JAPAN PATENT OFFICE

MINISTRY OF ECONOMY, TRADE AND INDUSTRY
GOVERNMENT OF JAPAN

特許庁
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June 19, 2012

The Honorable David J. Kappos
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
United States Patent and Trademark Office
Alexandria, Virginia

Re: JPO Comments on the Feasibility of Placing Economically Significant Patent Under a Secrecy Order

Dear Under Secretary Kappos:

There have been appeared on the Federal Register dated April 20, 2012, the US proposal of introducing a system under which those patent applications regarded significant in terms of nation's economic security are not to be disclosed for a certain period of time. In this context, the Japan Patent Office (JPO) would like to make comments on the proposal as follows.

The introduction of the system proposed in the Federal Register will increase the number of undisclosed applications. That is, the system will expand the problem of "submarine patents", make corporate activities unstable and thus bring big disadvantages to third parties. The introduction of this kind of system will at the same time expand the scope of exceptions relating to the system of 18-month publication of patent applications, which would inevitably be considered as something against various cooperations for the international patent harmonization currently led by the USPTO and the JPO. There is the U.S.-Japan Patent Agreement which was reached in the Japan-U.S. Framework for a New Economic Partnership held in 1994. The proposed system will go against the spirit of the following agreement.

"*The USPTO is to make publicly available all applications, filed after January 1, 1996, as soon as possible after the expiration of 18 months from the filing date or, where priority is claimed under 35 USC 119, 120, 121 or 365, from the earliest priority date.*"

In terms of nation's economic security, which patent applications are significant and which ones are not? It is considered highly difficult to determine which ones are/are not important within a short period of time from the filing date. We, therefore, concern this system could be administered in an arbitrary manner.

Moreover, if this system is introduced in the U.S., which has an advanced IP system, we feel there could be a possibility that a similar system might be introduced also in other foreign countries.

A concern resulting from that it takes time from publication to patent grant, as mentioned in the said Federal Register, is understandable. The concern is, however, a problem which should be handled through effort to accelerate the examination of relevant applications.

We would like you to kindly understand that the JPO has a strong concern in introducing the above-mentioned system, and would thus like you to give due consideration to the introduction of the system.

Sincerely yours,

Japan Patent Office