Reference material 1

Establishment of the Utility Model System

1.Prior to enactment of the Utility Model Law

The Patent System (Monopoly Patent Law) was enforced as part of the policy to boost productivity and modernize the nation in 1885.

Applications from foreigners started in 1897 but since the technical level of inventions by Japanese applicants was low and most patent applications concerned improving fundamental techniques introduced from abroad, most of the important patents were held by foreigners. Therefore, most of the applications from Japanese nationals with far lower technical level than the Western standard were refused, and it was impossible to protect small inventions with the Patent Law.

2.Enactment of the Utility Model Law in 1905

The Utility Model Law, based on the German Utility Model Protection Law, was enacted in 1905 because a system to protect and promote mainly small inventions in Japan as industrial policy was considered necessary.

3.Amendment of the Utility Model Law in 1921

After World War I began, the dyestuff and medical fields that had been dependent on imports from Germany were thrown into confusion as imports stopped, exposing the fragility of the foundation of Japanese industry and technologies. The Japanese government was forced to realize the necessity of developing its own technology and so began to promote science and technology. This policy of promoting science and technology encouraged inventions, and there arose a strong demand for amendments to the system, etc. With this background of changes in the external industrial property system, the Utility Model Law was amended in 1921.

4.Amendment of the Utility Model Law in 1959

In the period immediately after World War II, few technologies were developed in Japan and the focus was on low-cost mass production using techniques from abroad. Technical advancement of Japan was thus supported by foreign technologies. In the late ’50s, however, as the technical level improved, it became possible to improve the technologies at the utility model level in standard business operations when necessary, and so the necessity for protecting small inventions began to diminish gradually.

The four intellectual property related laws therefore began to be reviewed, and after ten years of reviews, a comprehensive amendment was conducted in 1959.

5.High-growth era and amendment of the Utility Model Law in 1970

(1)Rapid increase of applications

During the high-growth period that lasted until the 70s, Japan closed the gap with the West and started to develop its own technologies, and so patent applications began to increase. New products and model changes accompanying minor improvements were developed successively for household appliances, automobiles, etc. as living standards rose, and applications for utility model registration also increased. The number of applications for utility model registration, which was about 60,000 in 1955 at the dawn of the high-growth era, tripled to around 180,000 in 1975.

(2)Amendment of the Utility Model Law in 1970 (Introduction of the Examination Request System)

As the number of applications increased rapidly, the backlog of unprocessed applications grew and the average processing period for a utility model in 1969 was as long as five years. Therefore, the examination request system was introduced, modeled on the systems in Germany and the Netherlands. This system allowed the period for judging the necessity for examination requests to be seven years for a patent and four years for a utility model, which

reduced the number of unprocessed applications.

6.Diversification and maturity of technologies and amendment of the Patent Law in 1987

(1)Decline of applications

In the 80s, research and development in Japan progressed and technology exports increased, narrowing the technical gap with the West. In the 80s and 90s, the introduction of technologies from the West leveled out, living standards improved, company management became more sophisticated, the computer and software market grew dramatically, the information technology society was born, and new markets and industrial fields emerged, which led to the diversification and maturing of technologies.

As technologies advanced and matured in Japan and applications for patents continued to increase, the applications for utility model registration, which used to exceed the number of patent applications, gradually began to decline and became fewer in number than patent applications from 1981.

(2)Amendment of the Patent Law in 1987 (Improvement of the Multiple Claim System)

While the contents of applications for patents continued to become more complicated as technical development progressed, it became apparent that the traditional “multiple claim system” had limitations, in the description format, etc., to provide thorough protection of the fruits of research and development, and so the Law was amended in 1987 to improve the multiple claim system.

This amendment allowed descriptions of multiple claims regardless of the format for one invention, and judgment on novelty, inventive steps, etc. could be given independently for each claim. It also allowed a separate invention to be filed using the same application form as a closely related invention.

Following this improvement of the multiple claim system, exploitation of the Utility Model System fell dramatically, because devices for which applications had been made for utility model registration could now be described in the claims in patent applications.

7.Amendment of the Utility Model Law in 1993 (See Reference material 2)

As the applications for utility model registration decreased, the need for accelerated registration to provide appropriate protection to techniques and products became apparent because technical innovation was accelerating, there were many products for which the utility model right was enforced at a very early stage, and the lifecycle of products was decreasing. To respond to such needs, the non-substantive examination and ex post facto evaluation style New Utility Model System were adopted without any substantive requirement examinations in 1993.