

Order on Non-Disclosure of Patent Applications under the Act on the Promotion of Ensuring National Security Through Integrated Implementation of Economic Measures Relating to the Cabinet Office and the Ministry of Economy, Trade and Industry (Tentative translation)

(Order of the Cabinet Office and the Ministry of Economy, Trade and Industry
No. 5 of December 18, 2023)

Based on the provisions of Article 66, paragraphs (1), (2) and (10), Article 79, paragraphs (1) and (6), and Article 85, paragraph (1) 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 Order on Non-Disclosure of Patent Applications under the Act on the Promotion of Ensuring National Security Through Integrated Implementation of Economic Measures Relating to the Cabinet Office and the Ministry of Economy, Trade and Industry is to be established as follows.

(Sending to the Prime Minister)

Article 1 (1) The Commissioner of the Japan Patent Office is to send relevant documents to the Prime Minister under the provisions of the main clause of Article 66, paragraph (1) or the paragraph (2) of the Act on the Promotion of Ensuring National Security Through Integrated Implementation of Economic Measures (hereinafter referred to as the "Act") by the method of sending copies of a written application for patent application, a description, claims, and drawings under the provisions of Article 36, paragraph (1) of the Patent Act (Act No. 121 of 1959), and any other documents that the Commissioner of the Japan Patent Office finds necessary.

(2) The Commissioner of the Japan Patent Office may send relevant documents as referred to in the preceding paragraph by using electronic data processing systems connecting computers (including input-output devices; hereinafter the same applies in this paragraph) used by the Japan Patent Office and computers used by the Cabinet Office through a telecommunications line based on the provisions of Article 6, paragraph (1) of the Act on the Advancement of Government Administration Processes That Use Information and Communications Technology (Act No. 151 of 2002).

(Request to Seek a Security Review)

Article 2 (1) A request under the provisions of the first sentence of Article 66, paragraph (2) of the Act (hereinafter simply referred to as the "request" in this paragraph) must be filed with a written request in Form 1 stating the following matters:

- (i) the details of the invention for which the request is filed and the section of the description, etc. provided in Article 65, paragraph (1) of the Act where the relevant invention is described;
- (ii) the reasons for the request.

(2) The request referred to in the preceding paragraph may be filed by using electronic data processing systems provided in Article 2, paragraph (1) of the Act on Special Provisions for Procedures related to Industrial Property Right (Act No. 30 of 1990).

(3) A person who files the request referred to in paragraph (1) may enter the identification number provided in Article 2, paragraph (1) of the Regulation for Enforcement of the Act on Special Provisions for Procedures related to Industrial Property Right (Order of the Ministry of International Trade and Industry No. 41 of 1990; referred to as the "Regulation for Enforcement of the Act on Special Provisions" in the following paragraph and paragraph (4) of the following Article) in a written request referred to in paragraph (1). In this case, the entry of the domicile or residence provided in Article 1, paragraph (3) of the Enforcement Regulation of the Patent Act (Order of the Ministry of International Trade and Industry No. 10 of 1960) that is applied *mutatis mutandis* pursuant to Article 7 may be omitted.

(4) The provisions of Article 10-2 and Article 13, paragraph (1) of the Regulation for Enforcement of the Act on Special Provisions apply *mutatis mutandis* to a person who files a request referred to in paragraph (1) by using electronic data processing systems under the provisions of paragraph (2). In this case, the phrase "on a document as required in the provisions of the laws and regulations related to patent, etc. as provided with regard to the relevant specified procedures" in Article 10-2, paragraph (1) of the Regulation for Enforcement of the Act on Special Provisions is deemed to be replaced with "on the written request referred to in Article 2, paragraph (1) of the Order on Non-Disclosure of Patent Applications under the Act on the Promotion of Ensuring National Security Through Integrated Implementation of Economic Measures Relating to the Cabinet Office and the Ministry of Economy, Trade and Industry (Order of the Cabinet Office and the Ministry of Economy, Trade and Industry No. 5 of 2023) as required under the provisions of the same paragraph"; and the phrase "Article 10-2, paragraph (1)" in Article 13, paragraph (1) of the Regulation for Enforcement of the Act on Special Provisions is deemed to be replaced with "Article 10-2, paragraph (1) applied *mutatis mutandis* pursuant to Article 2, paragraph (4) of the Order on Non-

Disclosure of Patent Applications under the Act on the Promotion of Ensuring National Security Through Integrated Implementation of Economic Measures Relating to the Cabinet Office and the Ministry of Economy, Trade and Industry".

(Request to Seek Notification Concerning the Determination Not to Send Relevant Documents)

Article 3 (1) A request under the provisions of Article 66, paragraph (10) of the Act must be filed with a written request in Form 2.

(2) The written request referred to in the preceding paragraph must be submitted by the day on which the period provided by Cabinet Order referred to in Article 66, paragraph (1) of the Act elapses starting on the day of the patent application (in the case of patent applications listed in the left-hand column of the table of paragraph (4) of that Article, the day listed in the right-hand column of the same table respectively corresponding to the categories listed in the left-hand column of the table (when the relevant patent application falls under two or more categories listed in the left-hand column of the table, the latest day among the days provided in the right-hand column of the table related to the relevant categories)).

(3) The provisions of paragraphs (2) and (3) of the preceding Article apply mutatis mutandis to a request referred to in paragraph (1).

(4) The provisions of Article 10-2 and Article 13, paragraph (1) of the Regulation for Enforcement of the Act on Special Provisions apply mutatis mutandis to a person who files a request referred to in paragraph (1) by using electronic data processing systems under the provisions of paragraph (2) of the preceding Article that are applied mutatis mutandis pursuant to the preceding paragraph. In this case, the phrase "on a document as required in the provisions of the laws and regulations related to patent, etc. as provided with regard to the relevant specified procedures" in Article 10-2, paragraph (1) of the Regulation for Enforcement of the Act on Special Provisions is deemed to be replaced with "on the written request referred to in Article 3, paragraph (1) of the Order on Non-Disclosure of Patent Applications as required under the Act on the Promotion of Ensuring National Security Through Integrated Implementation of Economic Measures Relating to the Cabinet Office and the Ministry of Economy, Trade and Industry (Order of the Cabinet Office and the Ministry of Economy, Trade and Industry No. 5 of 2023) under the provisions of the same paragraph"; and the phrase "Article 10-2, paragraph (1)" in Article 13, paragraph (1) of the Regulation for Enforcement of the Act on Special Provisions is deemed to be replaced with "Article 10-2, paragraph (1) applied mutatis mutandis pursuant to Article 3, paragraph (4) of the Order on Non-Disclosure of Patent Applications under the Act on the Promotion of Ensuring

National Security Through Integrated Implementation of Economic Measures Relating to the Cabinet Office and the Ministry of Economy, Trade and Industry".

(Matters to be Stated for a Disposition to Dismiss a Patent Application)

Article 4 A disposition to dismiss a patent application under the provisions of Article 69, paragraph (4), Article 73, paragraph (8) (including the case where the relevant provisions are applied mutatis mutandis pursuant to Article 74, paragraph (3) of the Act), and Article 78, paragraph (7) of the Act is to be made with a document stating the following matters:

- (i) the number of the patent application;
- (ii) the names of the applicant for the patent or the agent;
- (iii) the reasons for the disposition;
- (iv) the date of the disposition.

(Prior Confirmation Regarding Prohibition of Foreign Applications)

Article 5 (1) A request for confirmation under the provisions of Article 79, paragraph (1) of the Act must be filed with a written request in Form 3 stating the following matters:

- (i) the name and domicile or residence of a person who intends to file a foreign application provided in Article 78, paragraph (1) of the Act (simply referred to as a "foreign application" in the following item and item (iii));
- (ii) in a case where an invention is associated with the results of technology-related research and development entrusted by the State or a national research and development agency (meaning the national research and development agency provided in Article 2, paragraph (3) of the Act on General Rules for Incorporated Administrative Agency (Act No. 103 of 1999); hereinafter the same applies in this item) or of software development outsourced by the State or a national research and development agency, and for which the State or the national research and development agency has decided not to acquire the right to the grant of a patent under the provisions of Article 17, paragraph (1) of the Industrial Technology Enhancement Act (Act No. 44 of 2000) (in a case where the national research and development agency has entrusted or outsourced, paragraph (1) of that Article applies mutatis mutandis pursuant to paragraph (2) of that Article), is stated in a foreign application that is intended to be filed, to that effect;
- (iii) in a case where an invention is associated with the results of technology-related research and development entrusted by the State, and for which the State has decided to take over only part of the right to the grant of a patent under the provisions of Article 22 (limited to the part pertaining to item (i)) of the Act on Vitalizing the Creation of Science, Technology, and Innovation

(Act No. 63 of 2008), is stated in a foreign application that is intended to be filed, to that effect.

- (2) a document stating the details of the invention for which a request for confirmation under the provisions of Article 79, paragraph (1) of the Act is filed (simply referred to as the "invention" in the following paragraph) and required drawings must be attached to the written request referred to in the preceding paragraph.
- (3) The document referred to in the preceding paragraph must contain the following matters:
 - (i) the title of the invention;
 - (ii) a brief explanations of the drawings;
 - (iii) a detailed explanations of the invention.
- (4) The document referred to in paragraph (2) must be prepared using Form 4 and the required drawings referred to in that paragraph must be prepared using Form 5.
- (5) The matters to be stated in the document referred to in paragraph (2) and the explanations to be contained in the required drawings may be entered in English.
- (6) The fee provided in Article 79, paragraph (6) of the Act is to be paid by submitting a written request referred to in paragraph (1) while affixing to it revenue stamps equivalent to the amount specified by Cabinet Order as provided in paragraph (5) of that Article.

(Service)

- Article 6 (1) The document to be served referred to in Article 85, paragraph (1) of the Act is to be a certified copy of the disposition of dismissal under the provisions of Article 69, paragraph (4), Article 73, paragraph (8) (including the case where applied *mutatis mutandis* pursuant to Article 74, paragraph (3) of the Act), and Article 78, paragraph (7) of the Act.
- (2) The certified copy referred to in the preceding paragraph must contain a statement to certify that the certified copy is consistent with the original copy, and an official designated by the Commissioner of the Japan Patent Office must affix his or her name and seal to the certified copy.
 - (3) The provisions of Article 16, paragraphs (3) to (5) of the Enforcement Regulation of the Patent Act apply *mutatis mutandis* to the service referred to in Article 85, paragraph (1) of the Act.

(*Mutatis Mutandis* Application of the Enforcement Regulation of the Patent Act)

- Article 7 The provisions of Article 1, paragraphs (2) to (5) and Article 2 of the Enforcement Regulation of the Patent Act apply *mutatis mutandis* to the

request referred to in Article 2, paragraph (1) and Article 3, paragraph (1) and the request for confirmation referred to in Article 5, paragraph (1).

Supplementary Provisions

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