site in July 2018 as a “Heritage Site Related to the Hidden Christians of Nagasaki and

the Amakusa Region.” There was a time in Japan when religious beliefs and proselytizing, especially of Christianity, were forbidden. We recommend a visit to Sakitsu Church, located in the fishing village of Sakitsu overlooking the calm waters of Yohkaku Bay, where you can spend a day reflecting on Japan's attitude toward Christianity and the hidden Christians who secretly kept their faith alive despite the severe 250-year suppression during the Edo period (1608-1868). Please note that in today's Japan, freedom of religion is guaranteed by the Constitution.

## Kumamon

Whether due to the popularity of Kumamon<sup>2</sup> (Fig. 9) on SNS or Internet memes, many people living overseas may know of his existence.

This delightful character helped pioneer the Yurukyara movement, which became huge in Japan. Yurukyara is also a registered trademark. Thanks to that foundational movement, Kumamon can be seen everywhere in Japan. You may be as surprised as we were to learn that Kumamon's license fee is basically free<sup>3</sup>. It would be no exaggeration to say that such free use of character copyright in and outside Japan is extremely rare and generous!

As Kumamon is very popular in Japan and around the world, many people, including our editorial team, believe that charging a license fee would prove quite profitable. In addition, Kumamoto Prefecture has bought the copyright of Kumamon from the designer, Manabu Mizuno, and registered it as a trademark. So, why doesn't Kumamoto Prefecture charge a fee for use of its Kumamon character?

One answer might lie in the fact that it strictly screens usage of the character. According to the

<sup>2</sup> Trademark Registration Number: 5387805, 5387806, 5540074, 5540075, 5544489, 5544490, 5649193

<sup>3</sup> In principle, royalties will be collected for the use of Kumamon overseas. ADK Emotions Co. is charged for overseas use and management of Kumamon among others, and the royalty fees collected will be used for anti-piracy measures. As previously established, agriculture, forestry, and marine products are managed directly by Kumamoto Prefecture.



Fig. 9: Kumamon

guidelines for use of the Kumamon character, there are rules which state that the intended use must fulfill one of the following three purposes:

- 1) PR of Kumamoto Prefecture
- 2) Expansion of sales channels for Kumamoto products
- 3) Promotion of Kumamoto Prefecture industries

Kumamoto Prefecture has established rules for the use of Kumamon as a trademark, and if any party uses “Kumamoto products” to promote Kumamoto, then that party must meet the requirements for such trademark use.

To sum up, then, companies that have nothing to do with Kumamoto Prefecture, but take advantage of the popularity of Kumamon, are not allowed to use Kumamon. By permitting only those companies that have passed a strict screening process to use Kumamon, Kumamoto Prefecture communicates the vital message of the relationship between Kumamon

and the prefecture, which helps build the “Kumamoto brand.” Kumamoto Prefecture's strategy is to have companies and organizations use Kumamon widely without charging a fee, while at the same time promoting the prefecture.

Through such an effective strategy of opening up its intellectual property rights while creating strict conditions for free usage of the character, Kumamoto Prefecture has endowed Kumamon with nationwide recognition—and enabled him to become a well-known, beloved character around the world.



## Ginza Kumamoto Kan



Fig. 10: Ginza Kumamoto Kan

Now that we've introduced many of Kumamoto's enchantments, how about a visit there, where you need not travel outside of Tokyo? Well, just a one-minute walk from Tokyo Metro's Ginza Station is the aforementioned Ginza Kumamoto Kan (Fig. 10), the antenna store that invites you to have a genuine Kumamoto experience.

At Kumamoto Plaza (1F), you'll find a wide array of fresh vegetables and fruits and local sweets, plus processed agricultural, livestock and marine products, as well as such liquors as Kuma Shōchū. There are nearly 1,500 items on display. Why not take home a tasty souvenir, like some of the Kumamoto gourmet foods mentioned above?

### Savory Shopping at Ginza Kumamoto Kan

Shopping for products is great, but what if you're in the mood to try some freshly prepared Kumamoto cuisine, or maybe grab a Kumamoto drink ?

If so, we suggest you go up the stairs to the right of the entrance and ascend to Kumamoto Salon ASOBI Bar (Fig. 11). This restaurant serves the same products sold on the first floor (as mentioned earlier), inviting you into Kumamoto's gourmet paradise. Here you can enjoy Kuma Shōchū or other alcoholic beverages derived from the prefecture's renowned water, along with such Kumamoto specialties as mustard lotus root. The mere mention of these tasty treats makes me hungry for them! On the same floor of Kumamoto Salon ASOBI Bar, across from the Tourist Information Center, is the Kumamon Official Goods Shop, where you'll find a fine array of products to choose from.



Fig. 11: ASOBI Bar (2F)

## Travel to Shimane & Kumamoto



## Map of Antenna Shops



### 【Access】

■ Hibiya Shimane Kan <https://www.shimanekan.jp/>

Address: Hibiya Chanter B1, 1-2-2 Yurakucho, Chiyoda-ku, Tokyo, Japan

To get there: 5-minute walk from JR Yurakucho Station (exit for Hibiya); or 2-minute walk from Tokyo Metro Hibiya Station

■ Ginza Kumamoto Kan <https://www.kumamotokan.or.jp/>

Address: 3-16, Ginza 5-chome, Chuo-ku, Tokyo, Japan

To get There: 5-minute walk from JR Yurakucho Station (exit for Sukiyaabashi); or 1-minute walk from Tokyo Metro Ginza Station (exit B9)

## Editor's Note

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I'm Mitty. There were many interesting responses for the 'Get to know your IP Friends' questionnaire. For the question "Are there any new pursuits that you have undertaken since the Covid-19 pandemic began?", my answer is I have started singing. What I mean by "singing" is that I have joined a band as a vocalist, which is something I have always wanted to do. I have not been able to practice live with the band yet, but I am trying to face singing again and practice on my own every day.

As for "What are your favorite dishes from your home country?", sashimi, sushi, sukiyaki and tempura are all well-known Japanese dishes but I prefer pork miso soup. The ingredients and the way it is made differ from region to region, and it is a popular home-cooked dish all over Japan. The most common ingredients are pork, white radish, carrots, burdock root, and taro, but the ingredients in my "pork miso soup" are pork, white radish, carrots, onion, leek, devil's apron, and sweet potato. The addition of sweet potatoes gives it a sweet taste and warms you up. You can also substitute tofu for the pork and combine it with dried bonito flakes. I would be very happy if you could tell me more about your country and yourself.



Greetings! This is Kay. This magazine is scheduled to be published in November, but at the time of writing this post-editorial, it's almost the end of August. Every year, this time reminds me of the "Owara Kaze no Bon", a festival held in Toyama, which is my father's hometown. As mentioned in the column written by the Director, most festivals in Japan are glamorous and extraordinary. This "Owara Kaze no Bon", however, is completely different from the lively nature of the "hare"-style vibe of festivals in other parts of Japan.

Away from the city center, in the narrow alleyways lined with stone pavements and old-fashioned houses, a singer responds to the somewhat lonely tunes of the shamisen and kokyu (stringed instruments), while dancers wearing braided hats slowly parade through the streets. Moving lustroously, the dancers approach from the slope where a series of dimly-lit lanterns are located, and then disappear into the darkness. This is a "dope" festival that you can't see anywhere else. (Whether or not the expression "dope" is appropriate for traditional culture, it's a really cool and unique festival that you can't experience anywhere else. When the current situation calms down, I hope everyone will go and visit it!



Hi. I'm Minori Miyazaki. With the spread of Covid-19 all over the world from last year, JPO/IPR training courses have been switched to online training. Many of the trainees, as well as we at APIC, are getting used to Zoom these days.

In the live sessions of one of the training courses, I was in charge of trainees from nearly 20 countries who were participating via Zoom in real time. The online lectures were held over a period of two to three weeks, and people from some countries in South America attended the lectures past midnight, while people from some countries in Africa enthusiastically joined the lectures from early in the morning. I was astonished by the effort of the trainees.

That training course just happened to coincide with the Tokyo Olympics.

I couldn't help but cheer for the athletes from all over the world on TV, especially when I saw athletes from trainees' home countries competing. I am so grateful for the opportunity to meet all trainees from all over the world through Zoom.

#### 【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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