

この特許協力条約に基づく国際出願等に関する法律の翻訳は、平成三十年法律第三十三号までの改正（平成31年4月1日施行）について作成したものです。

この法令の翻訳は公定訳ではありません。法的効力を有するのは日本語の法令自体であり、翻訳はあくまでその理解を助けるための参考資料です。この翻訳の利用に伴って発生した問題について、一切の責任を負いかねますので、法律上の問題に関しては、官報に掲載された日本語の法令を参照してください。

This English translation of the Act on International Applications under the Patent Cooperation Treaty has been prepared (up to the revisions of Act No. 33 of 2018 (Effective April 1, 2019)).

This is an unofficial translation. Only the original Japanese texts of laws and regulations have legal effect, and the translations are to be used solely as reference material to aid in the understanding of Japanese laws and regulations.

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## Act Concerning International Applications, etc.

### Pursuant to the Patent Cooperation Treaty

#### (Act No. 30 of April 26, 1978, as amended)

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## **Chapter I General Provisions (Article 1)**

(Purpose)

1.—This Act 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 (Article 2 to 7)**

**(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.

**(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) 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.

**(Accordinging of the international filing date, etc.)**

4.—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 items:

- (i) the applicant does not comply with the requirements of Article 2;
- (ii) the particulars listed in Article 3(2)(i) 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 claims(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 Article 3(1);

(2) Where an international application falls under any of the items of the preceding paragraph, the Commissioner of the Patent Office shall invite the applicant to make the required correction in writing, designating an adequate 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 paragraph has complied with the invitation within the time limit designated in accordance with the said paragraph.

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 paragraph has furnished the drawings mentioned in the said paragraph 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 items, the Commissioner of the Patent Office shall invite correction to be made in writing,

designating an adequate 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 Article 16(3) or Article 7(1) to (3) of the Patent Act (Act No. 121 of 1959) applied in the first sentence of Article 19(1) (or provisions of pertinent Cabinet Order if any exceptions are made therefor by Cabinet Order referred to in the second sentence of Article 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.—When an international application falls under any of the following items, the Commissioner of the Patent Office shall decide that such application shall be considered withdrawn:

- (i) when a person who has been invited to make a correction under Article 6 has failed to make the correction within the time limit designated in accordance with the said Article;
- (ii) when the fees to be paid under Article 18(2) (excluding the portion specified in row of table 3 under said paragraph) have not been paid within the time limit prescribed in an ordinance of the Ministry of Economy, Trade and Industry;
- (iii) in respect of an international application for which the decision under Article 4(1) or (3) or article 5(2) has been made, when the said international application is found to fall under any of the items of article 4(1) within the time limit prescribed in an ordinance of the Ministry of economy, Trade and Industry.

**Chapter III The International Search (Article 8 and 9)**

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 Article 4(1) or (3) or Article 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 items in connection with all of the claims therein, the examiner shall decide not to establish the international search report, notwithstanding the provision of the preceding paragraph:
  - (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 so 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 items under the preceding paragraph in connection with certain claims therein, the examiner 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, the extent the amount obtained by multiplying the number of the claimed inventions minus one by 78,000 yen, by Cabinet Order, designating an adequate time limit.
- (5) Where the applicant who was invited to pay additional fees under the preceding paragraph has no paid the required additional fees within the time limit designated in accordance with the said paragraph, 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 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 The International Preliminary Examination (Article 10 to 15)**

##### **(Demand for international preliminary examination )**

10.— (1) The applicant of an international application for which the decision under Article 4(1) or (3) or Article 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 within the time limit prescribed in an ordinance of the Ministry of Economy, Trade and Industry. 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 paragraph 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, 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 items in connection with all of the claims therein, the examiner shall so indicate and where such international application falls under any of the following items in connection with certain claims therein, the examiner 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 inadequately supported 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 claims to be subjected to the international preliminary examination or to pay the additional fees which are to be fixed, to the extent the amount obtained by multiplying the number of the claimed inventions minus one by 21,000 yen, by Cabinet Order, designating an adequate time limit.

(4) Where the applicant who was invited to restrict the claims to be subjected to the international preliminary examination or to pay the additional fees under the preceding paragraph has not restricted the said claims or has not paid the required additional fees within the time limit designated under the said paragraph, 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, a note 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 items, 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 fees to be paid under Article 18(2) (excluding the portion specified in row of table 3 under said paragraph) have been paid, or there are such reasons as provided for in an ordinance of the Ministry of Economy, Trade and Industry, the proceedings 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.—Article 9 shall apply mutatis mutandis to the case where the applicant has made a demand for international preliminary examination.

## Chapter V— Miscellaneous Provisions (Article 16 to 21)

### **(Representatives, etc.)**

- 16.—(1) In respect of proceedings to be taken under this Act 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 Act through an agent shall appoint a patent attorney or an attorney at law as his agent, except the case where a proceeding is taken by a legal representative in accordance with the principal sentence of Article 7(1) of the Patent Act as applied under the first sentence of Article 19(1) of this Act or where a situation is provided for by Cabinet Order.

### **(Special provisions for corrections, etc.)**

- 17.—Where the applicant has taken, prior to the receipt of the invitation referred to in Article 4(2) or the notification referred to in Article 5(1), the proceeding which should be taken if the said invitation or the said notification were received, the said proceeding shall be considered to have been taken or 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 person making the request referred to in Article 9 (including its application under Article 15) shall pay the fees the amount of which shall be prescribed by Cabinet Order with the actual costs taken into consideration.
- (2) The persons specified in the second column of the following table shall pay the fees the amount of which is the sum of the amount prescribed by Cabinet Order within the limit of the amounts specified in the third column of the table and the amount specified in the fourth column of the said table:
- (i) a person filing an international application for which the international search is to be carried out by the Patent Office — 110,000 yen per case; the amount

prescribed by Cabinet Order as the fee related to the International Bureau (meaning the International Bureau defined in Article 2(xix) of the Treaty -- hereinafter referred to as "International Bureau") of the fees under Article 3(4)(iv) of the Treaty.

(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 — 13,000 yen per case; the amount prescribed by Cabinet Order, as the fee related to the International Searching Authority defined in the Treaty other than the Patent Office and the International Bureau, of the fees under Article 3(4)(iv) of the Treaty.

(iii) a person making a demand for international preliminary examination — 36,000 yen per case; the amount prescribed by Cabinet Order as the fee related to the International Bureau defined of the fees under Article 31(5) of the Treaty.

(3) Article 195(4), (5), (7), (8), and (11) to (13) of the Patent Act shall apply mutatis mutandis to the fees to be paid under paragraph (1) and the preceding paragraph (excluding the portion of the amount specified in the fourth column of the table under the said paragraph) and the fees required to be paid additionally under Article 8(4) or Article 12(3); Article 195(6) of the said Act shall apply mutatis mutandis to the fees required to be paid under the preceding paragraph (excluding the portion of the amount specified in the fourth column of the table under the said paragraph); and Article 195(8), and (11) to (13) shall apply mutatis mutandis to the fees to be paid under the preceding paragraph (excluding the portion of the amount prescribed by Cabinet Order in the said paragraph within the amount specified in the third column of the table under the said paragraph), respectively.

**(Reduction of or exemption from fees)**

18-2.—The Commissioner of the Patent Office may, pursuant to the provisions of Cabinet Order, grant a person filing an international application in the Japanese language who is a person specified by Cabinet Order, while comprehensively considering matters including the person's financial resources, ability to carry out research and development and technology development, and degree of contribution to the development of industry, such as a small and medium-sized enterprise operator (meaning a small and medium-sized enterprise operator provided in Article 109-2(2) of the Patent Act) and an experiment and research institute, etc. (meaning an experiment and research institute, etc. provided in paragraph (3) of the said Article), a reduction of, or exemption from, the fees required to be paid

under paragraph (2) of the preceding Article (limited to the portion of the amount prescribed by Cabinet Order in the said paragraph within the amount specified in the third column of the table under the said paragraph).

**(Application mutatis mutandis of Patent Act)**

19.—(1) Articles 7(1) to (3), 8, 11, 13(1) and (4), 16, 20 and 21 of the Patent Act shall apply mutatis mutandis to the proceedings under this Act. 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) Article 47(2) of the Patent Act shall apply mutatis mutandis to international search and international preliminary examination.

(3) Article 195<sup>ter</sup> of the Patent Act shall apply mutatis mutandis to the measures under this Act or an order or ordinance under this Act.

**(Delegation to ordinance of Ministry of International Trade and Industry)**

20.—In addition to the provisions from Articles 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 examination 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 Act 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 Act, 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 Act, the patent Act and other laws, where necessary from the view point of international cooperation in industrial property.

**Supplementary provisions (Extract)**