

Cabinet Office Order on Non-Disclosure of Patent Applications under the Act on the Promotion of Ensuring National Security Through Integrated Implementation of Economic Measures (Tentative translation)

(Cabinet Office Order No. 78 of December 18, 2023)

Based on the provisions of Article 67, paragraphs (1), (9) and (10), Article 70, paragraphs (1) and (3), Article 73, paragraph (2), Article 75, paragraph (1), Article 76, paragraphs (1) and (2), and Article 80, paragraph (2) of the Act on the Promotion of Ensuring National Security Through Integrated Implementation of Economic Measures (Act No. 43 of 2022) and in order to enforce the Act, the Cabinet Office Order on Non-Disclosure of Patent Applications under the Act on the Promotion of Ensuring National Security Through Integrated Implementation of Economic Measures is to be established as follows.

(Definition)

Article 1 The terms used in this Cabinet Office Order are the same as the terms used in the Act on the Promotion of Ensuring National Security Through Integrated Implementation of Economic Measures (hereinafter referred to as the "Act").

(Procedures in Writing, etc.)

Article 2 (1) When undergoing procedures that are specified as being to be carried out by submitting documents to the Prime Minister under the provisions of Chapter 5 of the Act and the provisions of this Cabinet Office Order, a patent applicant must enter the name of the submitter (in the case of a corporation, its name and the name of its representative), the submitter's domicile or residence, and the number of the patent application in the documents.

(2) The documents referred to in the preceding paragraph must be written in Japanese.

(Opinion Hearing in a Security Review)

Article 3 When conducting a security review under the provisions of Article 67, paragraph (1) of the Act, the Prime Minister is to hear the opinions of the patent applicant regarding the extent of the likelihood that the publication of the invention stated in description, etc. may undermine the security of the

State and its citizens due to action taken from the outside, and the impact on the development of industry if a security designation is made, and other circumstances; provided, however, that this is not to apply when the determination that there is no need to make a security designation can be made without requesting the submission of materials and explanations from the patent applicant under the provisions of paragraph (2) of that Article.

(Notification Concerning the Details of the Invention that Could be an Invention for Security Designation)

Article 4 A notification under the provisions of Article 67, paragraph (9) of the Act is to be filed with a document stating the details of the invention that could be an invention for security designation and the part of the description, etc. where the relevant invention is described.

(Matters to be Provided by Cabinet Office Order Referred to in Article 67, Paragraph (9), Item (iii) of the Act)

Article 5 The matters to be provided by Cabinet Office Order referred to in Article 67, paragraph (9), item (iii) of the Act are the details of modifications in the matters provided in item (i) or (ii) of that paragraph when any modifications are scheduled.

(Procedures when Maintaining a Patent Application)

Article 6 The submission of the document under the provisions of Article 67, paragraph (10) of the Act must be conducted using Form 1.

(Notifications Concerning Security Designation)

Article 7 Notifications to a patent applicant and the Commissioner of the Japan Patent Office under the provisions of Article 70, paragraph (1) of the Act are to be made with a document stating the matters listed in the following items:

- (i) the details of the invention for security designation and the part of the description, etc. where the relevant invention for security designation is described;
- (ii) the period of time for the security designation specified under the provisions of Article 70, paragraph (2) of the Act;
- (iii) the matters concerning invention sharing business entities.

(Extension of the Security Designation Period)

Article 8 When extending the security designation period under the provisions of the second sentence of Article 70, paragraph (3) of the Act, the Prime Minister is to hear the opinions of the designated patent applicant in advance.

(Matters to be Stated in an Application Document for the Authorization of Working Inventions for Security Designation)

Article 9 The matters provided by Cabinet Office Order referred to in Article 73, paragraph (2) of the Act are as follows:

- (i) the name of a person who intends to work the invention (in the case of a corporation, its name and the name of its representative) and the person's domicile or residence;
- (ii) the reasons why it is necessary to work the invention;
- (iii) measures to be taken for preventing leakage of the information pertaining to the invention for security designation due to the working thereof.

(Measures Provided by Cabinet Office Order Referred to in Article 75, Paragraph (1) of the Act)

Article 10 The measures provided by Cabinet Office Order referred to in Article 75, paragraph (1) of the Act are as follows:

- (i) the following measures as measures concerning organizational information management
 - (a) to properly manage persons who handle information pertaining to the invention for security designation (for measures to be taken by invention sharing business entities, limited to the information pertaining to the invention for security designation, the handling of which has been admitted by the designated patent applicant; hereinafter such information is referred to as the "information on the invention for security designation" in this Article, and such persons are referred to as "information handlers" in this Article), and to appoint an administrator who integrally manages appropriate implementation of the measures to prevent the leakage of the information on the invention for security designation (hereinafter referred to as the "administrator of the information on the invention for security designation" in this Article);
 - (b) to clarify the responsibilities and duties of the administrator of the information on the invention for security designation and other information handlers;
 - (c) to prepare a management ledger stating the security designation period, the names of the present and past administrators of the information on the invention for security designation and other information handlers, the status of the authorization for the working of the invention, and other information necessary for properly managing the information on the invention for security designation;
 - (d) to handle the information on the invention for security designation as a trade secret (meaning a trade secret provided in Article 2, paragraph (6) of the Unfair Competition Prevention Act (Act No. 47 of 1993));

- (e) to formulate and implement rules concerning proper management of the information on the invention for security designation, and to evaluate the operation of the rules and make improvements in order to appropriately take measures concerning the management of the information on the invention for security designation;
- (f) when invention sharing business entities formulate the rules referred to in (e) above or make modifications to them, to have them obtain the confirmation of the designated patent applicant in advance;
- (g) to develop a system for administrative operations for a case where the leakage of the information on the invention for security designation has occurred or is likely to occur;
- (h) when finding that the leakage of the information on the invention for security designation has occurred or is likely to occur, the designated patent applicant must immediately make a report to the Prime Minister to that effect, while an invention sharing business entity must immediately make a report to the designated patent applicant to that effect;
- (ii) the following measures as measures concerning human information management:
 - (a) to limit the scope of information handlers to the minimum necessary;
 - (b) when adding an information handler, to have the administrator of the information on the invention for security designation check in advance whether there is any possibility that the relevant person may leak the information on the invention for security designation, and when such possibility is found, to prohibit the relevant person from handling the information on the invention for security designation;
 - (c) to take measures to have information handlers comply with the rules referred to in (e) of the preceding item;
 - (d) to have the administrator of the information on the invention for security designation provide necessary education and training to other information handlers;
- (iii) the following measures as measures concerning physical information management:
 - (a) to specify a zone to handle the information on the invention for security designation or to store the document, drawings, electromagnetic record (meaning a record made by an electronic method, a magnetic method, or any other methods not recognizable to human senses) or objects wherein the information on the invention for security designation is recorded, or objects that embody the information on the invention for security designation (hereinafter referred to as "documents, etc. containing the information on the invention for security designation" in this item) and to take measures to manage and restrict entries into the zone thus specified

- (hereinafter referred to as the "specified zone" in this item);
- (b) to store documents, etc. containing the information on the invention for security designation in the specified zone while using appropriate storage facilities and taking measures to prevent the leakage of the information on the invention for security designation;
 - (c) when newly copying or creating documents, etc. containing the information on the invention for security designation, to require to obtain approval of the administrator of the information on the invention for security designation in advance by presenting the reasons and the methods, and to limit the number of the copies and the documents, etc. to the minimum necessary;
 - (d) when taking documents, etc. containing the information on the invention for security designation out from the specified zone, to require to obtain approval of the administrator of the information on the invention for security designation in advance by presenting the reasons and the methods;
 - (e) when disposing documents, etc. containing the information on the invention for security designation, to employ means by which they are restorable;
 - (f) beyond what is set forth in (a) to (e) above, to take measures to prevent theft and loss of documents, etc. containing the information on the invention for security designation;
- (iv) the following measures as measures concerning technical information management:
- (a) to take measures to limit the persons who can handle the information on the invention for security designation on a computer;
 - (b) when a computer on which the information on the invention for security designation is handled is connected with electronic telecommunications lines, to take measures to prevent acts of unauthorized computer access (meaning the acts of unauthorized computer access provided in Article 2, paragraph (4) of the Act on Prohibition of Unauthorized Computer Access (Act No. 128 of 1999));
 - (c) beyond what is set forth in (a) and (b) above, to take measures to prevent the leakage of the information on the invention for security designation on a computer.

(Procedures for Modifications of Invention Sharing Business Entities)

Article 11 (1) An application for permission under the provisions of Article 76, paragraph (1) of the Act must be filed with an application document in Form 2 stating the following matters:

- (i) the name of the business entity to be newly permitted to handle the

- information pertaining to the invention for security designation (in the case of a corporation, its name and the name of its representative), and its domicile or residence;
- (ii) the reasons why it is necessary to newly permit the business entity to handle the information pertaining to the invention for security designation;
 - (iii) the plan for information management by the business entity that is newly permitted to handle the information pertaining to the invention for security designation.
- (2) the notification of the modifications under the provisions of Article 76, paragraph (2) of the Act must be filed with a written notice in Form 3.

(Written Claim for Compensation)

- Article 12 A person who intends to claim compensation under the provisions of Article 80, paragraph (2) of the Act must submit to the Prime Minister a written claim in Form 4 stating the matters listed in the following items, while attaching materials sufficient to make a prima facie showing of those matters:
- (i) the total amount of compensation claimed and a breakdown thereof;
 - (ii) the reasons for the compensation claim.

(Identification Card for On-site Inspections)

- Article 13 An identification card of a person who conducts on-site inspections under the provisions of Article 84, paragraph (1) of the Act is to be in Form 5.

Supplementary Provisions

This Cabinet Office Order comes into effect as of the day of enforcement of the provisions set forth in Article 1, item (v) of the Supplementary Provisions of the Act.