



SONODA & KOBAYASHI
INTELLECTUAL PROPERTY LAW



IP News Bulletin

for Japan & China

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- News about Sonoda & Kobayashi -

1. Sonoda & Kobayashi attended the IP Law & Management Institute 2023 in Florida

Sonoda & Kobayashi attended the IP Law & Management Institute in Bonita Springs, Florida from October 15th to 17th. The event was attended by people from over 50 different companies. Dr Yoshitaka Sonoda (Co-founder, Managing Partner), Mr. Jeroen van der Donck (Deputy Manager, International Affairs), and Ms. Sukanya Hummel (U.S. Lawyer, International Affairs) represented our firm at a booth in the exhibitor rooms. We extend our thanks to those who interacted with us during this event.

2. Sonoda & Kobayashi attended IP Service World 2023 in Munich

Sonoda & Kobayashi attended IP Service World, Europe’s largest IP convention and trade fair, in Munich, Germany on the 25th and 26th of November. There were over 700 attendees from 55 different countries present. Ms. Yanhui Wang (Partner, Chief Chinese Attorney), Ms. Rie Takahashi (Patent Attorney) Mr. Jeroen van der Donck (Deputy Manager, International Affairs), and Ms. Debora Cheng (New Zealand Lawyer, International Affairs) represented our firm at a booth and presented a round table discussion on the topic of “Strategies for cost-effective patent filing in Japan and China.” We would like to thank everyone who participated in our discussion, visited our booth, and chatted with us during the event.

- JPO and CNIPA News -

1. JPO updates its report on the filing of AI-related inventions

Since 2019, the JPO has been reporting on an annual basis on the filing situation of AI-related inventions in Japan. In October of this year it has added the latest update, now containing information on filing up to the year 2021.

AI-related inventions include core AI inventions (FI code: G06N) as well as inventions where artificial intelligence is applied to various technical fields.

The JPO’s study shows that the AI boom, starting in 2014, has continued for applications filed in 2021. Across that period, the number of applications of AI-related inventions skyrocketed from barely reaching 1000, to more than 9000 per year.

The number of applications of new core AI-related inventions in 2021 reached almost 2700, compared to a mere 220 in 2014. However, the speed of the growth seems to be slowing down in recent years.

Further information and graphs can be found [here](#). (Japanese)

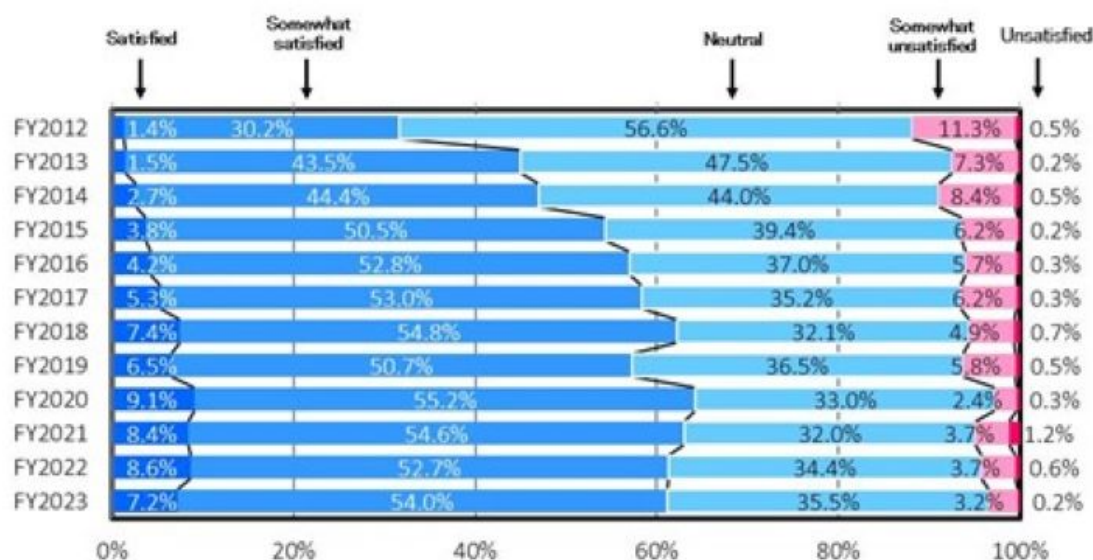
2. JPO releases the results of its 2023 user satisfaction survey

On October 2nd, the JPO published the results of the user satisfaction surveys on

examination quality of the financial year 2023. The JPO conducts an annual survey and publishes these results to keep track of IP users' opinions of its examinations, and reflect them in quality management initiatives.

In this year's survey, 96.6% of respondents evaluated the overall quality of patent examinations as "Neutral" or higher. This is a slight increase of 0.9% percentage points compared to 2022.

The graph below shows further detailed changes in satisfaction level on the quality of patent examination on national applications.



Further information on IP users' opinions on the quality of examination of patents, designs, trademarks and more can be found [here](#). (Japanese)

3. CNIPA passes Regulations for the Implementation of the Patent Law (Draft)

On November 3, 2023, the State Council deliberated and passed the Regulations for the Implementation of the Patent Law of China (Draft).

As an important supporting administrative regulation to ensure the effective implementation of the Patent Law, the revision of the Implementing Rules of the Patent Law has attracted much attention in the industry since its inception. On October 17, 2020, the 22nd Session of the Standing Committee of the 13th National People's Congress voted and passed the Decision on Amending the Patent Law. Subsequently, the State Intellectual Property Office immediately started the revision of the Regulations for the implementation of the Patent Law, formed a draft of the amendment proposal, and released it to the public for comments from November 2020 to January 2021.

The Regulations for the Implementation of the Patent Law as amended by the Patent Law provide detailed provisions on the application procedures, conditions, and views to be submitted for partial design patents and domestic design priority. It clarifies the content of the patent open license statement, the circumstances of non-publication, withdrawal, filing and other matters; It clarifies the submission of a request for compensation for the term of the patent right, the unreasonable delay caused by the applicant, and the specific details of the compensation system for the term of the patent right for drugs. It stipulates that the patent administration department of the State Council shall establish a public service platform for patent information, improve the national patent information service network, provide basic data on patent information, and cultivate patent information talents.

The amendment further improves the patent application and examination system to improve quality and efficiency. In response to the development and application of new technologies, the definition of "written form" for filing a patent application has been expanded to include both electronic form and paper form, and the filing date of the application in electronic form has been clarified. This results in improving and simplifying the filing of patent application documents and improving the patent evaluation report system and the patent invalidation system.

CNIPA stated that the next step will be to complete the revision of the "Patent Examination Guidelines" and other relevant supporting departmental rules and normative documents as soon as possible, so as to effectively ensure the smooth implementation of the detailed rules for the implementation of the Patent Law.

Further information can be found [here](#). (Chinese)

4. World Intellectual Property Indicators Report: Record Number of Patent Applications Filed by China in 2022

Global patenting activity soared to new records in 2022, fueled by Indian and Chinese innovators, but an uncertain economic outlook is casting doubt on further growth.

Even as global filings for trademarks and designs dropped, innovators from around the world submitted 3.46 million patent applications in 2022, marking a third consecutive year of growth, according to WIPO's annual World Intellectual Property Indicators (WIPI) report.

China, the US, Japan, the Republic of Korea, and Germany were the countries with the highest numbers of patent filings in 2022. While innovators from China continue to file nearly half of all global patent applications, the country's growth rate dipped for a second consecutive year from 6.8% in 2021 to 3.1% in 2022. Meantime, patent applications by residents of India grew by 31.6% in 2022, extending an 11-year run of growth unmatched by any other country among the top 10 filers.

In releasing the report, WIPO Director General Daren Tang warned that geopolitical instability and an uncertain economic outlook could threaten the global intellectual property (IP) ecosystem.

In this regard, Chinese Foreign Ministry spokesman Wang Wenbin said, at a regular press conference on the 8th of November, that China will continue to improve the quality and efficiency of intellectual property rights, continue to optimize the environment for intellectual property protection, and accelerate the release of innovation and creativity in society as a whole.

Wang Wenbin said: The Chinese side has taken note of the reports. According to the report, in 2022, China filed about 1.6 million patent applications, ranking first in the world.

According to statistics, as of June this year, the cumulative number of effective invention patents in China has reached 4.568 million, ranking first in the world. China ranks 12th in the Global Innovation Index 2023, with six indicators ranking first in the world. These are a testament to China's remarkable achievements in the field of intellectual property.

Further information can be found [here](#). (Chinese)

1. Inventions assisted by AI considered to be human inventions in Japan

The Nikkei, November 7th, 2023

On the 7th of November, Nikkei Asia reported on the issue of whether new products that utilize AI can be considered “human inventions” in Japan.

With the increase in development of AI, the Japanese government held an online review meeting to discuss how to handle intellectual property rights stemming from inventions that were created with the assistance of AI. Because humans are involved to a certain extent, the Japan Patent Office considers such AI-assisted inventions to be “human inventions”. This is because, at this point in time, it is humans who select the data the AI can learn from. And AI-assisted inventions being considered “human inventions” is important, because current patent law only gives intellectual property rights to human creations.

One problem that may be faced in the future is the question of an unprecedented inventive step. If AI becomes widespread and accessible to all and anyone can use it to make a “human creation”, the JPO may change the examination standards for determining what is considered an inventive step.

The Japan Newspaper Association has even gotten involved, and asked for revisions to the copyright law. As a result, in October a study committee was launched by the Cabinet Office, and the Agency for Cultural Affairs is also holding a copyright review meeting on this topic. These two groups will work together to discuss how intellectual property rights might change with the rise of AI. A further meeting on this topic will be held in December.

Further information can be found [here](#). (Japanese)

2. Nobel Pharma insists it will protect IP against Sawai Pharmaceutica

Mix Online, November 7th, 2023

On the 7th of November, Mix Online reported on Nobel Pharma’s continuing efforts to protect its intellectual property - in this case, from Sawai Pharmaceutical.

Nobel Pharma sells Novelzin, which is a treatment for Wilson’s Disease (where copper absorption is inhibited) and hypozincemia. On February 15, Sawai Pharmaceutical received approval for a generic of the Novelzin product. Nobel Pharma has adamantly opposed this approval, starting with filing a patent infringement suit with the Tokyo District Court in April.

Despite this, Sawai Pharmaceutical started selling the generic on August 4. As a result, Nobel Pharma filed a new injunction on October 30 to stop manufacturing and sales. Nobel Pharma also filed a petition for a provisional disposition order. Nobel Pharma is alleging that Patent No. 6716464 and Patent No. 6768984 were infringed.

It is Nobel Pharma’s stance that the intellectual property (that protects their technology and products that were made to further their mission) is of the utmost importance to protect, and Nobel Pharma will take strict action, including legal action, to protect such rights. Sawai Pharmaceutical has stated it will refrain from commenting until it receives the complaint for the provisional disposition.

Further information can be found [here](#). (Japanese)

1. Top Chinese chipmaker YMTC sues Micron for alleged patent infringement

Reuters, November 14th, 2023

Reuters reported on November 14th, 2023, that Chinese chipmaker Yangtze Memory Technologies Co (YMTC) has taken legal action against its U.S. rival, Micron Technology, by filing a lawsuit alleging the infringement of eight of its patents. The lawsuit, submitted on November 9 at the U.S. District Court for the Northern District of California, accuses Micron of utilizing YMTC's patented technology in order to thwart competition from YMTC and secure and safeguard its market share. According to YMTC, Micron has not been compensating them appropriately for the use of these patented inventions. This relates to the design, manufacture, and operation of 3D NAND technology.

Micron Technology is a key player in the semiconductor industry, manufacturing DRAM chips and NAND flash memory chips. It competes with major players such as South Korea's Samsung Electronics and SK Hynix, as well as Japan's Kioxia (a unit of Toshiba). YMTC, while asserting its patents against Micron, is a relatively smaller rival that faced restrictions from the U.S. in the past, being barred from purchasing certain American components.

The backdrop of this legal dispute includes the broader context of heightened restrictions imposed by the U.S. on exporting chipmaking technology to China due to security concerns. In May, China indicated that Micron products did not pass a network security review, resulting in a ban on their purchase by operators of key infrastructure. This legal action marks another episode in the complex relationship between Micron and the Chinese market.

In the past, Micron experienced challenges in China, once its largest market, where it generated half of its \$20 billion revenue in fiscal 2017. However, this market share dwindled to 16% in 2022, and Micron faced setbacks, including the closure of DRAM operations in Shanghai. Despite these challenges, Micron has reiterated its commitment to the Chinese market. In June, the company announced a substantial investment of 4.3 billion yuan (\$590 million) in the coming years for its chip-packaging plant in Xian city. Additionally, Micron participated in a trade expo in Shanghai, marking its first appearance at such an event.

The evolving dynamics in the semiconductor industry, intertwined with geopolitical and security considerations, underscore the complexities faced by companies like Micron as they navigate global markets and legal challenges. The outcome of the lawsuit will be closely watched, given its potential implications for intellectual property rights, competition, and market dynamics in the semiconductor sector.

Further information can be found [here](#). (English)

2. Former employee of chipmaker giant ASML accused of stealing company secrets for Huawei

South China Morning Post, October 24th, 2023

On October 24th, 2023, South China Morning Post reported that a former employee of ASML Holding, a manufacturer of advanced semiconductor-making equipment, has been accused of stealing trade secrets. This individual later worked for Huawei Technologies, a Chinese telecommunications giant. The theft of data, related to proprietary technology, was disclosed by ASML in its 2022 annual report. The company did not specify the nature of the stolen data but mentioned unauthorized misappropriation by a former China-based employee. ASML reported the breach to authorities and implemented remedial measures, stating that it believed the breach would not significantly impact its business.

According to the Dutch newspaper NRC, the accused individual went on to work for Huawei after leaving ASML. ASML and Huawei have not yet responded to inquiries about these allegations. Since being placed on the US Entity List in 2019, Huawei has faced restrictions on accessing advanced chip technology using US components. This incident adds to concerns about intellectual property theft and talent poaching between companies in the semiconductor industry amid geopolitical tensions.

ASML, with a near-monopoly in extreme ultraviolet (EUV) lithography machines crucial for advanced chip production, stopped exporting these machines to mainland China in 2019. The Dutch government has further imposed export controls, preventing ASML from shipping some less advanced lithography systems to China starting in January. This restricted access poses a challenge to China's goals of chip self-sufficiency.

There are also previous accusations by ASML and other chip-related companies against Chinese entities for intellectual property theft and talent poaching. It highlights a broader context of economic tensions and investigations involving technology companies in China and other nations.

Further information can be found [here](#). (English)

- IP Law Updates in Japan: Insights from Sonoda & Kobayashi -

1. The pitfalls of English to Japanese translation: "Vertical" and "Perpendicular"

Yoko Nagatomo (Department Manager, Translation Department)

Sonoda & Kobayashi's translation team translates approximately one million words of English specifications for filing in Japan each month. Translation is often thought of as a discrete task of converting a document written in one language into a separate document written in another language. However, at Sonoda & Kobayashi, we believe that the best translation can only be achieved through discussions between the parties involved, so we often exchange information and opinions internally as well as with our clients.

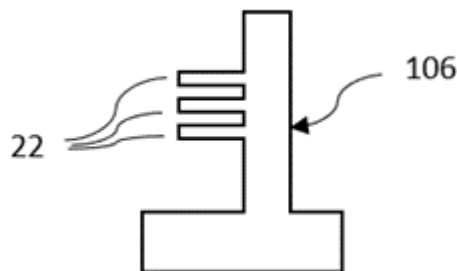
The following is a topic presented at an internal discussion session.

Every language has words that have similar meanings, leading to misuse and confusion. Although it is possible to understand the differences by consulting a dictionary for each term or looking up the definitions on websites that compare definitions of similar terms, people are often unaware that they have a choice of different expressions. As a result, incorrect terminology becomes commonplace, and in some cases, misuse and confusion become the norm in everyday conversation and writing.

In contrast to ordinary situations, when drafting patent specifications, we naturally pay close attention to the definition of terms and use certain terms after strict consideration, but the problems arise when a specification is translated into a foreign language. In some

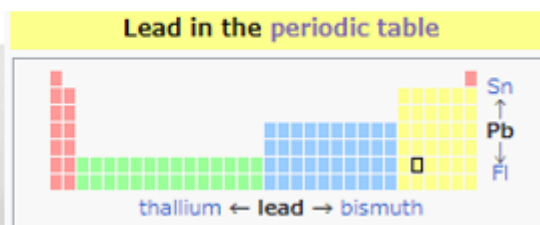
Below is an example of a case involving the translation of the term “vertical”.

- “[...] a distribution pipe (106) extending essentially vertically, and having a plurality of nozzles (22)”



- Definitions of “vertical” in certain dictionaries are as follows:

- According to a native English speaker, “‘vertical’ is associated with the up-and-down direction. That is, ‘perpendicular’ is at or forming a right angle to, while ‘vertical’ is along the direction of a plumb line or along a straight line that includes the center of the Earth. The word ‘plumb’ comes from Latin *plumbum*, which means ‘lead’ and has the symbol Pb.”



As can be seen from the above comments, the distinction between vertical and perpendicular seems to be relatively clear for English speakers. On the other hand, in Japanese, the equivalent of vertical is “鉛直 (*Enchoku*)” and the equivalent of perpendicular is “直角 (*Chokkaku*),” but the word “垂直 (*Suichoku*)” is commonly used in both senses, which causes the problem described above.

lead straight/direct
(*Enchoku*: vertical) 鉛 直

straight/direct angle
(*Chokkaku*: perpendicular) 直 角

hang down straight/direct
(*Suichoku*: vertical / perpendicular) 垂 直

The third of these essentially means “vertical,” since “垂” means “to hang down”. The dictionary “*Kojien* (7th edition)” also lists the following:

[*Suichoku*] (meaning “to hang down straight”) (1) The direction of gravity. Vertical. ⇔ horizontal.

However, the dictionary also lists this second meaning:

(2) [Math]

- a) When two lines intersect each other at 90 degrees, these two lines are said to be orthogonal or *Suichoku* to each other. Furthermore, two lines in space are said to be *Suichoku* to each other when they are orthogonal as a result of a parallel shift.
- b) A line that is *Suichoku* to all lines in a plane is said to be *Suichoku* to this plane.
- c) A plane that contains a line that is *Suichoku* to a plane is said to be *Suichoku* to the former plane.

Thus, *Suichoku* refers not only to the direction of gravity, but also to being perpendicular to something. In other words, *Suichoku* originally means to be vertical, but it can also mean to be perpendicular if “with respect to what” is specified. Perhaps because of this

convenience, “perpendicular” is commonly used. Strictly speaking, however, using “*Suichoku*” in the sense of “vertical” requires a reference to “with respect to what,” and simply stating “X is perpendicular” is imprecise.

The *Kojien* Dictionary is an authoritative dictionary that the JPO relies on when the definition of terms becomes an issue in examinations and appeals, and based on its description, the examiner would probably examine the case under the policy that the use of the term “*Suichoku*”, without a reference description, is unclear.

More importantly, “*Suichoku*”, without the reference to “with respect to what”, can be interpreted as “*Enchoku*” (the direction of gravity), so the meaning becomes narrower. Therefore, the careful choice of words is necessary not only in terms of clarity, but also in terms of the scope of rights.

References

<https://en.wikipedia.org/wiki/Lead>

<https://www.dictionary.com/browse/vertical>

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About

SONODA & KOBAYASHI is a law firm offering dependable legal services for intellectual property. Our multinational team of about 100 experts in technology, law, languages and international communication has served companies worldwide and gained a reputation for thoroughness and reliability.

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