

Order Concerning Certification, etc. of Research and Development Business Plans

(Order of the Cabinet Office, the Ministry of Internal Affairs and Communications, the Ministry of Finance, the Ministry of Health, Labour and Welfare, the Ministry of Agriculture, Forestry and Fisheries, the Ministry of Economy, Trade and Industry, the Ministry of Land, Infrastructure, Transport and Tourism, and the Ministry of the Environment No. 2 of October 31, 2012)

Based on the provisions of Article 2, paragraph (3), and Article 4, paragraph (1), paragraph (2), item (ii), paragraph (3), items (ii) and (iii), and Article 5, paragraph (1) of the Act on Special Measures to Promote Research and Development Business, etc. by Specified Multinational Enterprises (Act No. 55 of 2012), and for the purpose of enforcing the same Act and the Enforcement Order of the Act on Special Measures to Promote Research and Development Business, etc. by Specified Multinational Enterprises (Cabinet Order No. 272 of 2012), the Order Concerning the Certification, etc. of Research and Development Business Plans is established as follows.

(Details of Business Expected to Create New Business and Expand Work Opportunities)

Article 1 Business that is prescribed by order of the competent ministry as being expected to create new business and expand work opportunities as set forth in Article 2, paragraph (3) of the Act on Special Measures to Promote Research and Development Business, etc. by Specified Multinational Enterprises (hereinafter referred to as the "Act") is to fall under both of the following items:

- (i) the business has novelty and contributes to the advancement of Japanese industry;
- (ii) the total of experiment and research expenses and development expenses (meaning development expenses and expenses spent especially to initiate new business as prescribed in Article 14, paragraph (1), item (iii) of the Order for Enforcement of the Corporation Tax Act (Cabinet Order No. 97 of 1965) is not less than 100 million yen each business year.

(Scope of Corporations Closely Related to Specified Multinational Enterprises)

Article 2 Corporations prescribed by order of the competent ministry as being closely related as set forth in Article 4, paragraph (1) of the Act are as follows:

- (i) a corporation that has the majority of the voting rights of all shareholders, etc. (meaning the voting rights of all shareholders or equity investors; the same applies hereinafter) of the specified multinational enterprise set forth

- in Article 4, paragraph (1) of the Act (hereinafter referred to as "the enterprise" in this Article);
- (ii) a corporation in which the enterprise has a majority of the voting rights of all shareholders, etc. (referred to as a "subsidiary corporation" in the following item);
- (iii) a corporation in which a subsidiary corporation has the majority of the voting rights of all shareholders, etc. (referred to as an "indirectly-owned company" in the following item);
- (iv) a corporation in which an indirectly-owned company has the majority of the voting rights of all shareholders, etc. ;
- (v) a corporation in which the enterprise and corporations listed in the preceding items have, in total, the majority of the voting rights of all shareholders, etc. (excluding those listed in the preceding items and limited to a corporation in which the enterprise has part of the voting rights of all shareholders, etc.).

(Application for Certification of Research and Development Business Plans)

- Article 3 (1) A specified multinational enterprise intending to receive certification of a research and development business plan pursuant to the provisions of Article 4, paragraph (1) of the Act (hereinafter referred to as the "applicant" in this Article, the following Article, and Article 6) must submit a written application in the form of Form 1 and a copy thereof to the competent minister via the Minister of Economy, Trade and Industry.
- (2) The written application referred to in the preceding paragraph must have the following documents necessary for the relevant certification procedures attached:
- (i) the applicant's articles of incorporation or any other document in lieu thereof;
 - (ii) business reports, balance sheets, and profit and loss statements for the most recent two business terms of the applicant and its major subsidiary corporations, etc. (meaning subsidiary corporations, etc. prescribed in Article 4, paragraph (1) of the Act; the same applies hereinafter) (in cases where these documents are not available, a document stating the outline of the business contents for the most recent year);
 - (iii) a document stating the status or estimate of subscription for shares or capital contributions of the applicant and its major subsidiary corporations, etc.
- (3) Beyond what is set forth in the items of the preceding paragraph, the competent minister may request the submission of other documents necessary for certification.
- (4) The written application referred to in paragraph (1) may be stated in English.

- (5) When the documents listed in the items of paragraph (2) and the documents referred to in paragraph (3) are not stated in Japanese or English, Japanese or English translations thereof must be attached.
- (6) When a research and development business plan pursuant to the provisions of Article 4, paragraph (3) of the Act has been certified, the competent minister is to notify the applicant to that effect.
- (7) The notice referred to in the preceding paragraph is to be made by attaching a copy of the written application set forth in paragraph (1) to a written notice of certification in the form of Form 2.

(Regularly Hired Employees for Research and Development Business)

Article 4 Matters prescribed by order of the competent ministry set forth in Article 4, paragraph (2), item (ii) of the Act are as follows:

- (i) the number of employees of the applicant or its major subsidiary corporations, etc. (limited to those who have professional knowledge or experience concerning the implementation of research and development business; the same applies in Article 6, item (i)) whom the applicant intends to employ at the domestic related company to be established pursuant to the provisions of Article 4, paragraph (1) of the Act (referred to as the "domestic related company" in Article 6, item (i)), and the estimated period of employment;
- (ii) when intending to employ foreign nationals, matters on management system concerning residence of foreign nationals.

(Number of Regularly Hired Employees for Research and Development Business)

Article 5 The number prescribed by order of the competent ministry set forth in Article 4, paragraph (3), item (ii) of the Act is ten; provided, however, that the number is 25 in the most recent business year of the implementation period of a research and development business plan (or 15 in the case of a business plan whose implementation period is three years or longer but shorter than four years, or 20 in the case of a business plan whose term is four years or longer but shorter than five years).

(Requirements Concerning Regularly Hired Employees for Research and Development Business)

Article 6 The requirements prescribed by order of the competent ministry set forth in Article 4, paragraph (3), item (ii) of the Act are as follows:

- (i) under the plan, one or more employees of the applicant or its major subsidiary corporations, etc. are to be employed at the domestic related company for six months or longer during the implementation period of the

- research and development business plan;
- (ii) when intending to employ foreign nationals, a sufficient management system concerning residence of foreign nationals is to be prepared under the plan.

(Implementation Period of Research and Development Business)

Article 7 The period prescribed by order of the competent ministry set forth in Article 4, paragraph (3), item (iii) of the Act is three years or more but shorter than five years (or five years in cases where application of special provisions for taxation as prescribed in the paragraphs of Article 11 of the Act) is sought.

(Application for Certification for Changes to Research and Development Business Plans)

- Article 8 (1) A certified research and development business operator (meaning the certified research and development business operator prescribed in Article 5, paragraph (1) of the Act; the same applies hereinafter) who intends to receive certification for a change to a research and development business plan pursuant to the provisions of that paragraph, must submit a written application in the form of Form 3 and a copy thereof to the competent minister via the Minister of Economy, Trade and Industry; provided, however, that this does not apply to minor changes.
- (2) The written application referred to in the preceding paragraph must have the following documents attached; provided, however, that documents listed in item (ii) may be omitted if there is no change in the details stated in the documents that had already been submitted to the competent minister, by way of stating to that effect in the written application:
- (i) a document stating the implementation status of research and development business conducted according to the research and development business plan;
- (ii) the documents listed in the items of Article 3, paragraph (2).
- (3) The provisions of Article 3, paragraphs (3) to (7) apply mutatis mutandis to the certification set forth in paragraph (1).

(Instructions for Making Changes to Certified Research and Development Business Plans)

Article 9 When instructing a certified research and development business operator to make a change to a certified research and development business plan pursuant to the provisions of Article 5, paragraph (3) of the Act, the competent minister is to notify the certified research and development business operator to that effect by sending a written notice in the form of Form 4.

(Rescission of Certification of Research and Development Business Plans)

Article 10 When rescinding certification of a research and development business plan pursuant to the provisions of Article 5, paragraph (2) or paragraph (3) of the Act, the competent minister is to notify the relevant certified research and development business operator to that effect by sending a written notice in the form of Form 5.

(Form of Written Applications for the Reduction of Patent Fees)

Article 11 The written application set forth in Article 2, paragraph (1) of the Order for Enforcement of the Act on Special Measures to Promote Research and Development Business, etc. by Specified Multinational Enterprises (hereinafter referred to as the "Order") must be prepared in the form of Form 6 for each application; provided, however, that when separately paying the patent fees for the fourth to the tenth years prescribed in Article 107, paragraph (1) of the Patent Act (Act No. 121 of 1959), the written application must be prepared in the form of Form 6 on each occasion.

(Form of Written Applications for Reduction of Fees for Requesting Examination of Patent Application)

Article 12 The written application set forth in Article 3, paragraph (1) of the Order must be prepared in the form of Form 7 for each application.

(Attachments)

Article 13 Documents to be attached to the written application set forth in Article 2, paragraph (1) or Article 3, paragraph (1) of the Order (hereinafter referred to as a "written application for the reduction of patent fees, etc." in this Article and the following Article) proving that the applicant set forth in Article 2, paragraph (1) of the Order falls under both of the items of Article 10, paragraph (1) of the Act or that the applicant set forth in Article 3, paragraph (1) of the Order falls under both of the items of Article 10, paragraph (2) of the Act are as follows:

- (i) a document proving that the applicant is a small or medium-sized enterprise which engages in research and development business according to a research and development business plan;
- (ii) a document proving that the patented invention or the invention for which the application has been made is an employee invention made by the employee, etc. prescribed in Article 35, paragraph (1) of the Patent Act;
- (iii) a copy of a contract, work regulations or other rules providing in advance that the right to grant of patent is succeeded by the employer, etc. prescribed in Article 35, paragraph (1) of the Patent Act, with regard to the patented invention or the invention for which the application has been made.

(Omission of Documents to be Attached to Written Applications for the
Reduction of Patent Fees)

Article 14 A person who has already submitted the documents to be attached to a written application for the reduction of patent fees, etc. (hereinafter referred to as the "documents" in this Article) to the Commissioner of the Japan Patent Office in procedures for submission of another written application for reduction of patent fees, etc. may omit the documents if there is no change in the documents attached to the other written application for reduction of patent fees, etc., by way of stating to that effect in the relevant written application for reduction of patent fees, etc.; provided, however, that the Commissioner of the Japan Patent Office may order to submit documents when the commissioner finds it particularly necessary.

(Reports Concerning the Implementation Status)

- Article 15 (1) Certified research and development business operators must make a report concerning the implementation status of the certified research and development business plan for each business year during the implementation period, within three months after the end of each business year, in principle, to the competent minister via the Minister of Economy, Trade and Industry, by submitting a written implementation status report in the form of Form 8.
- (2) The written implementation status report referred to in the preceding paragraph must have the inventory of assets, the balance sheet, and the income and expenditure statement or the profit and loss statement, or any document equivalent to either of these attached for each business year, as well as a document stating any other matters to be referred to.
- (3) The written implementation status report referred to in paragraph (1) may be stated in English.
- (4) When the documents referred to in paragraph (2) are not stated in Japanese or English, Japanese or English translations thereof must be attached.

Supplementary Provisions

(Effective Date)

Article 1 This Order comes into effect as of the date on which the Act comes into effect (November 1, 2012).

(Partial Amendment of the Enforcement Regulation of the Patent Act)

Article 2 The Enforcement Regulation of the Patent Act (Order of the Ministry of International Trade and Industry No. 10 of 1960) is partially amended as follows:

In Article 31-2, paragraph (2), the term "or" is deleted from the phrase "or

seeking application of the provisions of Article 17, paragraph (2) of the Industrial Technology Enhancement Act," and the phrase "or seeking application of the provisions of Article 10, paragraph (2) of the Act on Special Measures to Promote Research and Development Business, etc. by Specified Multinational Enterprises (Act No. 55 of 2012)" is added after the phrase "requests the examination of patent application)."

In Article 69, paragraph (4), the term "or" is deleted from the phrase "or Article 17, paragraph (1), items (i) to (iii) of the Industrial Technology Enhancement Act," and the phrase "or Article 10, paragraph (1) of the Act on Special Measures to Promote Research and Development Business, etc. by Specified Multinational Enterprises" is added after the phrase "the Industrial Technology Enhancement Act."

In Remarks 6 of Form 44, the term "or" is deleted from the phrase "or seeking application of the provisions of ... of the Industrial Technology Enhancement Act"; the phrase "or seeking application of the provisions of Article 10, paragraph (2) of the Act on Special Measures to Promote Research and Development Business, etc. by Specified Multinational Enterprises" is added after the phrase "requests the examination of patent application"; the term "or" is deleted from the phrase "or seeking the reduction"; and the phrase "or seeking the reduction by half of the fees for requesting the examination of patent application under Article 10, paragraph (2) of the Act on Special Measures to Promote Research and Development Business, etc. by Specified Multinational Enterprises" is added after the phrase "the Industrial Technology Enhancement Act."

In Remarks 7 of Form 69, the term "or" is deleted from the phrase "or Article 17, paragraph (1), items (i) to (iii) of the Industrial Technology Enhancement Act"; the phrase "or Article 10, paragraph (1) of the Act on Special Measures to Promote Research and Development Business, etc. by Specified Multinational Enterprises (Act No. 55 of 2012)" is added after the phrase "the Industrial Technology Enhancement Act"; the term "or" is deleted from the phrase "or seeking the reduction"; and the phrase "or seeking the reduction by half of the patent fees under Article 10, paragraph (1) of the Act on Special Measures to Promote Research and Development Business, etc. by Specified Multinational Enterprises" is added after the phrase "the Industrial Technology Enhancement Act."

Article 3 The Enforcement Regulation of the Act on Special Measures for Procedures related to Industrial Property Right (Order of the Ministry of International Trade and Industry No. 41 of 1990) is partially amended as follows:

In Remarks 7 of Form 19, the term "or " is deleted from the phrase "or Article

17, paragraph (1), items (i) to (iii) of the Industrial Technology Enhancement Act"; the phrase "or Article 10, paragraph (1) of the Act on Special Measures to Promote Research and Development Business, etc. by Specified Multinational Enterprises (Act No. 55 of 2012)" is added after the phrase "the Industrial Technology Enhancement Act"; the term "or" is deleted from the phrase "or seeking the reduction"; and the phrase "or seeking the reduction by half of the patent fees under Article 10, paragraph (1) of the Act on Special Measures to Promote Research and Development Business, etc. by Specified Multinational Enterprises" is added after the phrase "the Industrial Technology Enhancement Act."