

Chapter 1 : Table of contents for From foot soldier to finance minister

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Intellectual property is the area of law that deals with protecting the rights of those who create original works. It covers everything from original plays and novels to inventions and company identification marks. The purpose of intellectual property laws are to encourage new technologies, artistic expressions and inventions while promoting economic growth. When individuals know that their creative work will be protected and that they can benefit from their labor, they are more likely to continue to produce things that create jobs, develop new technology, make processes more efficient, and create beauty in the world around us. There are three main mechanisms for protecting intellectual property in the United States: Copyrights Copyrights protect the expressive arts. They give owners exclusive rights to reproduce their work, publicly display or perform their work, and create derivative works. Additionally, owners are given economic rights to financially benefit from their work and prohibit others from doing so without their permission. Patents Patents protect an invention from being made, sold or used by others for a certain period of time. There are three different types of patents in the United States: Utility Patents - these patents protect inventions that have a specific function, including things like chemicals, machines, and technology. Design Patents - these patents protect the unique way a manufactured object appears. Plant Patents - these patents protect plant varieties that are asexually reproduced, including hybrids. Inventors may not assume that their creation is patented unless they apply and are approved for a patent by the US Patent and Trademark Office. This process can be complex and time consuming. Trademarks Trademarks protect the names and identifying marks of products and companies. The purpose of trademarks is to make it easy for consumers to distinguish competitors from each other. Trademarks are automatically assumed once a business begins using a certain mark to identify its company, and may use the symbol TM without filing their symbol or name with the government. There are strict laws in place to protect intellectual property rights. When intellectual property rights are violated, it is important to hire an intellectual property lawyer. An experienced attorney can help you sue for damages that include lost royalties. If your case is successful, the person who violated your intellectual property rights may be required to pay for all of your legal fees in addition to compensating you for using your work without your permission.

Chapter 2 : Japanese patent law - Wikipedia

On 1 March Japan's Ministry of Economy, Trade and Industry announced that it had granted the first trademark approval for a color palette. Japan's first color trademarks go to the humble pencil eraser MONO from Tombow and the convenience store chain 7-Eleven.

Trademark Cases, U. Property in trademarks has long been recognized and protected by the common law and by the statutes of the several states, and does not derive its existence from the act of Congress providing for the registration of them in the Patent Office. A trademark is neither an invention, a discovery, nor a writing within the meaning of the eighth clause of the eighth section of the first article of the Constitution, which confers on Congress power to secure for limited times to authors and inventors the exclusive right to their respective writings and discoveries. If an act of Congress can in any case be extended, as a regulation of commerce, to trademarks, it must be limited to their use in "commerce with foreign nations, and among the several states, and with the Indian tribes. The legislation of Congress in regard to trademarks is not, in its terms or essential character, a regulation thus limited, but in its language embraces, and was intended to embrace, all commerce, including that between citizens of the same state. That legislation is void for want of constitutional authority, inasmuch as it is so framed that its provisions are applicable to all commerce, and cannot be confined to that which is subject to the control of Congress. The first two cases were brought here on certificates of division in opinion between the judges of the Circuit Court of the United States for the Southern District of New York. The last was brought here on a certificate of division in opinion between the judges of the Circuit Court of the United States for the Southern District of Ohio. Steffens was indicted under the fourth and fifth sections of an act of Congress entitled "An Act to punish the counterfeiting of trademarks and the sale or dealing in of counterfeit trademark goods," approved Aug. The first count in the indictment charges him with knowingly and willfully having in his possession counterfeits and colorable imitations of the trademarks of G. The second count charges him with knowingly and willfully selling counterfeited representations and colorable imitations of the trademark of said G. The indictment consists of six counts, and they charge: Johnson, McNamara, and Reeder were prosecuted under that act by a criminal information containing seven counts, of which the first, fourth, and sixth are founded upon a trademark consisting of the letters "O K," registered in the United States Patent Office by Charles F. That any person or persons who shall, with intent to defraud any person or persons, knowingly and willfully cast, engrave, or manufacture, or have in his, her, or their possession, or buy, sell, offer for sale, or deal in, any die or dies, plate or plates, brand or brands, engraving or engravings, on wood, stone, metal, or other substance, moulds, or any false representation, likeness, copy, or colorable imitation of any die, plate, brand, engraving, or mould of any private label, brand, stamp, wrapper, engraving on paper or other substance, or trademark, registered pursuant to the statutes of the United States, shall, upon conviction thereof, be punished as prescribed in the first section of this act. That any person or persons who shall, with intent to defraud any person or persons, knowingly and willfully make, Page U. The judges of the circuit court were opposed in opinion upon the following question: The Attorney-General for the United States. The three cases whose titles stand at the head of this opinion are criminal prosecutions for violations of what is known as the trademark legislation of Congress. In all of them, the judges of the circuit courts in which they are pending have certified to a difference of opinion on what is substantially the same question, namely, are the acts of Congress on the subject Page U. The entire legislation of Congress in regard to trademarks is of very recent origin. It is first seen in secs. The part of this act relating to trademarks is embodied in chap. Six years later, we have the Act of Aug. The right to adopt and use a symbol or a device to distinguish the goods or property made or sold by the person whose mark it is, to the exclusion of use by all other persons, has been long recognized by the common law and the chancery courts of England and of this country and by the statutes of some of the states. It is a property right for the violation of which damages may be recovered in an action at law, and the continued violation of it will be enjoined by a

court of equity, with compensation for past infringement. This exclusive right was not created by the act of Congress, and does not now depend upon it for its enforcement. The whole system of trademark property and the civil remedies for its protection existed long anterior to that act, and have remained in full force since its passage. There propositions are so well understood as to require neither the citation of authorities nor an elaborate argument to prove them. In the argument of these cases this seems to be conceded, and the advocates for the validity of the acts of Congress on this subject point to two clauses of the Constitution, in one or in both of which, as they assert, sufficient warrant may be found for this legislation. The first of these is the eighth clause of sec. That section, manifestly intended to be an enumeration of the powers expressly granted to Congress and closing with the declaration of a rule for the ascertainment of such powers as are necessary by way of implication to carry into efficient operation those expressly given, authorizes Congress, by the clause referred to, "to promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries. It may also be safely assumed that until a critical examination of the subject in the courts became necessary, it was mainly if not wholly to this clause that the advocates of the law looked for its support. Any attempt, however, to identify the essential characteristics of a trademark with inventions and discoveries in the Page U. The ordinary trademark has no necessary relation to invention or discovery. The trademark recognized by the common law is generally the growth of a considerable period of use, rather than a sudden invention. It is often the result of accident, rather than design, and when under the act of Congress it is sought to establish it by registration, neither originality, invention, discovery, science, nor art is in any way essential to the right conferred by that act. If we should endeavor to classify it under the head of writings of authors, the objections are equally strong. In this as in regard to inventions, originality is required. The writings which are to be protected are the fruits of intellectual labor, embodied in the form of books, prints, engravings, and the like. The trademark may be, and generally is, the adoption of something already in existence as the distinctive symbol of the party using it. At common law, the exclusive right to it grows out of its use, and not its mere adoption. By the act of Congress, this exclusive right attaches upon registration. But in neither case does it depend upon novelty, invention, discovery, or any work of the brain. It requires no fancy or imagination, no genius, no laborious thought. It is simply founded on priority of appropriation. We look in vain in the statute for any other qualification or condition. If the symbol, however plain, simple, old, or well known, has been first appropriated by the claimant as his distinctive trademark, he may by registration secure the right to its exclusive use. While such legislation may be a judicious aid to the common law on the subject of trademarks, and may be within the competency of legislatures whose general powers embrace that class of subjects, we are unable to see any such power in the constitutional provision concerning authors and inventors, and their writings and discoveries. The other clause of the Constitution supposed to confer the requisite authority on Congress is the third of the same section, Page U. Every species of property which is the subject of commerce, or which is used or even essential in commerce, is not brought by this clause within the control of Congress. The barrels and casks, the bottles and boxes in which alone certain articles of commerce are kept for safety and by which their contents are transferred from the seller to the buyer, do not thereby become subjects of congressional legislation more than other property. State of California, 24 How. The question, therefore, whether the trademark bears such a relation to commerce in general terms as to bring it within congressional control, when used or applied to the classes of commerce which fall within that control, is one which, in the present case, we propose to leave undecided. We adopt this Page U. In such cases, it is manifestly the dictate of wisdom and judicial propriety to decide no more than is necessary to the case in hand. That such has been the uniform course of this Court in regard to statutes passed by Congress will readily appear to anyone who will consider the vast amount of argument presented to us assailing them as unconstitutional, and he will count, as he may do on his fingers, the instances in which this Court has declared an act of Congress void for want of constitutional power. Governed by this view of our duty, we proceed to remark that a glance at the commerce clause of the Constitution discloses at once what has been often the subject of comment in this Court and out of it -- that the power of

regulation there conferred on Congress is limited to commerce with foreign nations, commerce among the states, and commerce with the Indian tribes. While bearing in mind the liberal construction that commerce with foreign nations means commerce between citizens of the United States and citizens and subjects of foreign nations, and commerce among the states means commerce between the individual citizens of different states, there still remains a very large amount of commerce, perhaps the largest, which, being trade or traffic between citizens of the same state, is beyond the control of Congress. When, therefore, Congress undertakes to enact a law which can only be valid as a regulation of commerce, it is reasonable to expect to find on the face of the law or from its essential nature that it is a regulation of commerce with foreign nations or among the several states or with the Indian tribes. If not so limited, it is in excess of the power of Congress. If its main purpose be to establish a regulation applicable to all trade, to commerce at all points, especially if it be apparent that it is designed to govern the commerce wholly between citizens of Page U. We find no recognition of this principle in the chapter on trademarks in the Revised Statutes. We would naturally look for this in the description of the class of persons who are entitled to register a trademark, or in reference to the goods to which it should be applied. If, for instance, the statute described persons engaged in a commerce between the different states, and related to the use of trademarks in such commerce, it would be evident that Congress believed it was acting under the clause of the Constitution which authorizes it to regulate commerce among the states. So if, when the trademark has been registered, Congress had protected its use on goods sold by a citizen of one state to another, or by a citizen of a foreign state to a citizen of the United States, it would be seen that Congress was at least intending to exercise the power of regulation conferred by that clause of the Constitution. But no such idea is found or suggested in this statute. Here is no requirement that such person shall be engaged in the kind of commerce which Congress is authorized to regulate. It is a general declaration that anybody in the United States, and anybody in any other country which permits us to do the like, may, by registering a trademark, have it fully protected. So, while the person registering is required to furnish "a statement of the class of merchandise, and the particular description of the goods comprised in such class, by which the trademark has been or is intended to be appropriated," there is no hint that the goods are to be transported from one state to another, or between the United States and foreign countries. The remedies provided by the act Page U. It is therefore manifest that no such distinction is found in the act, but that its broad purpose was to establish a universal system of trademark registration, for the benefit of all who had already used a trademark or who wished to adopt one in the future, without regard to the character of the trade to which it was to be applied or the residence of the owner, with the solitary exception that those who resided in foreign countries which extended no such privileges to us were excluded from them here. It has been suggested that if Congress has power to regulate trademarks used in commerce with foreign nations and among the several states, these statutes shall be held valid in that class of cases, if no further. To this there are two objections: This precise point was decided in *United States v. In that case, Congress had passed a statute punishing election officers who should refuse to any person lawfully entitled to do so the right to cast his vote at an election. This Court was of the opinion that as regarded the section of the statute then under consideration, Congress could only punish such denial when it was on account of race, color, or previous condition of servitude. It was urged, however, that the general description of the offense included the more limited one, and that the section was valid where such was in fact the cause of denial. But the Court said, through the Chief Justice: The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not there now. Each of the sections must stand as a whole or fall altogether. The language is plain. There is no room for construction unless it be as to the effect of the Constitution. The question, then, to be determined is whether we can introduce words of limitation into a penal statute so as to make it specific when, as expressed, it is general only. To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty. *Hitchings, 5 Gray Mass.* In what we have here said, we wish to be understood as leaving untouched the whole question of the treatymaking power over trademarks and of the duty of Congress to pass any laws necessary to carry*

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treaties into effect. While we have, in our references in this opinion to the trademark legislation of Congress, had mainly in view the act of and the civil remedy which that act provides, it was because the criminal offenses described in the act of are, by their express terms, solely referable to frauds, counterfeits, and unlawful use of trademarks which were registered under the provisions of the former act. If that act is unconstitutional, so that the registration under it confers no lawful right, then the criminal enactment intended to protect that right falls with it. The questions in each of these cases being an inquiry whether these statutes can be upheld in whole or in part as valid and constitutional, must be answered in the negative, and it will be So certified to the proper circuit courts. Justia case law is provided for general informational purposes only, and may not reflect current legal developments, verdicts or settlements. We make no warranties or guarantees about the accuracy, completeness, or adequacy of the information contained on this site or information linked to from this site. Please check official sources. Justia Annotations is a forum for attorneys to summarize, comment on, and analyze case law published on our site. Justia makes no guarantees or warranties that the annotations are accurate or reflect the current state of law, and no annotation is intended to be, nor should it be construed as, legal advice. Contacting Justia or any attorney through this site, via web form, email, or otherwise, does not create an attorney-client relationship. Receive free daily summaries of US Supreme Court opinions.

Chapter 3 : Trademarks | Japan Patent Office

From Foot Soldier to Finance Minister Japan's First Trademark and Patent Laws, ; 5. Maeda Masana and the Debate over Industrial Policy,

At this early stage in the legislative process it is unclear how the proposed amendments will look in their final form. Patent Act Amendments The proposed amendments to the Patent Act aim to regulate Standard Essential Patents, exceptions to infringement and written demands made by patentees. The amendments also introduce file wrapper estoppel into Canadian law. The proposed addition of subsection These licensing commitments are sometimes required to be offered as FRAND licenses fair, reasonable and non-discriminatory. Historically, file wrapper estoppel has been unavailable at law in Canada. Prosecution history of an original application for both divisional patents, and reissued patents would also be admissible under the new law. Broadening Experimental and Prior use Defenses Two statutory exceptions to infringement are broadened under the proposed amendments. Further, the proposed amendments would permit the Governor in Council to make regulations pursuant to subsection The prior use exception under section 56 of the current Patent Act would be broadened under the proposed amendments to include any acts that take place prior to the claim date and continue to be exempt from infringement on or after claim date. This expanded exception applies to individuals and their successor in title of the would-be infringing article. Transitional provisions in the Bill would make the new section 56 effective as of October 29, Written Demand Requirements The addition of proposed subsection At this stage, it is unclear what the requirements of written demands would be. Any person who receives a written demand or is aggrieved by such a demand may bring a proceeding in the Federal Court in relation to it. If the Federal Court is satisfied the written demand does not comply with the prescribed requirements, it may provide relief in the form of recovery of damages, punitive damages, an injunction, a declaration or an award of costs. In special cases, the agents of a corporation who sends a written demand may be held jointly and severally liable for written demands held not to comply with prescribed requirements. The Governor in Council is granted the power under the proposed amendments to make regulations with respect to these provisions such as the requirements of a written demand and what factors the Court must take into account when deciding whether to enforce such a demand. The addition of these provisions would likely impact the nature of cease and desist letters and the steps taken by patent holders and their agents in enforcing their rights. Bad Faith The Bill would amend the Trademarks Act to add bad faith as a ground of opposition to the registration of a trademark and for the invalidation of a trademark registration. Relief within the First Three Years of Registration Under the proposed amendments, owners of a registered trademark would be prevented from obtaining relief for acts done contrary to section 19, 20, or 22 of the Trademarks Act during the first three years after the trademark is registered unless the trademark was in use in Canada during that period or special circumstances exist that excuse the absence of use. Official Marks The proposed amendments clarify that, despite any public notice of adoption and use, prohibitions in subparagraph 9 1 n iii and section 11 of the Trademarks Act do not apply if the entity that made the request for public notice is no longer a public authority or no longer exists. The Registrar may, on their own initiative or the request of a person who pays a prescribed fee, give public notice that subparagraph 9 1 n iii does not apply. Modernization of the Conduct of Proceedings before the Registrar of Trademarks Costs Orders The proposed amendments would permit the Registrar to award costs in an objection to geographical indication, opposition, or non-use cancellation proceeding. A certified copy of an order for costs may be filed in the Federal Court and may be enforced as an order of that Court. Withdrawal of Objection or Opposition If an opponent or objector fails to pursue the continuation of the respective opposition or objection to geographical indication, the Registrar may, after giving notice, treat the opposition or objection as withdrawn unless the default is remedied within the specified timeframe. Confidentiality Orders Parties to an objection to geographical indication, opposition, or non-use cancellation proceeding may request a confidentiality order from the Registrar. The Registrar may, on

any terms he or she considers appropriate, order that evidence be kept confidential or give notice that he or she is not satisfied that the evidence should be kept confidential. A certified copy of a confidentiality order may be filed in the Federal Court and enforced as a court order. Case Management The Governor in Council may make regulations respecting case management by the Registrar of objection to geographical indication, opposition, or non-use cancellation proceedings. Evidence on Appeal Under the current Trademarks Act, an appeal from an opposition or non-use cancellation proceeding permits parties to serve new evidence before the Federal Court as of right. The amendments would require leave of the Federal Court to adduce evidence in addition to what was before the Registrar. The Bill clarifies that subsection 34 1 of the Trademarks Act, establishing priority in Canada based on an application abroad, does not apply for some analyses of distinctiveness, use or proposed use, and proposed divisional applications. In each case, the date the application was filed would be the relevant date. CPATA establishes the College of Patent Agents and Trademark Agents, which is to be responsible for the regulation of patent agents and trademark agents in the public interest. CPATA, among other things: In general, the proposed amendments seek to reform the practices and processes of Copyright Board, prohibit the inclusion of specific content in notices issued under the notice and notice regime, and limit the availability of statutory damages for collective societies with respect to certain acts. Copyright Board Reform Last year the Federal Government announced the launch of consultations with the objective of reforming the Copyright Board. In view of this background, it appears that the amendments to the Copyright Act proposed in the Bill aim to improve the speed at which the Copyright Board makes decisions by clarifying proceedings and decision-making processes. Paraphrasing the overview provided in the Bill itself, the proposed amendments seek to: Prohibited Content in Notices With respect to the so-called "notice and notice regime" under sections Specifically, the Bill seeks to prohibit the inclusion of offers to settle, requests or demands for payment or personal information, and references to such offers, requests or demands e. The Bill further proposes that limitations to the content of notices may be prescribed by regulation. Conclusion While the Bill still has a long way to go before becoming law, given the potential impacts on patent, trademark and copyright law and practice it will be worth keeping an eye on the proposed legislation in the months ahead as the Bill undergoes debate in Parliament. Read the original article on [GowlingWLG](#). Specialist advice should be sought about your specific circumstances.

Chapter 4 : Trademark Cases :: U.S. 82 () :: Justia US Supreme Court Center

As a result, the court held that Nexsan's trademark application filed in U.S. Patent and Trademark Office qualified as the first legally recognizable "use" of the trademark in the United States.

Generic no protection Arbitrary and Fanciful[edit] Where there is no logical relationship between the mark and the goods or services, trademark protection is at its strongest. Arbitrary and fanciful marks are considered inherently distinctive and are prima facie registrable. For example, coined words "such as Kodak , Polaroid , or Starbucks " are considered fanciful and receive strong trademark protection. Arbitrary marks include preexisting words used in an arbitrary way, such as "Apple" when used for computers. Suggestive[edit] Suggestive trademarks are still broadly protected. These marks "suggest" something about the product or services they are used on. The suggestion is a subtle connotation, not an outright description of the product. An example is "Whirlpool" for washing machines. Descriptive[edit] Descriptive terms immediately describe the goods, or some important characteristic of the goods. Trademark law does not protect descriptive terms unless achieve "secondary meaning" in the minds of consumers. That is, trademark rights accrue when the public comes to associate the descriptive term with a particular company rather than the product in general. Generic[edit] The generic term for a product or service cannot be trademarked. Granting trademark rights on a generic term-say "apple" for use on apple juice-puts other companies at an unfair competitive disadvantage. Every company has the right to describe its products and services using generic terms. Both registered and non-registered trademarks are both eligible for protection under the Lanham Act. However, registration on the "Principal Register" affords several advantages: Nationwide trademark rights A registered mark is presumed to be a valid trademark The owner listed on the registration is presumed to be the true owner of the trademark rights Presumption that the mark has not been "abandoned" through non-use Access to Federal Courts for litigating trademark infringement "Incontestability. Customs Service prevent others from importing goods bearing infringing marks Process of application for Federal trademark registration[edit] Trademarks may be registered online. The process takes about 6 months from initial application to final registration. It is a general practice to hire a trademark lawyer to file the application on behalf of the future owner. Once the application is filed, it sits in a queue for a few months. If the Trademark Examiner identifies problems with the applications, the applicant will be sent a "preliminary rejection. If the Trademark Examiner is persuaded by the reply arguments, the application will be granted registration. If not, a "final rejection" will be issued. When an application is allowed, it moves on to "publication" in the Trademark Official Gazette. Once published, there is a day opportunity for other companies to appeal the registration. If no appeal is filed, the registration is finally issued. If the registration receives a final rejection from the Trademark Examiner, the applicant may appeal the rejection to the Trademark Trial and Appeal Board. Likewise, if the application is opposed by a third party, the appeal will be reviewed by the Trademark Trial and Appeal Board. An ITU application is a placeholder. It will not be allowed to register until the applicant actually begins using the mark in interstate commerce. The value of ITU is in establishing priority"that is, determining which business first acquired the trademark rights. Primary Register and Supplemental Register[edit] The benefits of federal trademark registration only accrue to marks listed on the "Primary Register". To be eligible for the Principal Register, a mark must be recognized as a trademark, and not just a description of some goods or services. Eligible marks include a arbitrary or fanciful marks, b "suggestive" marks, and c descriptive marks that have achieved "secondary meaning" or "distinctiveness. Descriptive marks describe some quality of the goods or services they are used with. Descriptive marks may become distinctive acquire "secondary meaning" through 5 years of use in commerce, or through evidence of heavy advertising and market recognition. Secondary meaning is acquired when in the minds of the public, the primary significance of a product feature State trademark registration[edit] Trademarks may also be registered at the state level. State registrations are less potent than federal trademark registration. But federal registration requires use of the mark in interstate commerce. If a

mark is only used in one particular state, registration at the state level may be appropriate. State trademark registration is usually by filing an application with the Secretary of State of the relevant state. A new trademark will infringe on an existing one if the new one is so similar to the original that consumers are likely to confuse the two marks, and mistakenly purchase from the wrong company. This multi-factor test was articulated by Judge Henry Friendly in *Polaroid v. Note* that other factors may also be considered in determining whether a likelihood of confusion exists. Fair use in trademark law does not employ the same four-pronged analysis used in copyright law. The law recognizes two fair use defenses: These uses are still subject to the requirement that there be no consumer confusion as to source or sponsorship. Trademarks may also be lawfully used in parodies, since in that case there is usually no likelihood of confusion. Trademark compared to other intellectual property laws[edit] In contrast to copyright or patent law, trademark protection does not have a set duration or definite expiration date. Trademark rights only expire when the owner stops using the mark in commerce. However, federal trademark registrations expire ten years after the registration date, unless renewed within one year prior to the expiration. Constitution specifically grants Congress power over copyright and patent law, but not over trademark law. Therefore, there must be some degree of interstate commerce present for a trademark to receive Lanham Act protection. Supreme Court invalidated the first federal trademark law by finding that Congress could not stretch the Copyright Clause to cover trademarks, [8] Unlike copyright law which provides for criminal penalties as well as civil damages, trademark law in the United States is almost entirely enforced through private lawsuits. The exception is in the case of criminal counterfeiting of goods. Otherwise, the responsibility is entirely on the mark owner to file suit in either state or federal civil court in order to restrict an infringing use. Failure to "police" a mark by stopping infringing uses can result in the loss of protection.

According to Article 8 of the Trademark Act, when two or more applications are filed on different dates to register an identical or similar trademark used for identical or similar goods and services, only the applicant who filed the application first will be entitled to register that trademark.

Definitions Article 2 1 "Invention" in this Act means the highly advanced creation of technical ideas utilizing the laws of nature. Calculation of time periods Article 3 1 The calculation of time periods under this Act or any order issued under this Act shall be made in accordance with the following provisions. Where the period is not calculated from the beginning of a month or a year, the period shall expire on the preceding day of the day corresponding to the first day of the calculation in the last month or year; provided, however, that where there is no corresponding day in the last month, the period shall expire on the last day of the last month. Extension of time limits, etc. Article 4 The Commissioner of the Patent Office may, upon request or ex officio, extend the period provided for in Articles 1 iii , 1 , 1 and 1 , for a person in a remote area or an area with transportation difficulty. Article 5 1 Where the Commissioner of the Patent Office, the chief trial examiner, or the examiner has designated a time limit by which procedures are to be undertaken under this Act, the said official may, upon request or ex officio, extend the time limit. Capacity of associations, etc. Capacity of minors or adult wards etc. Independent representation by representatives Article 12 Where there are two or more representatives acting for a person who undertakes procedures, each representative may represent the principal before the Patent Office. Replacement of representatives, etc. Article 13 1 When the Commissioner of the Patent Office or the chief trial examiner finds that a person undertaking procedures is not competent or suitable for undertaking such procedures, the official may order the person to undertake the procedures through a representative. Jurisdiction over overseas residents Article 15 Regarding a patent right or other right relating to the patent of an overseas resident, the location of the property under Article 5 iv of the Code of Civil Procedure Act No. Amendment of proceedings Article 17 1 A person undertaking a procedure before the Patent Office may make amendments only while the case is pending; provided, however, that the person may not amend the description, scope of claims, drawing s or the abstract attached to the application, or the corrected description, scope of claims or drawings attached to the written request for correction or a trial for correction under Article 1 , unless an amendment may be made pursuant to the provisions the following Article to Article inclusive. Amendment of abstract Article An applicant for a patent may amend the abstract attached to the application within one year and three months excluding the period after a request for laying open of application is filed from the filing date of the patent application or in the case of a patent application containing a priority claim under Article 41 1 , the filing date of the earlier application provided for in the said paragraph, in the case of a patent application containing a priority claim under Article 43 1 , 1 or 2 , the filing date of the earliest application, a patent application that is deemed to be the earliest application under Article 4. C 4 of the Paris Convention refers to the Paris Convention for the Protection of Industrial Property of March 20, , as revised at Brussels on December 14, , at Washington on June 2, , at Hague on November 6, , at London on June 2, , at Lisbon on October 31, , and at Stockholm on July 14, , the same shall apply hereinafter or a patent application that is recognized as the earliest application under Article 4. A 2 of the Paris Convention, and in the case of a patent application containing two or more priority claims under Article 41 1 , 43 1 , 1 or 2 , the earliest day of the filing dates on which the said priority claims are based, the same shall apply to the main clause of Article 2 and Article 64 1. Amendment of corrected description, scope of claims or drawings Article 1 The demandee of a trial for patent invalidation may amend the corrected description, scope of claims or drawings attached to the written request for correction under Article 1 only within the time limit designated under Article 1 , 2 , 3 , 1 , 2 or 2. Dismissal of procedures Article 18 1 The Commissioner of the Patent Office may dismiss the procedures where a person ordered to make an amendment to the procedures under Article 17 3 fails to make such amendment within the designated time limit under the said provision, or

where a person obtaining the registration establishing a patent right fails to pay patent fees within the designated time limit under Article 1. Dismissal of unlawful procedure Article 1 The Commissioner of the Patent Office shall dismiss a procedure where the procedure is unlawful and not amendable. Effective time of submission of application Article 19 An application, a document or any other item submitted by mail to the Patent Office under this Act, or any order rendered under this Act, that is subject to a time limit, shall be deemed to have arrived at the Office at the date and time when such application or item is presented to the post office if such date and time are proven by the receipt of the mail, at the date and time of the date stamp on the mail if such date and time are clearly legible, or at noon of the day of the date stamp on the mail if only the day, but not the time, of the date stamp is clearly legible. Succession of effects of procedures Article 20 The effects of the procedures relating to a patent right or any right relating to a patent shall extend to a successor in title. Continuation of procedures Article 21 Where a patent right or any right relating to a patent is transferred while a case is pending before the Patent Office, the Commissioner of the Patent Office or the chief trial examiner may proceed with the procedures relating to the case to which the successor in title shall be the party. Article 23 1 Where a procedure for an examination, trial or retrial has been suspended and the person responsible for resuming the procedure fails to do so, the Commissioner of the Patent Office or the trial examiner shall, upon a motion or ex officio, order the said person to resume the procedure and designate an adequate time limit for this purpose. Article 24 The Code of Civil Procedure, Articles excluding paragraph 1 vi , to , 1 , , and 2 suspension or termination of court proceedings shall apply mutatis mutandis to a procedure for an examination, a trial or retrial. In this case, the term "counsel" in Article 2 of the said Code shall be deemed to be replaced with "agent entrusted with the examination, trial or retrial", the term "court" in Article of the said Code shall be deemed to be replaced with "commissioner of the patent office or the chief trial examiner", the term "court" in Articles 1 and of the said Code shall be deemed to be replaced with "commissioner of the patent office or the trial examiner", and the term "court" in Article of the said Code shall be deemed to be replaced with "patent office". Enjoyment of rights by foreign nationals Article 25 A foreign national not domiciled or resident or, in the case of a juridical person, with a business office in Japan may not enjoy a patent right or other rights relating to a patent, except in the following cases: Effect of treaties Article 26 Where specific provisions relating to a patent are provided by treaty, such provisions shall prevail. Registration in the patent registry Article 27 1 The following matters shall be registered in the patent registry maintained in the Patent Office: Issuance of certificate of patent Article 28 1 The Commissioner of the Patent Office shall issue the certificate of patent to the patentee when the establishment of a patent right has been registered, or when a trial decision to the effect that the description, scope of claims or drawings attached to the application are to be corrected has become final and binding and the said trial decision has been registered. Chapter II Patents and Patent Applications Conditions for Patentability Article 29 1 An inventor of an invention that is industrially applicable may be entitled to obtain a patent for the said invention, except for the following: Article Where an invention claimed in a patent application is identical with an invention or device excluding an invention or device made by the inventor of the invention claimed in the said patent application disclosed in the description, scope of claims or drawings in the case of the foreign language written application under Article 2 , foreign language documents as provided in Article 1 originally attached to the written application of another application for a patent or for a registration of a utility model which has been filed prior to the date of filing of the said patent application and published after the filing of the said patent application in the patent gazette under Article 66 3 of the Patent Act hereinafter referred to as "gazette containing the patent" or in the utility model bulletin under Article 14 3 of the utility Model Act Act No. Exception to lack of novelty of invention Article 30 1 In the case of an invention which has fallen under any of the items of Article 29 1 by reason of the fact that the person having the right to obtain a patent has conducted a test, has made a presentation in a printed publication, has made a presentation through electric telecommunication lines, or has made a presentation in writing at a study meeting held by an academic group designated by the Commissioner of the Patent Office, such invention shall be deemed not have fallen under

any of the items of Article 29 1 for the purposes of Article 29 1 and 2 for the invention claimed in a patent application which has been filed by the said person within six months from the date on which the invention first fell under any of those items. Article 31 Deleted Unpatentable inventions Article 32 Notwithstanding Article 29, any invention that is liable to injure public order, morality or public health shall not be patented. Right to obtain patent Article 33 1 The right to obtain a patent may be transferred. Article 34 1 The succession of the right to obtain a patent prior to the filing of the patent application shall have no effect on any third party unless the successor in title files the patent application. Inventions by Employees Article 35 1 An employer, a juridical person or a national or local government hereinafter referred to as "employer, etc. Patent applications Article 36 1 A person requesting the grant of a patent shall submit an application to the Commissioner of the Patent Office stating the following: In such case, an invention specified by a statement in one claim may be the same invention specified by a statement in another claim. Article 1 A person requesting the grant of a patent may, in lieu of the description, scope of claims, drawings where required and abstract as provided in paragraph 2 of the preceding Article, attach to the application a document in foreign language as provided by Ordinance of the Ministry of Economy, Trade and Industry, stating matters required to be stated in the description or the scope claims under paragraphs 3 to 6 of the said Article, and drawings s where required which contain any descriptive text in the said foreign language hereinafter referred to as "foreign language documents" , and a document in the said foreign language stating matters required to be stated in the abstract under paragraph 7 of the said Article hereinafter referred to as "foreign language abstract". Article 37 Two or more inventions may be the subject of a single patent application in the same application provided that, these inventions are of a group of inventions recognized as fulfilling the requirements of unity of invention based on their technical relationship designated in Ordinance of the Ministry of Economy, Trade and Industry,. Joint applications Article 38 Where the right to obtain a patent is jointly owned, a patent application may only be filed by all the joint owners. Prior application Article 39 1 Where two or more patent applications claiming identical inventions have been filed on different dates, only the applicant who filed the patent application on the earliest date shall be entitled to obtain a patent for the invention claimed. Where no agreement is reached by consultations or consultations are unable to be held, none of the applicants shall be entitled to obtain a patent for the invention claimed. Where no agreement is reached by consultations or no consultations are able to be held, the applicant for a patent shall not be entitled to obtain a patent for the invention claimed therein. Article 40 Deleted Priority claim based on patent application, etc. Article 41 1 A person requesting the grant of a patent may make a priority claim for an invention claimed in the patent application, based on an invention disclosed in the description or scope of claims for a patent or utility model registration, or drawings in the case where the earlier application was a foreign language written application, foreign language documents originally attached to the application of an earlier application filed for a patent or utility model registration which the said person has the right to obtain hereinafter referred to as "earlier application" , except in the following cases: Procedures for a priority claim under the Paris Convention Article 43 1 A person desiring to take advantage of the priority under Article 4. D 1 of the Paris Convention regarding a patent application shall, along with the patent application, submit to the Commissioner of the Patent Office a document stating thereof, and specify the country of the Union of the Paris Convention in which the application was first filed, deemed to have been first filed under C 4 of the said Article, or recognized to have been first filed under A 2 of the said Article, and the date of filing of the said application. C 4 of the Paris Convention, or recognized to have been first made under A 2 of the said Article, as well as certified copies of those equivalent to the description, scope of claims for patent or utility model registration and drawings submitted at the time of the filing of the application, or any bulletin or certificate equivalent thereto issued by the government of the said country, within one year and four months from the earliest of the following dates: C 4 of the Paris Convention, or recognized to have been first made under A 2 of the said Article; ii where such patent application contains a priority claim under Article 41 1 , the date of filing of the application on which the said priority claim is based; or iii where such patent application contains other priority claims under 43 1 or 1 or 2 , the date of filing of the

application on which the said priority claim is based. C 4 of the Paris Convention, or recognized to have been first filed under A 2 of the said Article; provided, however, that where such filing number is not available to the person prior to the submission of the documents as provided in the said paragraph, in lieu of the said document, a document specifying the reason thereof shall be submitted and the document specifying such filing number shall be submitted without delay when such number becomes available to the said person. Priority claims recognized under the Paris Convention Article 1 A priority claim may be declared in a patent application under Article 4 of the Paris Convention, where the priority claim is based on an application filed by a person specified in the left-hand column of the following table in a country specified in the corresponding right-hand column. Japanese nationals or nationals of a country of the Union of the Paris Convention including nationals deemed to be the nationals of the country of the Union in accordance with Article 3 of the Paris Convention - hereinafter the same shall apply in paragraph 2. Member of the World Trade Organization Nationals of a Member of the World Trade Organization meaning the nationals of Members provided for in paragraph 3 of Article 1 of the Annex 1C to the Marrakesh Country of the Union of the Paris Convention or Member of the World Trade Organization 2 A national of a country that is neither a country of the Union of the Paris Convention nor a member of the World Trade Organization limited to the country that allows Japanese nationals to declare a priority under the same conditions as in Japan, hereinafter referred to as a "specified country" in this paragraph , a Japanese national, a national of a country of the Union of the Paris Convention or a national of a member of the World Trade Organization may declare a priority claim in the patent application based on the application filed in the specified country under Article 4 of the Paris Convention. Division of patent applications Article 44 1 An applicant for a patent may extract one or more new patent applications out of a patent application containing two or more inventions only within the following time limits: Article of the Patent Act where the new patent application falls under another patent application in the said Article; Article of the Utility Model Act where the new patent application falls under a patent application in the said Article; and Articles 30 4 , 41 4 and 43 1 of the Patent Act including its mutatis mutandis application under paragraph 3 of the preceding Article. Article 45 Deleted Conversion of application Article 46 1 An applicant of a utility model registration may convert the application into a patent application; provided, however, that this shall not apply after the expiration of 3 years from the date of filing of the utility model registration application. Exclusion of examiners Article 48 Articles i to v and vii shall apply mutatis mutandis to examiners. Examination of patent applications Article The examination of a patent application shall be initiated after the filing of a request for examination. Request for examination of application Article 1 Where a patent application is filed, any person may, within 3 years from the filing date thereof, file with the Commissioner of the Patent Office a request for the examination of the said application. Article A person s filing a request for the examination of an application shall submit a written request to the Commissioner of the Patent Office stating the following: Article 1 Where a request for the examination of an application is filed, in the case where such request is filed prior to the laying open of the application, the Commissioner of the Patent Office shall publish the fact thereof in the patent gazette either at the time of laying open of the application or thereafter without delay, and in the case where such a request is filed after laying open of the application, without delay after laying open. Preferential examination Article Where it is recognized that a person other than the applicant is working the invention claimed in a patent application as a business after the laying open of the application, the Commissioner of the Patent Office may, where deemed necessary, cause the examiner to examine the patent application in preference to other patent applications. Notice of statement of information concerning invention known to the public through publication Article Where the examiner recognizes that a patent application does not comply with the requirements as provided in Article 36 4 ii , the examiner may notify the applicant of the patent thereof and give the said applicant an opportunity to submit a written opinion, designating an adequate time limit for such purpose. Notice to the effect that the reasons for refusal stated therein are the same as those stated in the previous notice.

Chapter 6 : United States trademark law - Wikipedia

From foot soldier to finance minister: Takahashi Korekiyo, Japan's Keynes / Richard J. Smethurst.

Before you apply 1. How long does it take for an application to be registered? It usually takes from one and a half to two years to obtain a trademark registration if no office actions are issued. If an office action is issued, it may take an additional 6 months. Back to top 2. Is there a way to expedite examination? Yes, it is possible to shorten the time prior to receiving the first action by taking advantage of the accelerated examination system for trademark applications. This system is useful if there is a possible infringement of your mark which has not yet been registered in Japan. If you have a corresponding trademark application pending in a foreign country, you are qualified to apply for accelerated examination. You can file the request when you file the application or even after you have filed the application. However, you must explain the reasons for expediting the examination along with any related documentation and the results of a trademark search. Back to top 3. What is registrable as a trademark in Japan? Registrable marks must be distinctive. Three dimensional marks are registrable. However, sound or smell is not registrable in Japan. Marks that are not considered as distinctive include common names of goods, very simple marks including two initials represented in a simple common design, descriptive marks i. However, it may be possible to obtain registration of the above mentioned marks if the applicant can establish that consumers recognize the goods or services as being connected with its business as a result of long and extensive use of the mark. Back to top 4. Are three-dimensional trademarks allowed in Japan? Since three-dimensional trademarks have been registrable in Japan. However, the Japanese Patent Office has been very strict in applying the examination standards especially to marks that relate to the shape of the designated goods or their packages, or to the shape of the goods used in order to offer the designated services. Generally, if the shape can be recognized as no more than the shape of the designated goods including their packages or the goods used in connection with offering the designated services, the shape cannot be registered as a three dimensional trademark unless it has acquired distinctiveness through long and extensive use. For example, it is very difficult to register a fanciful shape of a beverage bottle if the bottle is still recognizable as a bottle. In this case, we often recommend seeking design protection. Back to top 5. Is proof of use required to obtain trademark registration? Use is not required to obtain a trademark registration. Proof of use is also not required at the time of renewal of registration. Proof of use is, however, necessary if a non-use cancellation request is filed against a registration which is more than three years old. Back to top 6. What is the non-use cancellation system in Japan? Any person may file a non-use cancellation request. The burden of proof of use is on the registrant. A non-use cancellation request may be filed with respect to all of the designated goods or a part of the goods in the registration. Under this provision, use of the mark within the three month period prior to the filing of the cancellation request is not a defense if the person requesting cancellation can prove that the registrant knew the cancellation proceeding was likely to be filed. Therefore, it is possible to seek an assignment of a trademark from a trademark owner who has not been using his mark and if such an assignment cannot be negotiated within 3 months, to file the cancellation request. Back to top 7. Are marks well-known outside Japan protectable in Japan? In order to strengthen protection of famous marks, Art. This law expressly states that registration of a trademark right shall not be granted when the mark has been applied for with an unjust intention e. This provision allows protection of trademarks that have high recognition outside Japan, regardless of the level of recognition within Japan. Back to top 8. Is it possible to prevent others from using marks identical to or similar with a trademark in a pending application? In Japan, trademark rights become effective once the applied for mark is registered. Unlike in the U. Otherwise, you can apply for an accelerated examination in order to obtain registration earlier. Back to top 9. What is the term and how can the mark be renewed? The term of a trademark right is 10 years from the date of registration. The term can be renewed for another 10 years, but a request for renewal must be filed within six months before the term expires. Even after expiration, a request for renewal may be

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accepted by paying an extra fee, if the request is filed within six months after the expiration. The renewal fee may be paid in either a lump sum at the time of the renewal request or in two installments. However, if the owner of a trademark right plans to use the trademark on short life cycle goods, payment in installments may be a good option because the owner can decide whether to renew the trademark right at the time of the second payment. Back to top

What are the forms of trademark registration specified under the Japanese Trademark Law? In Japan, in addition to regular trademark registrations, collective mark registrations, defensive mark registrations are available. A collective mark is one used or intended to be used by members of an aggregate corporation, industrial business cooperative association and other associations. For obtaining a defensive mark registration, no intention to use the mark is required. In Japan, there are no provisions for certification mark registrations. Associated mark registrations, which are registrations of similar marks for similar goods or services by the same party, have been abolished.

Chapter 7 : Trademark protection in Myanmar

Bill C, the Budget Implementation Act (the "Bill"), received its first reading in the House of Commons on October 29, Among other things, the Bill implements Canada's Intellectual Property Strategy, proposing amendments to various pieces of existing intellectual property legislation, and enacts the College of Patent Agents and Trademark Agents Act.

What is a trademark? According to the Article 1 of the Trademark Act, the purpose of this Act is, through the protection of trademarks, to ensure the maintenance of business confidence of persons who use the trademarks and thereby to contribute to the development of the industry and to protect the interests of consumers. It goes without saying that consumers benefit from the economic activities of various companies and other economic entities. Consumers expect a certain level of quality of products or services from certain brands and therefore benefit by being able to determine the manufacturer of a product or provider of a service. Trademarks indicate a specific function of a product or a service. By protecting the reputation of a brand associated with a trademark, the trademark system protects the interests of the consumer and contributes to the development of industries. Article 2 of the Trademark Act defines a "trademark" as any character s , figure s , sign s or three-dimensional shape s , or any combination thereof, with colors hereinafter referred to as a "mark" which is: In addition, "Services" set forth in item ii above shall include retail services and wholesale services, namely, the provision of benefits for customers conducted in the course of retail and wholesale business. The period may be renewed every ten years. How is a procedures for obtaining a trademark right? An outline of the procedures for registration of a trademark is displayed at the following URL: What should I know before I file a trademark application? First of all, you should know the "First to File" principle. According to Article 8 of the Trademark Act, when two or more applications are filed on different dates to register an identical or similar trademark used for identical or similar goods and services, only the applicant who filed the application first will be entitled to register that trademark. This is called the "First to File" principle. This means that if any other applicants file applications for the identical or similar trademark used for identical or similar goods and services after the first applicant has applied, those later applications will be refused. Therefore, before filing a trademark application, please be sure to search prior trademarks to see if identical or similar trademarks have been registered by other applicants. Please also note that even if no trademark applications have been filed earlier or if no registered trademarks exist, your trademark still might not be able to be registered if it corresponds to either of the trademarks stipulated in Article 3 and Article 4 1 of the Trademark Act. In addition, the "Examination Guidelines for Trademarks" is helpful for letting you know what kinds of trademarks cannot be registered. Examination Guidelines for Trademarks: How can I renew my trademark registration? A trademark right expires 10 years from day on which the trademark was registered. You can renew your trademark right by filing a request for renewal six months before the trademark right expires. You need to pay the renewal fee at the same time you request to renew your trademark right. The payment has to be made by an appointed representative either residing or domiciled in Japan such as a patent attorney. Can I pay my registration or renewal fees in installments? Yes, the registration fee can be paid in two installments, one for the first five years and the next for the last five years. When paid over installments, however, the amount of the registration fee for 10 years ends up being higher than if it were paid all at once. The registration fee for the last five years must be paid within five years from the day on which the trademark was registered. The renewal fee can be paid in two installments as well, one for the first five years and the next for the last five years, in the same way that you can pay registration fees. When paid over installments, however, the amount of the renewal fee ends up being higher than if it were paid all at once. How can I file an opposition? If you would like to raise an opposition against a trademark registration, you can file an opposition against that registration within two months from the date on which the Gazette containing the trademark was published. You need to state that your opposition is based on the grounds that the trademark lacks the requirements needed for the trademark to be registered. This is based on Article of the Trademark

Act. This same type of provision applies to utility models, designs, and trademarks under their respective acts. We highly recommend that you appoint a patent attorney as your representative and consult with your representative about the procedures in detail. Can the period that the examiner specifies for me to respond to the notification of reason for refusal be extended while my trademark application is undergoing substantive examination? Yes, the period of time that the examiner specifies for you to respond to the notification of reason for refusal can be extended while your trademark application is undergoing substantive examination. In order to do so, you need to file a request to that effect with the JPO before the specified period has expired. The specified period may also be extended if you file a request to that effect with the JPO within two months after the period has expired, or if the period has been extended by one month, within two months after the extended period has expired. We highly recommend that you appoint a patent attorney as your representative and consult with him or her about the procedures in detail.

Chapter 8 : From Foot Soldier to Finance Minister : Richard J. Smethurst :

Japanese patent law is based on the first-to-file principle and is mainly given force by the Patent Act (特許法 TokkyohÅ) of Japan. Article 2 defines an invention as "the highly advanced creation of technical ideas utilizing the law of nature".

English translation[edit] The definitive version of Japanese law is the text in the Japanese language. An official English-language translation of the law does not exist, but the Ministry of Justice Japan has the website "Japanese Law Translation", [2] where one can search for Japanese laws and their unofficial English translation. Definition of invention[edit] Article 2, paragraph 1, of the Patent Act of Japan defines invention as "the highly advanced creation of technical ideas by which a law of nature is utilized". Although the substance of the definition is almost accepted, there is opposition against giving a definition of "invention" in a written law in many other patent systems, invention is not defined directly. In the generally accepted interpretation, the phrase highly advanced does not imply a requirement for an inventive step since the matter of inventive step is dealt with in Article 29, paragraph 2. The definition may have been included in light of the Utility Model Act of Japan which gives a definition of a device as "the creation of technical ideas by which a law of nature is utilized". Patent prosecution[edit] The procedures for obtaining a patent right in Japan is described in detail on the website of Japan Patent Office. Article 39 states that a person who is the first to file an application for a patent for an invention may obtain that patent, rather than a different person who is the first to invent the same invention. A patent may be granted for an invention if: This is a summary; Article 49 contains a full list of conditions. Such disclosures do not form part of the prior art. This is a much broader exemption than the one available under European patent law Article 55 EPC but is significantly narrower than that provided under United States patent law. Application[edit] A person desiring to obtain a patent has to submit a request, specification, claims, any drawings necessary, and the abstract to the commissioner of the Japan Patent Office Article Article 36bis allows an application in foreign languages currently only in English if the applicant submits a Japanese translation within two months from the filing date. However, the applicant may not amend the foreign language file Article 17, paragraph 2. In there was a revision of Japan Patent Law. Pursuant to a revision of the law, the period for filing a Japanese translation for a Foreign Language Application is 14 months from the filing date or the priority date. The applicant may request for early publication Article 64bis. Examination[edit] Request for examination and payment of examination fee are needed for an application to be examined Article 48bis. The applicant, or a third party, [10] may request examination within three years from the filing date Article 48ter , this time limit is to be applied for patent applications filed after October 1, [11] if they stand examination fee Article , paragraph 2. A qualified examiner examines the application Article The examiner notifies the applicant of the reasons for refusal before making the decision to refuse a patent Article 50 , pointing out that some of the above conditions for patent are not met. The applicant may submit a statement or amendments against the reasons for refusal, within a time limit designated by the examiner Article 17bis and The time limit is normally 60 days after the date of notification for applicants living in Japan, or three months after the date of notification for applicants living in foreign countries. Whenever the applicant is allowed to amend the claims, specification, and drawings of a certain application, the applicant may derive a new application from the application Article This is called "division of application". Amendments are allowed when they demand for the trial Article 17bis, paragraph 1. If amendments are made, an examiner re-examines the application Article Usually the examiner who made the decision of refusal is appointed for re-examination. The examiner then issues a decision to grant a patent, or reports to the Commissioner if there are reasons for refusal that have not dissolved by the amendments Article In case amendments were not made, or the examiner reported that reasons for refusal still remain, a group of three or five qualified trial examiners Article conduct the trial by communicating with the applicant in letters Article , paragraph 2. A person dissatisfied at the trial may demand a retrial Article , or may

sue the commissioner of the Japan Patent Office in quest of the patent Article and Trial for invalidation[edit] Anyone may demand the commissioner of the patent office a trial for invalidation of a patent against the patentee Article A group of three or five trial examiners Article conduct the trial, gathering the parties to the patent office Article , paragraph 1 and 3. The patentee may demand restriction of claims, or correction of errors or ambiguity Article bis, added in to avoid the invalidation. A lawsuit against patent infringement may be suspended until a trial decision of the patent office has become final and conclusive Article , paragraph 2. Patentability[edit] Summary of the rules on patentability is as follows. More detailed description is found in "Examination Guidelines for Patent and Utility Model in Japan" [12] with summaries of significant court decisions. Patentable subject matter[edit] Novelty[edit] Sharing the same rule as other jurisdictions, Japanese patent law does not grant exclusionary rights to existing technologies. Article 29 1 of Patent Act stipulates this point; an inventor may not obtain a patent for inventions that were known to the public "publicly known" Item i , inventions that were publicly worked "publicly used" Item ii or inventions that were described in a distributed publication or made publicly available through an electric telecommunication line Item iii , in Japan or a foreign country prior to the filing of the patent application. For this decision to be made, in the abstract, an accurate assessment is firstly to be made of the standard of art in the field of art to which the invention belongs as at the time of the application, and the points where the application invention varies from the prior art are to be made clear. Then, while making allowance for the purpose and effect of the invention, a decision is to be made depending on whether or not it is possible to logically support a person skilled in the art having been easily able to achieve the application invention by altering the prior art. In particular, with respect to inventions such as those concerning genes, chemical substances or organisms, a concrete applicable use must be specified. However, patent rights can be obtained over aspects of medical treatment including pharmaceuticals and medical devices, and the methods of their manufacture note that Article 69 3 of the Patent Act however stipulates certain limitations on the effect of patent rights obtained for pharmaceuticals. The commissioner issues the certificate of patent to the patentee Article The term of patent is 20 years from the filing date. It may be extended for medicines and pesticides Article A patentee have an exclusive right to commercially work the patented invention Article 68 , where "work" an invention means Article 2, paragraph 3 make, use, assign, lease, import, or offer for assignment or lease a patented product, use a patented process, or use, assign, lease, import, or offer for assignment or lease the product made by a patented process. The statements of patent claims determine the technical scope of the patented invention Article However, the doctrine of equivalents may be employed. A patentee may grant an exclusive license Article 77 or a non-exclusive license Article Infringement and remedies[edit] Civil remedies[edit] Right to demand an injunction[edit] The patentee may exercise a right to demand an injunction against the person who infringes or is likely to infringe its rights: Article 1 of the Patent Act. In making a demand for an injunction under Paragraph 1 of Article , the patentee may also demand measures necessary for the prevention of an act of infringement, including the disposal of products constituting the act of infringement and the removal of facilities used for the act of infringement: Unlike an ordinary tortious act however, in the case of the infringement of a patent right, it is often difficult to prove the amount of the loss, as well as intent or negligence on the part of the infringer. For that reason, the Patent Act contains a special provision for calculating the amount of loss Article , a provision on the presumption of negligence Article , and a provision permitting the determination of a reasonable amount of loss Article If during the hearings the court finds that there exists sufficient cause to invalidate the patent, a claim of injunction, damages, or other claims based on such patent would be an extension of rights beyond the scope contemplated under the law unless it can be demonstrated that circumstances exist which justify special treatment. Summary of the judgment: In the event there is clear and convincing evidence that a patent is invalid, a claim for injunction, damages, or other claims based on such patent is beyond the scope of rights intended by the act, except in extenuating circumstances. You can help by adding to it. June Criminal penalty[edit] Japanese patent law provides that patent infringement is a crime. In addition to the above penalty for an infringer, a firm that the infringer belongs to

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must pay a fine of at most million yen Article According to statistics of the National Police Agency of Japan, however, only four people were arrested for the infringement of patent in History[edit] The history of Japanese patent law began with the opening of the country that began in the Meiji era. Fukuzawa Yukichi introduced the concept of the patent to Japan in his writings. The next year, the Meiji Restoration occurred, and the modernization of Japan began. In 1874, the fourth year of the Meiji era, an experimental patent system was implemented. It was abandoned the following year. The first seven patents under the Patent Monopoly Act were granted on August 14, 1875. Hotta Zuisho obtained Japanese Patent No. 1. Takabayashi Kenzo obtained Patent No. 2. During the Meiji era, all governmental systems underwent frequent changes, and the patent law was no exception. After the Meiji era, the Patent Act was completely revised twice, in 1909 and 1929. The Japanese patent law was amended several times, especially pertaining to opposition proceedings, the term of patent, and compliance with the Patent Cooperation Treaty PCT in relation to criteria of novelty.

Chapter 9 : Japanese Law Translation - [Law text] - Patent Act

Patent Act (Act No. of April 13, 1884) Chapter I General Provisions (Purpose) Article 1 The purpose of this Act is, through promoting the protection and the utilization of inventions, to encourage inventions, and thereby to contribute to the development of industry.