

Intellectual Property Basic Act

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Intellectual Property Basic Act (Act No. 122 of 2002)

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Chapter I General Provisions

Article 1 (Purpose)

The purpose of this Act is, for the objective of realizing a dynamic economy and society that is based on the creation of added values through the creation of new intellectual property and effective exploitation of such intellectual property in light of a growing necessity for intensifying the international competitiveness of Japanese industry in response to the changes in the social and economic situations at home and abroad, to promote measures for the creation, protection and exploitation of intellectual property in a focused and systematic manner by stipulating the basic principles on the creation, protection and exploitation of intellectual property and the basic matters to achieve the principles, clarifying the responsibilities of national government, local governments, universities, etc. and business operators, establishing the Intellectual Property Strategy Headquarters, and providing stipulations on the development of a strategic program on the creation, protection and exploitation of intellectual property.

Article 2 (Definition)

(1) The term "intellectual property" as used in this Act shall mean inventions, devices, new varieties of plants, designs, works and other property that is produced through creative activities by human beings (including discovered or solved laws of nature or natural phenomena that are industrially applicable), trademarks, trade names and other marks that are

used to indicate goods or services in business activities, and trade secrets and other technical or business information that is useful for business activities.

(2) The term "intellectual property right" as used in this Act shall mean a patent right, a utility model right, a plant breeder's right, a design right, a copyright, a trademark right, a right that is stipulated by laws and regulations on other intellectual property or right pertaining to an interest that is protected by acts.

(3) The term "universities, etc." as used in this Act shall mean universities and colleges of technology (which means universities and colleges of technology as provided in Article 1 of School Education Act [Act No. 26 of 1947]; The same shall apply in Article 7, paragraph 3 of this Act), inter-university research institutions (which means inter-university research institutions as provided in Article 9-2, paragraph 1 of National School Establishment Act [Act No. 150 of 1949]; The same shall apply in Article 7, paragraph 3 of this Act), incorporated administrative agency (which means incorporated administrative agency as provided in Article 2, paragraph 1 of Act on General Rules for Incorporated Administrative Agency [Act No. 103 of 1999]; The same shall apply in Article 30, paragraph 1 of this Act) that are engaged in test and research activities, public corporations (which means juridical person directly incorporated by an act or juridical person incorporated by special juristic act for establishment by a special act, to which the provision of Article 4, paragraph 15 of the Act on Establishment of the Ministry of Public Management, Home Affairs, Posts and Telecommunications [Act No.91 of 1999] are applicable ; The same shall apply in Article 30, paragraph 1 of this Act) that are designed for Research and Development, and test and research institutions that belong to national government and local governments.

Article 3 (Sound development of the national economy and creation of rich culture)

Measures for the creation, protection and exploitation of intellectual property shall be promoted with the objective of realizing a society in which the public can enjoy the benefit of intellectual property and establishing a foundation for the creation of new intellectual property in the future, thereby contributing to the sound development of the national economy and the creation of rich culture, through developing an essential environment to develop human resources that are rich in creativity, effectively exercise such creativity, achieve prompt and appropriate protection of intellectual property in response to the progress in technical innovation at home and abroad, actively exploit intellectual property in the economy and society, and utilize its value to the maximum.

Article 4 (Intensification of the international competitiveness and sustainable development of Japanese industry)

Measures for the creation, protection and exploitation of intellectual property shall be promoted with the objective of achieving an intensification of the technical capabilities of Japanese industry and the revitalization of the industry, the activation of the local economy, and an increase in job opportunities, thereby contributing to the intensification of the international competitiveness of Japanese industry and a sustainable development of Japanese industry that precisely responds to the changes in the economic environment at home and abroad, through encouraging smooth transfer of the results of creative Research and Development into commercial use and promoting the development of new business fields, management innovation and business startups, all of which are based on intellectual property.

Article 5 (Responsibilities of National government)

National government shall have the responsibility for formulating and implementing measures for the creation, protection and exploitation of intellectual property in accordance with the basic principles on the creation, protection and exploitation of intellectual property set forth in the provisions of the preceding two articles (hereinafter referred to as "basic principles").

Article 6 (Responsibilities of local governments)

Local governments shall have the responsibility for formulating and implementing autonomous measures that reflect distinctive features of the areas of the relevant local governments with regard to the creation, protection and exploitation of intellectual property in accordance with the basic principles, by appropriately sharing roles with national government.

Article 7 (Responsibilities, etc. of universities, etc.)

(1) Universities, etc. shall, in light of the fact that their activities are contributing to the creation of intellectual property in the whole society, endeavor voluntarily and positive to develop human resources, disseminate research and the research results.

(2) Universities, etc. shall endeavor to assure proper treatment of researchers and engineers and to establish and improve research facilities so that the duties and working environments of such researchers and engineers will be attractive and suitable for their importance.

(3) In formulating and implementing measures for the creation, protection and exploitation of intellectual property pertaining to universities, colleges of technology and inter-university research institutions, national government and local governments shall consider the respect for researchers' autonomy or other characteristics of the research that is carried out at universities, colleges of technology and inter-university research institutions.

Article 8 (Responsibilities of business operators)

(1) In light of the importance of the role that intellectual property plays in the development of Japanese industry, business operators shall, in accordance with the basic principles, endeavor for positive exploitation of the intellectual property that is created by themselves or by other business operators and the intellectual property that is created by universities, etc. as well as for proper management of their own intellectual property in order to increase their productivity and reinforce their business foundation through vigorous business activities.

(2) Business operators shall endeavor to assure proper treatment of inventors and other employees who are engaged in creative activities so that the duties of such inventors and other employees who are engaged in creative activities will be attractive and suitable for their importance.

Article 9 (Strengthening of coordination)

National government shall, in light of the fact that mutual cooperation and coordination between national government, local governments, universities, etc. and business operators can effectively achieve the creation, protection and exploitation of intellectual property, take necessary measures to strengthen coordination between these parties.

Article 10 (Consideration for promoting competition)

In promoting measures for the creation, protection and exploitation of intellectual property, consideration shall be paid to secure the fair exploitation of intellectual property and public interests and to promote fair and free competition.

Article 11 (legislative measures, etc.)

The government shall take the legislative, financial and other actions that are necessary for implementing measures on the creation, protection and exploitation of intellectual property.

Chapter II Basic Measures

Article 12 (Promotion of Research and Development)

In light of the fact that the creation of high-value added intellectual property at universities, etc. is a source of sustainable development for the Japanese economy and society, national government shall take necessary measures to promote Research and Development, such as securing and developing researchers rich in creativity, improving research facilities, etc., and making effective use of funding pertaining to Research and Development, while considering the policy on the advancement of science and technology stipulated in Article 2 of the Basic Act on Science and Technology (Act No. 130 of 1995).

Article 13 (Promotion of transfer of Research and Development results, etc.)

In light of the fact that Research and Development results achieved by universities, etc. are useful for the development of new business fields and the improvement of industrial technology, national government shall take necessary measures to encourage universities, etc. to properly manage their Research and Development results and smoothly transfer the results to business operators, such as improving systems in universities, etc. to utilize human resources that have expert knowledge on intellectual property, improving such proceedings pertaining to registration for establishment on intellectual property, carrying out research and study on market, etc., and providing market information.

Article 14 (Prompt granting of right, etc.)

(1) National government shall take necessary measures, such as improving the examination systems to enable the necessary procedures to be promptly and properly carried out so that business operators will be able to smoothly carry out their business activities by promptly obtaining definite rights with respect to intellectual property for which a right is established on the basis of such national registrations, as inventions, new varieties of plants, designs, and trademarks.

(2) In taking the measures set forth in the preceding paragraph, national government shall endeavor to obtain the understanding and cooperation of business operators for the purpose of ensuring effective implementation of such measures.

Article 15 (Effective and prompt court proceedings, etc.)

In light of the fact that the judicial authorities will play more important role in protecting intellectual property rights along with advancement in the exploitation of intellectual property in the economy and society, national government shall take necessary measures to ensure more effective and prompt court proceedings, improve technical resolution systems at court and reinforce alternative dispute resolution systems, with regard to legal case on intellectual property rights.

Article 16 (Measures against infringement of right, etc.)

(1) National government shall take necessary measures against infringements of intellectual property rights in the domestic market and against importation of the products that infringe intellectual property rights into the domestic market, such as controlling such infringements of intellectual property rights and confiscating the infringing products, in a close cooperation and coordination with business operators, business associations and other associations concerned.

(2) Where intellectual property owned by juridical persons and other associations pursuant to Japanese laws and regulations or by persons who have Japanese nationality (hereinafter called "Japanese juridical persons, etc." ; The same shall apply in the next article) is not properly protected in a foreign state, national government shall take necessary measures, such as achieving proper enforcement of rights under intellectual property-related treaties, in coordination with the foreign government, international organizations and associations concerned, according to the situation.

Article 17 (Establishment of international systems, etc.)

National government shall endeavor to establish systems pertaining to intellectual property that are internationally consistent in concerted action with foreign governments by cooperating with intellectual property-related international organizations and other international frameworks, and shall take necessary measures to develop an environment in which Japanese juridical persons, etc. can promptly and certainly obtain or enforce intellectual property rights in states or regions where an intellectual property protection system has yet to be sufficiently developed.

Article 18 (Protection of intellectual property in new fields, etc.)

(1) In light of the fact that creation of new businesses will be expected through active business startups when useful Research and Development results are promptly and properly protected as intellectual property rights in the fields, such as life sciences, where outstanding progress of technological innovation is seen, national government shall take necessary measures, such as taking legislative measures on the basis of an examination of the scope of rights that need proper protection.

(2) National government shall take necessary measures, such as reviewing the contents of rights and supporting business operators in developing and utilizing their technical means for protection, in order to achieve proper protection of intellectual property rights while precisely responding to the diversified applications of intellectual property along with the dissemination of the Internet and other changes in social and economic circumstances.

Article 19 (Development of an environment in which business operators can effectively and properly exploit intellectual property)

(1) National government shall take necessary measures to develop an environment in which business operators can effectively and properly exploit intellectual property, such as establishing methods for appropriate assessment of intellectual property and setting forth management guidelines that will be helpful examples for business operators, in order to enable business operators to start up new businesses and smoothly carry out these businesses by exploitation of intellectual property.

(2) In taking the measures set forth in the preceding paragraph, national government shall specially consider business startups by individuals and the development of new businesses by small and medium sized enterprise operator with volition, in light of the fact that small and medium sized enterprises are entrusted with an important mission for maintaining and strengthening the vitality of the Japanese economy.

Article 20 (Provision of information)

National government shall conduct research and analysis on domestic and international trends concerning intellectual property, prepare necessary statistics and other data, develop databases on intellectual property, and take necessary measures to promptly provide information for business operators, universities, etc. and other parties concerned through access to the Internet and other advanced information and telecommunications networks.

Article 21 (Promotion of education, etc.)

National government shall take the necessary measures to promote education and learning on intellectual property and disseminate knowledge on intellectual property through public relations activities, etc. in order to develop a society in which intellectual property rights are respected, through making citizens more aware of and deepening its interest in intellectual property.

Article 22 (Securing human resources, etc.)

National government shall take necessary measures to promote the creation, protection and exploitation of intellectual property, such as securing and developing human resources that have expert knowledge on intellectual property and improving their quality in close cooperation and coordination with universities, etc. and business operators.

Chapter III Strategic Program on the Creation, Protection and Exploitation of Intellectual Property

Article 23

(1) The Intellectual Property Strategy Headquarters shall develop a strategic program on the creation, protection and exploitation of intellectual property (hereinafter referred to as the "strategic program") pursuant to the provision of this Chapter.

(2) The matters listed in the following items shall be decided within the strategic program:

- (i) Basic policy concerning measures that the government should implement in a focused and systematic manner for the creation, protection and exploitation of intellectual property;
 - (ii) Measures that the government should take in a focused and systematic manner for the creation, protection and exploitation of intellectual property;
 - (iii) Measures that the government should take in a focused and systematic manner to promote education on intellectual property and secure human resources, etc.
 - (iv) Matters other than those prescribed in the preceding items that are required for the government to promote measures in a focused and systematic manner for the creation, protection and exploitation of intellectual property.
- (3) The specific objectives and time limits for accomplishment of these objectives shall be, in principle, decided for the measures determined within the strategic program.
- (4) When the Intellectual Property Strategy Headquarters develops the strategic program pursuant to the provision of paragraph 1, it shall publish the program via the Internet and other appropriate means without delay.
- (5) The Intellectual Property Strategy Headquarters shall investigate the degree of the accomplishment of the objectives set pursuant to the provision of paragraph 3 and publish the results via the Internet and other appropriate means in a timely manner.
- (6) The Intellectual Property Strategy Headquarters shall, by taking into consideration of the changes in the situation surrounding intellectual property and based on the assessment of the effect of the measures for the creation, protection and exploitation of intellectual property, review the strategic program at least annually and amend the program when it finds necessary.
- (7) The provision of paragraph 4 shall apply mutatis mutandis to amendments to the strategic program.

Chapter IV Intellectual Property Strategy Headquarters

Article 24 (Establishment)

In order to promote measures for the creation, protection and exploitation of intellectual property in a focused and systematic manner, the Intellectual Property Strategy Headquarters (hereinafter referred to as "Headquarters") shall be established in the Cabinet.

Article 25 (affairs under the jurisdiction)

The Headquarters shall take charge of the affairs listed in the following items:

- (i) Development of the strategic program, and promotion of the implementation of the program.

(ii) In addition to what is prescribed in the preceding item, study and deliberation on planning important measures on the creation, protection and exploitation of intellectual property, and promotion and comprehensive adjustment of implementation of the measures.

Article 26 (Organization)

The Headquarters shall be organized to consist of the Director-General of the Intellectual Property Strategy Headquarters, the Vice Director-Generals of the Intellectual Property Strategy Headquarters, and Members of the Intellectual Property Strategy Headquarters.

Article 27 (Director-General of the Intellectual Property Strategy Headquarters)

(1) The Headquarters shall be headed by the Director-General of the Intellectual Property Strategy Headquarters (hereinafter referred to as "Director-General"), the post which shall be served as the Prime Minister.

(2) The Director-General shall be in charge of general coordination of the affairs of the Headquarters, and shall direct and supervise the relevant officials.

Article 28 (Vice Director-Generals of the Intellectual Property Strategy Headquarters)

(1) The Vice Director-Generals of the Intellectual Property Strategy Headquarters (hereinafter referred to as "Vice Director-Generals") shall be assigned in the Headquarters, the posts which shall be appointed from among the Ministers of State.

(2) The Vice Director-Generals shall assist the duties of the Director-General.

Article 29 (Members of the Intellectual Property Strategy Headquarters)

(1) Members of the Intellectual Property Strategy Headquarters (hereinafter referred to as "Members") shall be assigned in the Headquarters.

(2) The posts of the Members shall be served as the persons listed in following items:

(i) all Ministers of State other than the Director-General and Vice Director-Generals; and

(ii) those having superior insights into the creation, protection and exploitation of intellectual property who have been appointed by the Prime Minister.

Article 30 (Submission of materials and other forms of cooperation)

(1) The Headquarters may, if it considers it necessary for implementing affairs under the jurisdiction, demand submission of materials, statements of opinions, explanations and other required cooperation from the heads of the relevant administrative organ, local governments and incorporated administrative agency and the representatives of public corporations.

(2) The Headquarters may also demand required cooperation from parties other than those prescribed in the preceding paragraph, if it considers it especially necessary for implementing affairs under the jurisdiction.

Article 31 (Affairs)

Affairs concerning the Headquarters shall be processed within the Cabinet Secretariat and administered by the Assistant Chief Cabinet Secretary under commission.

Article 32 (Competent Minister)

The competent Minister as set forth in the Cabinet Act (Act No.5 of 1947) for the matters pertaining to the Headquarters shall be the Prime Minister.

Article 33 (Delegation to Cabinet Orders)

In addition to what is provided for in this Act, necessary matters concerning the Headquarters shall be prescribed by a Cabinet Order.

Supplementary Provisions

Article 1 (Effective Date)

This Act shall come into force as from the date specified by a Cabinet Order within a period not exceeding three months from the day of promulgation

Article 2 (Review)

The government shall review the state of enforcement of this Act within three years from effective date of this Act, and shall take necessary measures based on the results.