

### JP-CN-KR Comparative Table of Prior User Rights System

	Japan	China	Korea
A. Prior User Rights System (“System”)			
A-1. Statutory legal basis on which the System is prescribed.	Article 79 of the Patent Act	Patent Law Article 69	Patent Act Article 103
A-2. Enforcement regulations and/or guidelines of the System (other than laws to be mentioned above.)	N/A	“Interpretation by the Supreme People’s Court on Some Issues Concerning the Application of Laws to the Trial of Patent Infringement Disputes” Article 15	N/A
B. Requirements for establishment of the prior user rights			

<p>B-1.</p> <p>In case where non-filed inventions are invented independently (i.e. not derived from any filed inventions): whether or not prior user rights can be granted a person who exercise such inventions without registration/license</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>
<p>B-2.</p> <p>In case where a person comes to know the inventions from a person who would be its registered patent holder, and such non-filed inventions are identical to the filed inventions (i.e. both inventions have the same source of knowledge): whether or not prior user rights can be granted a person who exercise such inventions without registration/license.</p>	<p>No</p>	<p>If the non-filed invention is acquired illegally, then no. Otherwise, yes.</p>	<p>No</p>

<p>B-3.</p> <p>By when a person who intends to be granted prior user rights shall exercise the inventions (the “Critical Date”).</p>	<p>Filing date(priority date if applicable)</p>	<p>Filing date(priority date if applicable)</p>	<p>Filing date(priority date if applicable)</p>
<p>B-4.</p> <p>The scope of activities which can be a basis of prior user rights, but are not classified as working of the invention itself (including whether it cover any preparatory activities for working)</p>	<p>Including preparation of business activities</p>	<p>Including the preparatory activities.</p>	<p>Including preparation of business activities</p>
<p>B-5.</p> <p>Whether the scope of acts which can be a basis of prior user rights is identical to the scope of acts which are classified as working of an invention.</p>	<p>Yes</p>	<p>No (behavior of selling, offering for sale and importing cannot be basis of prior user rights)</p>	<p>Yes</p>
<p>B-6.</p> <p>Whether interruption of business after the Critical Date may cause</p>	<p>Re preparation, if preparation is interrupted, prior user rights may be expired. Re working of</p>	<p>Not clear</p>	<p>Not clear</p>

expiration of prior user rights.	invention, it is not clear.		
C. Effects of prior user rights recognized in the statutory/case laws.			
C-1. Whether the prior user rights may expand capability of manufacturing/distribution after the date when such rights are granted	Yes	No	Not clear
C-2. Whether the prior user rights may cover any changes of exercise of inventions (such as model changes to the goods/services, changes to manufacturing methods, etc.)	Within the scope which is determined pursuant to the following rule (see C-3).	Not clear	Not clear
C-3. The scope of exercise which the laws and/or courts recognize identical to that which is a basis of establishment of the prior user	The effect of the prior user's right extends not only to the mode in which the prior user was actually working or preparing to work the invention at the time the patent application was filed	Limited to the original scope, which includes the production scale before the filing date, and the production scale that could be achieved by using the	Not clear

rights.	(the day when the priority claim was made), but also extends to any mode of working that has been changed within the scope of an invention that does not lose its identity with the invention materialized therein.	then-existing manufacturing equipment or based on then-existing manufacturing preparations.	
C-4.  Whether or not prior user rights are assignable in the course of business transfer. If there are any business transfer schemes which affect the validity of transfer of prior user rights, please describe.	Yes	Yes	Yes (in case of business transfer)
C-5.  Whether or not prior user rights are sub-licensable	No	No	No