SONODA & KOBAYASHI
INTELLECTUAL PROPERTY LAW

September 2025

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1. A brief historical overview on how the criteria of novelty and inventive step evolved in the Patent Law

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1. Sonoda & Kobayashi holds webinar "*Trademark Infringement in China: Solutions and Advice for International Firms*"

On Thursday, September 25, Sonoda & Kobayashi hosted "Trademark Infringement in China: Solutions and Advice for International Firms," a webinar where Chinese trademark expert Eric Zhao discussed common trademark enforcement issues in China, as well as means to prevent and combat cases of infringement. This webinar is the first in a series. The second webinar, "*Handling Trademark Squatting in Japan and China*," will be held Thursday, November 20, 2025 at 22:00 JST/21:00 China ST/15:00 CEST/09:00 EST. Yoko Sasaki and Eric Zhao will discuss trademark squatting in Japan and China and give strategies to handle this complex issue in each jurisdiction.

To learn more and sign up, please see our application form here.

- JPO and CNIPA News -

1. JPO releases its 2025 annual report on user satisfaction

In September 2025, the JPO published its "Report on FY2025 Annual User Satisfaction Survey on Patent Examination Quality". This report is the result of the JPO's yearly satisfaction survey on patent examination.

It uses a 5-point scale to indicate the level of satisfaction with the JPO's examination quality of national applications, international search and preliminary examination on PCT applications. The survey itself was conducted from April to June of 2025 and had a response rate of 80%.

Some of the main results reveal that overall 95.7% of respondents rated their satisfaction of the quality of examination on national applications as "neutral" or higher. What is more, 60.7% rated it as "somewhat satisfied" or "satisfied".

Based on this and the further findings of the survey, the JPO's quality management offices decided that the JPO should focus on improving the "consistency of judgements among examiners" and the "consistency of judgements among examiners on Article 29 (2): inventive step".

Further information can be found here. (Japanese)

2. The 14th China Intellectual Property Annual Conference opened in Beijing

On September 11, the 14th China Intellectual Property Annual Conference opened in

Beijing under the theme “Intellectual Property in the Digital Age.”

Numerous guests from government departments, academia, and the business community delivered keynote speeches. More than 8,000 participants attended the conference, including the head of the World Intellectual Property Organization’s China office, officials from the National Intellectual Property Administration, heads of intellectual property management departments from various provinces, autonomous regions, and municipalities, representatives from embassies and consulates in China and foreign-related institutions, as well as delegates from domestic and international enterprises and intellectual property service organizations.

Prior to the opening ceremony, Chinese and foreign guests explored interactive digital experiences powered by artificial intelligence, along with activities highlighting the integration of patents, trademarks, and geographical indications. This year’s conference featured one main forum and 12 sub-forums, where participants engaged in discussions on trending topics in intellectual property.

Further information can be found here. (Chinese)

- Latest IP News in Japan -

1. Toyota ranks third globally among automakers for AI readiness, with the most patents held

Nikkei, August 18, 2025

The race to dominate automotive-related AI is reshaping the industry, but intellectual property strategies show different approaches. Toyota leads the field in patent holdings, with more than 3,000 AI-related applications. Hyundai and Ford follow with over 1,500 each, reflecting their heavy investment in formal intellectual property protection. Yet patent strength alone does not necessarily mean leadership.

Tesla and Xiaomi, two of the biggest AI adopters, hold fewer than 100 AI patents each, but they are advancing rapidly in self-driving systems, humanoid robotics, and proprietary semiconductors. Similarly, BMW has secured a competitive edge without filing a single AI patent, instead prioritizing partnerships and integration. These cases highlight a striking trend: while some companies view patents as essential assets, others rely on trade secrets, rapid iteration, and ecosystem collaborations to outpace rivals.

Toyota also complements its IP with strategic partnerships, including collaborations with Boston Dynamics on humanoid robots and Nvidia on autonomous driving platforms. Analysts suggest that the future of AI competitiveness in the automotive sector will depend less on patent counts and more on how effectively companies can integrate AI across operations and connect disparate systems into distributed, self-improving networks.

Further information can be found here. (Japanese)

2. MUJI loses 25-year trademark battle in China

Nikkei, August 29, 2025

Japanese retailer Ryohin Keikaku, known for its MUJI brand, has lost a decades-long trademark battle in China, forcing it to stop using the "無印良品" mark on certain products, such as towels and bedding. The Supreme People's Court rejected the company's final appeal in June, concluding a 25-year dispute that began when a Chinese company, Hainan Nanhua, applied for the "無印良品" trademark in 2000. That mark was later transferred to Beijing Cottonfield Textile, which has operated stores under a similar name and branding.

While MUJI can continue using its English logo and the "無印良品" mark on other product categories, the case shows the risks Japanese firms face in China's first-to-file trademark system, where rights go to whoever applies first, regardless of prior overseas use. Similar controversies have affected global companies: Apple paid $60 million in 2012 to settle an iPad trademark dispute, and in 2023, a Chinese company attempted to register "Shohei Ohtani" as a mark.

Experts warn Japanese companies to file trademarks preemptively, even in markets where they have no immediate plans. Preventive filings, monitoring of applications, and tracking bad-faith filers are key safeguards. MUJI's loss serves as a cautionary tale for firms expanding into China's vast consumer market.

Further information can be found here. (Japanese)

- Latest IP News in China -

1. Forward-looking thoughts on copyright law in the AI era

Guangming Daily, September 6, 2025

The legal status of AI-generated content has become a global debate. In China, the Beijing Internet Court ruled that AI-generated images can constitute works, while the Suzhou Intermediate People's Court found otherwise. Despite differing outcomes, both courts emphasized intellectual input and originality, noting that prompts and parameters reflect human creativity. Users' aesthetic choices shape personalized outputs, making originality possible.

AI generation is inherently random: identical prompts may yield different results. Therefore, infringement assessment must focus on the actual output, not the similarity of prompts. Substantial similarity in content, not in instructions, is the key factor. Establishing the correct infringement object is essential for fair protection.

Balancing AI development with copyright rights is another challenge. High-quality AI relies on massive datasets, often containing copyrighted works. To address this, a fair use clause for data mining should be introduced. However, such use must still meet the "three-step test": it must not impair normal exploitation of works or cause unreasonable harm to rights holders.

Finally, copyright infringement hinges on dissemination. Deleting rights management data

for AI training, without generating or sharing substantially similar works, causes no tangible harm. In such cases, infringement claims should be dismissed.

Further information can be found here. (Chinese)

2. The trademark "Qianhe 0" for soy sauce has been declared invalid

Lygmedia, September 14,2025

Recently, the National Intellectual Property Administration announced that the trademark “Qianhe 0” (registration number 35126959) has been declared invalid. In response, Qianhe Flavor Industry clarified that while some defensive trademarks have been invalidated, the trademark “Qianhe 0” with registration number 46717423 remains legal and valid.

This ruling is not an isolated case. Regulatory scrutiny of trademarks such as “zero addition” and “0 addition” is tightening across the country.

Trademarks like “Zero Additive”, “0 Additive”, and similar variants have been invalidated, sending a clear message: the margin for trademarks that attempt to blur concepts or exploit ambiguity is shrinking. Future applications of such trademarks will face increasingly strict compliance reviews.

Further information can be found here. (Chinese)

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

1. A brief historical overview on how the criteria of novelty and inventive step evolved in the Patent Law

Translation and article content: Jacobus Sonderhoff, patent attorney

The Senbai-Tokkyo Jôrei (専売特許条例, Patent Monopoly Act) of 1885 (Meiji 18)

Article 1 of this Act provides for the right to obtain a patent for the invention of a “useful” device that was not already publicly known or publicly used in Japan.

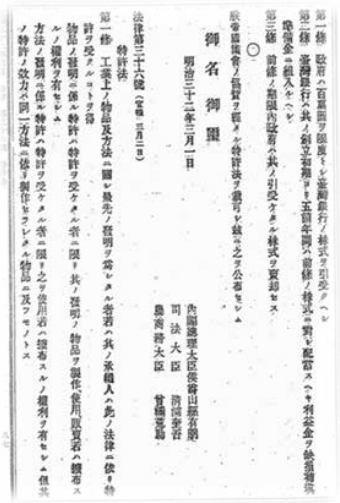

官報
太政官文書局

The Tokkyo-Jorei (特許条例, Patent Act) of 1888 (Meiji 21)

Article 1 of the 1888 Patent Act provided for the right to obtain a patent for *new* useful machines, products, compositions or improvements thereof, not publicly known or publicly worked in Japan.

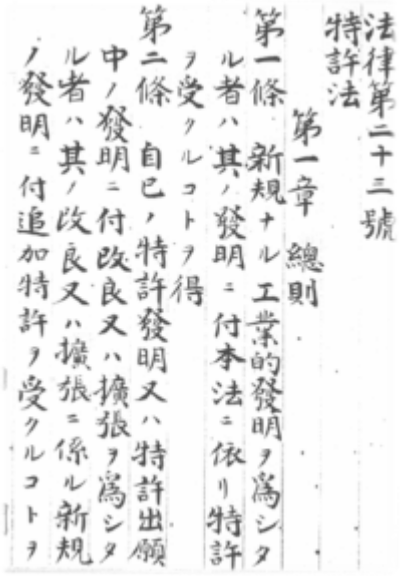
Since the invention was intended to be useful, the novelty criterion went further than a mere "photographic" comparison of the prior art with the claimed invention. If the prior art and the claimed invention differed only slightly, the claimed invention was considered known, since the minor differences could not constitute a useful contribution to the prior art.

Patent Law (特許法) of 1899 (Meiji 32)



In 1899, Japan acceded to the Paris Convention. The wording of Article 1 of the 1899 Patent Law was changed, namely that a patent may be granted for a “first” invention of an industrial device or method (lit. “The inventor who made a first invention may obtain...”), under the conditions laid out in Article 2. The word “useful” was dropped. Regarding what was considered “known”, no significant changes were made compared to the 1888 Law, expect that a patent may still be granted if the “invention” was known up to 2 years before filing due to testing purposes (a grace period). Another change was that the protection of a process also extended to articles obtained by the process.

The Patent Laws of 1909 (特許法 Meiji 42, below left) and 1921 (特許法 Taishô 10, below right)



法律第二十三號
特許法

第一章 總則

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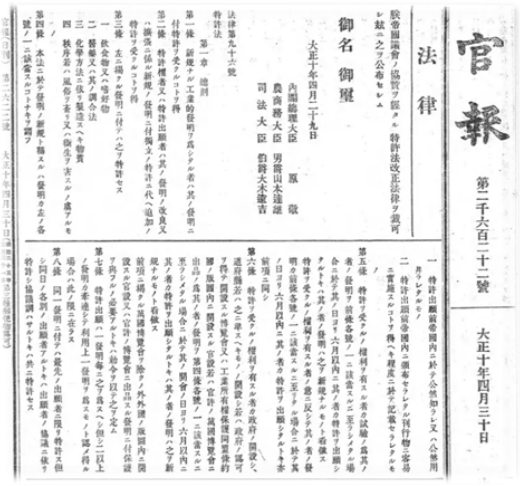


官報 第二千六百二十二號 大正十年四月三十日

法律

御名 御璽

大正十年四月二十九日

内閣總理大臣 原 敬
農商務大臣 男爵山本達雄
司法大臣 伯爵大木遠吉

The wording of Article 1 of the 1909 Patent Law (and the 1921 Patent Law) reverts somewhat to the wording of the 1888 Patent Law, namely that a patent may be obtained for a new industrial invention. However, for the first time, a definition of a “new invention” is contained in Article 4, which reads: a "new invention" means anything that does not fall under any of the following categories: 1. anything that was publicly known or publicly used in the Empire before the filing of a patent application; 2. anything that was described in a publication distributed in the Empire to the extent that it could be easily applied before the filing of a patent application.

The previously introduced “grace period” for inventions publicly known for experimental purposes is also maintained.

Patent Law (特許法) of 1959 (Showa 42), and revision of 1999

For the first time, what was considered to be known (and thus not new) also included disseminated foreign publications (but not known foreign public use or foreign public knowledge).

(Original 1959 Patent Law)

(Revision of 1999)

第二十九条 産業上利用することができる発明をした者は、次に掲げる発明を除き、その発明について特許を受けることができる。

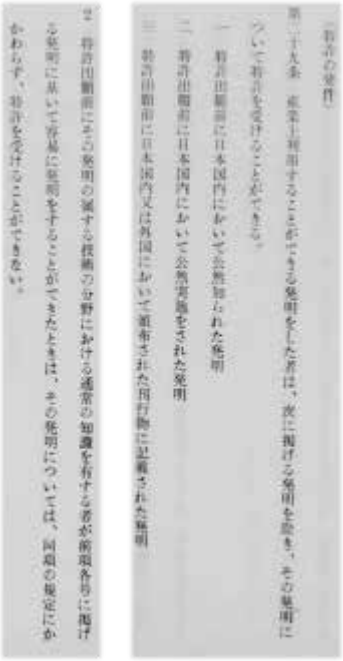
一 特許出願前に日本国内又は外国において公然知られた発明

二 特許出願前に日本国内又は外国において公然実施をされた発明

三 特許出願前に日本国内又は外国において、頒布された刊行物に記載された発明又は電気通信回線を通じて公衆に利用可能となつた発明

第二十九条第一項第一号及び第二号中「日本国内」の下に「又は外国」を加え、同項第三号中「頒布」を「、頒布」に改め、「発明」の下に「又は電気通信回線を通じて公衆に利用可能となつた発明」を加える↵

Law Revision of 14. Mai 1999, Law No. 41↵



In Paragraph 2 of Article 29, also for the first time, a patent could not be granted for an invention that could easily have been made by the skilled person (having the usual skill in the field of the invention) based on what was considered known as given in Paragraph 1 of the article.

It was only in the 1999 revision of the Patent Law that, for the first time, other forms of publication abroad also counted as prior art, including public prior use and prior knowledge in a more general sense. Further, the provision was added that domestic and foreign publications made publicly available via electronic telecommunications lines would also count as prior art.

In the following, we briefly address notable aspects of this evolution.

Acceptance of foreign “prior art”

None of the following constituted prior art in Japan under the original Patent Law of 1959: without a corresponding disseminated publication, an invention that was publicly known or used outside Japan prior to the filing of the patent application. Why was this the case? The reason is that it was considered very difficult in practice to prove such prior knowledge or use outside Japan, due to limited accessibility to evidence, limited international travel opportunities, language barriers etc. In other words, until the revision in 1999, one could obtain a patent in Japan even if the underlying invention was already publicly known or used outside of Japan. This meant that a Japanese company could be barred from using such technologies if a patent application was filed (e.g. by a foreign applicant) and granted

for subject matter that was already known outside of Japan and written or disseminated evidence for the subject matter was not available.

After the 1999 revision, with the added pillar of accepting what was made publicly known via electronic communications lines, the factors considered to hamper access to evidence abroad were no longer considered as prohibitive, and the general provisions regarding publicly known or used inventions (Article 29(1)(i)(ii) JPatLaw) were expanded to include foreign public knowledge and use.

Inventive step

During the parliamentary deliberations (including the presentations by Professor Niwa (丹羽保次郎)) in the run up to incorporating inventive step as a criterion for patentability in 1959, it was agreed to improve the quality of patents (there had for some time been criticism of too many "weak" applications). Because the JPO was processing a very rapidly growing number of patent applications in 1959, the additional “inventive step” requirement would help reduce the backlog at the JPO by eliminating weak patents. There were also efforts to harmonize with other major jurisdictions.

Turning to the wording of Article 29(2), the concept of objective capability of the skilled person, "being able to make something easily," may arguably not be the same as "obviousness" (e.g. Art. 56 EPC). The ability to "be able to make something easily" based on what is considered already known may arguably pose a higher hurdle than obviousness, the latter seeming to suggest a degree of reflexive motivation for the skilled person to consider a known art when solving a technical problem. Based on this alone, it may be argued that the criterion of inventive step, i.e. that a skilled person could not have easily made the invention, may be somewhat more difficult to establish in Japan compared to Europe or the United States. However, case law in Japan has evolved to guard against a too liberal interpretation of what the skilled person “could have easily made”, such that the gap between the manner in which inventive step is examined in Japan and abroad (notably EP and US) has significantly narrowed.

It should be noted that the term "inventive step" (or "obviousness") is not used in the Patent Law at all. Moreover, the concept of what the skilled person could have easily made according to Article 29(2) in the Japanese Patent Law is not connected to a condition such as the involvement of “an inventive step” as laid out in Art. 52 EPC. However, among professionals, the term "shimposei" is commonly used when referring to inventive step, but

this term may actually be better translated as "progressiveness". It may be argued that for an invention to be progressive, it should also be useful.

Conclusion

In the earliest versions of the Patent Law, the term 有益な (useful) was used as a condition for an invention for which a patent could be granted. This reflected the general motivation as a matter of national policy to provide a patent system that would assist in Japan's development into an industrial power competing in the world with the other great powers of the time. In a bid to harmonize with foreign jurisdictions at least, the criterion of "usefulness" was dropped and the concept of novelty (Shinkisei – 新規性) emerged. While the further condition that the skilled person could not "have easily made" the invention was later introduced, the original concept of usefulness is still a major component of a strong argument demonstrating the "progressiveness" of an invention in Japan.

Relevant Sources:

(1) Photographic experts of the patent laws: National Diet Library Digital Collection.

(2) Photographs of Takahashi Korekiyo, Edo-Tokyo Museum, Digital Archives.

About

SONODA & KOBAYASHI is a law firm offering dependable legal services for intellectual property. Our multinational team of about 120 experts in technology, law, languages and international communication has served companies worldwide and gained a reputation for thoroughness and reliability.

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