



(Provisional Translation)

Law concerning International Applications, etc. Pursuant to the Patent Cooperation Treaty

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Chapter I General Provisions

Purpose



1. This Law shall provide for proceedings to be taken between the Patent Office and an applicant concerning an international application, international search and international preliminary examination pursuant to the Patent Cooperation Treaty done at Washington on June 19, 1970 (hereinafter referred to as "Treaty").

Chapter II The International Application

The International Application

2. A Japanese national or an alien who is domiciled or resident (or, in the case of a legal entity, established) in Japan (hereinafter referred to as a "Japanese national, etc.") may file an international application referred to in Article 2(vii) of the Treaty (hereinafter referred to as "international application") with the Commissioner of the Patent Office. The same shall also apply in the case where a Japanese national, etc. and a person other than the Japanese national, etc. jointly file an international application and the Japanese national, etc. is designated as the representative in the said international application or the said international application complies with the requirements specified in an ordinance of the Ministry of Economy, Trade and Industry.

The Request, etc.

3.—(1) A person desiring to file an international application shall submit to the Commissioner of the Patent Office a request, a description, one or more claims, one or more drawings (where required) and an abstract in the Japanese language or in a foreign language specified in an ordinance of the Ministry of Economy, Trade and Industry.

(2) The request shall contain the following:

(i) a petition to the effect that the international application be processed according to the Treaty;

(ii) the name, the nationality and the domicile or residence of the applicant;

(iii) the title of the invention;

(iv) the name or names of the Contracting State or States of the Treaty in which protection for the invention is desired on the basis of the international application;

(v) if, for any Contracting State or States of the Treaty designated under the preceding paragraph (hereinafter referred to as "designated States"), a regional patent referred to in Article 2(iv) of the Treaty is desired, the indication to this effect;

(vi) other particulars specified in an ordinance of the Ministry of Economy, Trade and Industry.

(3) An ordinance of the Ministry of Economy, Trade and Industry shall prescribe the matters to be stated or illustrated in a description, claims, drawings and an abstract, and other necessary particulars in relation to these documents.

According to the International Filing Date, etc.

4.—(1) The Commissioner of the Patent Office shall decide to accord as the international filing date the date of receipt of the international application, unless the international application falls under any of the following paragraphs:

- (i) the applicant does not comply with the requirements of Section 2;
- (ii) the particulars listed in Section 3(2)(i) or (iv) are not stated;
- (iii) the name of the applicant is not stated, or the statement is not considered sufficient to the extent to enable the identification of the applicant;
- (iv) the international application does not contain a description or a claim or claims.
- (v) the description and claim(s) are not in the Japanese language or in a foreign language specified in an ordinance of the Ministry of Economy, Trade and Industry referred to in Section 3(1);

(2) Where an international application falls under any of the paragraphs of the preceding subsection, the Commissioner of the Patent Office shall invite the applicant to make the required correction in writing, designating a definite time limit.

(3) The Commissioner of the Patent Office shall decide to accord as the international filing date the date of receipt of the correction in writing when the person whom he has invited to make the correction under the preceding subsection has complied with the invitation within the time limit designated in accordance with the said subsection.

5.—(1) Where an international application refers to drawings which are not included in that application, the Commissioner of the Patent Office shall notify the applicant accordingly.

(2) If the person who has been notified in accordance with the preceding subsection has furnished the drawings mentioned in the said subsection within the time limit prescribed in an ordinance of the Ministry of Economy, Trade and Industry, the Commissioner of the Patent Office shall decide the date on which the drawings are received as the international filing date.

Invitation to Make Corrections

6. Where an international application falls under any of the following paragraphs, the Commissioner of the Patent Office shall invite correction to be made in writing, designating an definite time limit:

- (i) where the request is not in the Japanese language or a foreign language specified in an ordinance of the Ministry of Economy, Trade and Industry;

- (ii) where the title of an invention is not stated;
- (iii) where drawings (limited to the text matter of drawings) and an abstract are not in the same language as that of the description and claim(s);
- (iv) where an abstract is not contained;
- (v) where there is no compliance with Section 16(3) or Section 7(1) to (3) of the Patent Law (Law No. 121 of 1959) applied in the first sentence of Section 19(1) (or provisions of pertinent Cabinet Order if any exceptions are made therefor) by Cabinet Order referred to in the second sentence of Section 19(1);
- (vi) where there is no compliance with formal requirements specified in an ordinance of the Ministry of Economy, Trade and Industry.

(Decision for being considered withdrawn)

7.—(1) When an international application falls under any of the following paragraphs, the Commissioner of the Patent Office shall decide that such applications shall be considered withdrawn:

(i) when a person who has been invited to make a correction under Section 6 has failed to make the correction within the time limit designated in accordance with the said section;

(ii) when the fee to be paid under Section 18(1)(i) or (ii), Section 18(2) or (3) has not been paid within the time limit prescribed in an ordinance of the Ministry of Economy, Trade and Industry (subject to the provisions of the next subsection);

(iii) in respect of an international application for which the decision under Section 4(1) or (3) or Section 5(2) has been made, when the said international application is found to fall under any of the paragraphs of Section 4(1) within the time limit prescribed in an ordinance of the Ministry of Economy, Trade and Industry.

(2) When a part of the fee to be paid under Section 18(3) has not been paid within the time limit prescribed in the ordinance of the Ministry of Economy, Trade and Industry referred to in Paragraph (ii) of the preceding subsection and Section 14(3) (b) of the Treaty becomes applicable, the Commissioner of the Patent Office shall make a decision, by specifying certain States from among the designated States, to the effect that the designation thereof is considered withdrawn in respect of such States as provided in an ordinance of the Ministry of Economy, Trade and Industry.

Chapter III The International Search

International Search Report

8.—(1) In respect of an international application [excluding one for which the international search referred to in Article 15 of the Treaty (hereinafter referred to as “international search”) is carried out by another International Searching Authority provided



for in the Treaty. Hereinafter the same in this Chapter and the next Chapter] for which the decision under Section 4(1) or (3) or Section 5(2) has been made, the Commissioner of the Patent Office shall have an examiner establish the international search report referred to in Article 18(1) of the Treaty (hereinafter referred to as “international search report”).

(2) Where an international application falls under any of the following paragraphs in connection with all of the claims therein, the examiners shall decide not to establish the international search report, notwithstanding the provision of the preceding subsection:

(i) where the international application relates to a subject matter for which an ordinance of the Ministry of Economy, Trade and Industry provides that the international search is not required;

(ii) where the necessary matters are not disclosed in the description, the claims or the drawings, or the disclosure is unclear that a meaningful search could not be carried out on the basis of such documents.

(3) Where an international application falls under any of the paragraphs under the preceding subsection in connection with certain claims therein, the examiners shall indicate accordingly and also state the result of the international search carried out in connection with only those claims other than the said certain claims in the international search report.

(4) Where an international application does not comply with the requirement of unity of invention referred to in Article 17(3) (a) of the Treaty, the Commissioner of the Patent Office shall invite the applicant to pay the additional fees which are to be fixed, with the costs taken into account, by Cabinet Order, designating an adequate time limit.

(5) Where the applicant who was invited to pay additional fees under the preceding subsection has not paid the required additional fees within the time limit designated in accordance with the said subsection, the examiners shall, as provided in an ordinance of the Ministry of Economy, Trade and Industry, separate the international application into a part which relates to inventions in respect of which the said fees were paid and a part which relates to the other inventions and shall state in the international search report the result of the international search carried out for that part which relates to the inventions in respect of which the said fees were paid, whereas, for that part which relates to the other inventions, a note to that effect.

Request for Copy of Reference

9. Where the international search report concerning his international application contains the citations of the documents considered to be relevant to his international application, the applicant may make a request to the Commissioner of the Patent Office within the time limit prescribed in an ordinance of the Ministry of Economy, Trade and Industry for copies of those documents to be sent.

Chapter IV International Preliminary Examination

Demand for International Preliminary Examination

10.—(1) The applicant of an international application for which the decision under Section 4(1) or (3) or Section 5(2) has been made may make a demand to the Commissioner of the Patent Office for international preliminary examination referred to in Article 33 of the Treaty (hereinafter referred to as “international preliminary examination”) in respect of his international application. However, this provision shall not apply where the applicant is other than those who are entitled to make a demand for international preliminary examination under Article 31(2) of the Treaty and where there are situations provided for in an ordinance of the Ministry of Economy, Trade and Industry.

(2) A person desiring to make a demand referred to in the preceding subsection shall submit to the Commissioner of the Patent Office a written demand which indicates, in the Japanese language or in a foreign language prescribed in an ordinance of the Ministry of Economy, Trade and Industry, the name of a designated State or States in which the results of the international preliminary examination are intended to be used (hereinafter referred to as “elected States”) and matters specified in an ordinance of the Ministry of Economy, Trade and Industry.

Amendment in Consequence of Demand for International Preliminary Examination

11. The applicant of an international application having made a demand for international preliminary examination may amend the description, the claims or the drawings within the time limit prescribed in an ordinance of the Ministry of Economy, Trade and Industry within the disclosure in the description, the claims or the drawings of the international application as filed.

International Preliminary Examination Report

12.—(1) Where a demand for international preliminary examination has been made, the Commissioner of the Patent Office shall have an examiner establish the international preliminary examination report referred to in Article 35 of the Treaty (hereinafter referred to as “international search report”) in respect of the international application for which the said demand has been made.

(2) Where the international application for which a demand for international preliminary examination has been made falls under any of the following paragraphs in connection with all of the claims therein, the examiners shall so indicate and where such international application falls under any of the following paragraphs in connection with certain claims therein, the examiners shall indicate accordingly and also state the result of the international preliminary examination carried out in connection with only those claims other than the said certain claims in the international preliminary examination report:

(i) where the international application relates to a subject matter for which an ordinance of the Ministry of Economy, Trade and Industry provides that the international preliminary examination is not required;

(ii) where the description, the claims, or the drawings, are so unclear, or the claims are so inadequate as to be unsupported by the description, that an opinion referred to in Article 33(1) of the Treaty cannot be formed on novelty, inventive step, or industrial applicability defined in Article 33(2), (3) or (4) of the Treaty in respect of the claimed invention.

(3) Where the international application for which a demand for international preliminary examination has been made does not comply with the requirements of unity of invention referred to in Article 34(3) (a) of the Treaty, the Commissioner of the Patent Office shall invite the applicant to restrict the claim to be subjected to the international preliminary examination or to pay the additional fees which are to be fixed, with the cost taken into account, by Cabinet Order, designating an adequate time limit.

(4) Where the applicant who was invited to restrict the claim to be subjected to the international preliminary examination or to pay the additional fees under the preceding subsection has not restricted the said claim or has not paid the required additional fees within the time limit designated under the said subsection, the examiner shall, as provided in an ordinance of the Ministry of Economy, Trade and Industry, separate the international application into a part which relates to inventions in respect of which the said fees were paid and a part which relates to the other inventions and shall state in the international preliminary examination report the result of the international preliminary examination carried out for that part which relates to the inventions in respect of which the said fees were paid, whereas, for that part which relates to the other inventions, as to that effect.

Submission of Written Response

13. Where the international application for which a demand for international preliminary examination has been made falls under any of the following paragraphs, the examiner shall inform the applicant accordingly and of the reasons therefor prior to establishing the international preliminary examination report and give him an opportunity to submit a written response, designating an adequate time limit:

(i) where the claimed inventions lack novelty, inventive step, or industrial applicability defined in Article 33(2), (3) or (4) of the Treaty;

(ii) where it is necessary for the international preliminary examination report to contain the observations referred to in Article 35(2) of the Treaty or where there is a provision in an ordinance of the Ministry of Economy, Trade and Industry.

Defects, etc., in Proceedings for Demanding International Preliminary Examination

14. Where, in respect of the demand for international preliminary examination, the demand does not contain an indication of elected States, the fees to be paid under Section 18(1)(iv) or Section 18(3) have not been paid, or there are such reasons as provided for in an ordinance of the Ministry of Economy, Trade and Industry, the proceeding to be taken by the Commissioner of the Patent Office and the applicant and the effect thereof shall be provided for by Cabinet Order.



Application mutatis mutandis

15. Section 9 shall apply *mutatis mutandis* to the case where the applicant has made a demand for international preliminary examination.

Chapter V
Miscellaneous Provisions

Representatives, etc.

16.—(1) In respect of proceedings to be taken under this Law in the case where two or more persons jointly filed an international application, a representative of the applicants may take such proceedings, or such proceedings may be taken against such representative, subject to the provisions in an ordinance of the Ministry of Economy, Trade and Industry.

(2) Where two or more persons jointly filed an international application but they have not designated their representative, the Commissioner of the Patent Office may appoint a representative of the applicants as provided in an ordinance of the Ministry of Economy, Trade and Industry.

(3) A person desiring to take proceedings under this Law through an agent shall appoint a patent attorney or an attorney at law as agent, except the case where a proceeding is taken by a legal representative in accordance with the principal sentence of Section 7(1) of the Patent Law as applied under the first sentence of Section 19(1) of this Law or where a situation is provided for by Cabinet Order.

Special Provision for Corrections, etc.

17. Where the applicant has taken, prior to the receipt of the invitation referred to in Section 4(2) or the notification referred to in Section 5(1), the proceeding which should be taken if the said invitation or the said notification were received, the said proceedings shall be considered to have been taken on receipt of the said invitation or the said notification, subject to the provisions in an ordinance of the Ministry of Economy, Trade and Industry.

Fees

18.—(1) The persons specified hereunder shall pay the fee the amount of which shall be prescribed by Cabinet Order with the actual cost taken into consideration:

(i) a person filing an international application for which the international search is to be carried out by the Patent Office;

(ii) a person filing an international application for which the international search is to be carried out by an International Searching Authority which is other than the Patent Office and which is provided for in the Treaty;

(iii) a person making the request referred to in Section 9 (including its application under Section 15);

(iv) a person making a demand for international preliminary examination.

(2) The persons specified under Paragraph (ii) in the preceding subsections shall pay as provided in the ordinance of the Ministry of Economy, Trade and Industry, in addition to the fee to be paid under said subsection, the fee to be fixed by an ordinance of the Ministry of Economy, Trade and Industry for the International Searching Authority referred to in said paragraph.

(3) The persons specified under Paragraphs (i), (ii) and (iv) in the preceding subsection shall pay as provided in the ordinance of the Ministry of Economy, Trade and Industry, in addition to the fee to be paid under the two preceding subsections, the fee for the International Bureau (meaning the International Bureau defined in Article 2 (xix) of the Treaty—hereinafter referred to as “International Bureau”) to be fixed by an ordinance of the Ministry of Economy, Trade and Industry.

(4) Section 195 (4) to (10) of the Patent Law shall apply *mutatis mutandis* to the fee to be paid under Subsection (1) and the fees required to be paid additionally under Section 8 (4) or Section 12 (3).

Application mutatis mutandis of Patent Law

19.—(1) Sections 7 (1) to (3), 8, 11, 13 (1) and (4), 16, 20 and 21 of the Patent Law shall apply *mutatis mutandis* to the proceedings under this Law. In this case, where there are any particular provisions in the Treaty or Regulations under the Patent Cooperation Treaty (hereinafter referred to as “Regulations”), Cabinet Order may provide for special provisions for the implementation of the said particular provisions.

(2) Section 47 (2) of the Patent Law shall apply *mutatis mutandis* to international search and international preliminary examination.

(3) Section 195 (1) of the Patent Law shall apply *mutatis mutandis* to the measures under this Law or an order or ordinance under this Law.

Delegation to Ordinance of Ministry of Economy, Trade and Industry

20. In addition to the provisions from Sections 2 to 19, details of the matters necessary in the implementation of the Treaty and Regulations concerning the international application, international search and international preliminary examinations shall be prescribed by an ordinance of the Ministry of Economy, Trade and Industry.

Tasks as an Office and Authority under the Treaty

21. No provisions of this Law shall preclude the Patent Office from carrying out, in accordance with the Treaty or Regulations, or any agreements made pursuant thereto, the



tasks as specified in the Treaty for the Receiving Office, International Searching Authority or International Preliminary Examining Authority, on behalf of persons other than those who are subject to the provisions of this Law, to the extent that there shall be no bar on the orderly execution of the tasks to be carried out by the Patent Office pursuant to the provisions of this Law, the Patent Law and other laws, where necessary from the viewpoint of international cooperation in industrial property.

Supplementary Provisions

Entry into Force

1. This Law shall enter into force on the day the Treaty becomes effective in Japan. However, the provisions of Chapter III shall enter into force on the day the agreement referred to in Article 16(3) (b) of the Treaty becomes effective with the Patent Office, and the provisions of Chapter IV and the next Section on the day the agreement referred to in Article 16(3)(b) as applied under Article 32(3) of the Treaty becomes effective with the Patent Office.

Provisional Restriction to Number of Demands for International Preliminary Examination

2.—(1) The Commissioner of the Patent Office may, for the time being, restrict the number of demands for international preliminary examination to be received (hereinafter referred to as “the number of demands”) within each of the periods to be fixed by Cabinet Order in accordance with the agreement with the International Bureau concerning the International Preliminary Examining Authority.

(2) Where it is desired to restrict the number of demands under the preceding subsection, the Commissioner of the Patent Office shall announce the number thus restricted at each period referred to in the preceding subsection.

(3) In addition to the matters provided for in the two preceding subsections, the matters necessary in connection with the restriction on the number of demands as provided for in subsection (1) shall be prescribed by Cabinet Order.

Extract from Law No. 116 of 1994

Entry into Force

1. This Law shall enter into force on July 1, 1995.

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Extract from Law No. 68 of 1996

Entry into Force



1. This Law shall enter into force on April 1, 1997.

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Extract from Law No. 51 of 1998

Entry into Force

1. This Law shall enter into force on January 1, 1999.

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Extract from Law No. 160 of 1999

Entry into Force

1. This Law shall enter into force on January 6, 2001.

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Extract from Law No. 220 of 1999

Entry into Force

1. This Law shall enter into force on January 6, 2001.

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