

内閣府・経済産業省関係経済施策を一体的に講ずることによる安全保障の確保の推進に関する法律に基づく特許出願の非公開に関する命令（暫定版）

**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)**

（令和五年十二月十八日内閣府・経済産業省令第五号）

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

経済施策を一体的に講ずることによる安全保障の確保の推進に関する法律（令和四年法律第四十三号）第六十六条第一項、第二項及び第十項、第七十九条第一項及び第六項並びに第八十五条第一項の規定に基づき、並びに同法を実施するため、内閣府・経済産業省関係経済施策を一体的に講ずることによる安全保障の確保の推進に関する法律に基づく特許出願の非公開に関する命令を次のように定める。

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.

（内閣総理大臣への送付）

（Sending to the Prime Minister）

第一条 経済施策を一体的に講ずることによる安全保障の確保の推進に関する法律（以下「法」という。）第六十六条第一項本文又は第二項の規定による送付は、特許法（昭和三十四年法律第百二十一号）第三十六条第一項の規定による特許出願に係る願書、明細書、特許請求の範囲、図面その他特許庁長官が必要と認める書類の写しを送付する方法によって行うものとする。

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 前項の送付は、情報通信技術を活用した行政の推進等に関する法律（平成十四年法律第百五十一号）第六条第一項の規定に基づき、特許庁の使用に係る電子計算機（入出力装置を含む。以下この項において同じ。）と内閣府の使用に係る電子計算機とを電気通信回線で接続した電子情報処理組織を使用して行うことができる。

(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).

（保全審査に付することを求める旨の申出）

(Request to Seek a Security Review)

第二条 法第六十六条第二項前段の規定による申出（以下この項において単に「申出」という。）は、次に掲げる事項を記載した様式第一による申出書によってしなければならない。

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:

一 申出に係る発明の内容及び法第六十五条第一項に規定する明細書等において当該発明が記載されている箇所

(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;

二 申出の理由

(ii) the reasons for the request.

2 前項の申出は、工業所有権に関する手続等の特例に関する法律（平成二年法律第三十号）第二条第一項に規定する電子情報処理組織を使用して行うことができる。

(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 第一項の申出をする者は、工業所有権に関する手続等の特例に関する法律施行規則

(平成二年通商産業省令第四十一号。次項及び次条第四項において「特例法施行規則」という。) 第二条第一項に規定する識別番号を第一項の申出書に記載することができる。この場合において、第七条において準用する特許法施行規則(昭和三十五年通商産業省令第十号) 第一条第三項に規定する住所又は居所を記載することを省略することができる。

(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 特例法施行規則第十条の二及び第十三条第一項の規定は、第二項の規定により電子情報処理組織を使用して第一項の申出をする者について準用する。この場合において、特例法施行規則第十条の二第一項中「当該特定手続につき規定した特許等関係法令の規定において書面に」とあるのは「内閣府・経済産業省関係経済施策を一体的に講ずることによる安全保障の確保の推進に関する法律に基づく特許出願の非公開に関する命令(令和五年内閣府・経済産業省令第五号) 第二条第一項の規定により同項の申出書に」と、特例法施行規則第十三条第一項中「第十条の二第一項」とあるのは「内閣府・経済産業省関係経済施策を一体的に講ずることによる安全保障の確保の推進に関する法律に基づく特許出願の非公開に関する命令第二条第四項において準用する第十条の二第一項」と読み替えるものとする。

(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".

(送付をしない旨の判断をした旨の通知を求める申出)

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

第三条 法第六十六条第十項の規定による申出は、様式第二による申出書によってしなければならない。

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 前項の申出書は、特許出願の日（特許出願が法第六十六条第四項の表の上欄に掲げる特許出願である場合にあっては、同表の上欄に掲げる区分に応じそれぞれ同表の下欄に掲げる日（当該特許出願が同表の上欄に掲げる区分の二以上に該当するときは、その該当する区分に係る同表の下欄に定める日のうち最も遅い日））から同条第一項に規定する政令で定める期間を経過する日までに提出しなければならない。

(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 前条第二項及び第三項の規定は、第一項の申出について準用する。

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

4 特例法施行規則第十条の二及び第十三条第一項の規定は、前項において準用する前条第二項の規定により電子情報処理組織を使用して第一項の申出をする者について準用する。この場合において、特例法施行規則第十条の二第一項中「当該特定手続きにつき規定した特許等関係法令の規定において書面に」とあるのは「内閣府・経済産業省関係経済施策を一体的に講ずることによる安全保障の確保の推進に関する法律に基づく特許出願の非公開に関する命令（令和五年内閣府・経済産業省令第五号）第三条第一項の規定により同項の申出書に」と、特例法施行規則第十三条第一項中「第十条の二第一項」とあるのは「内閣府・経済産業省関係経済施策を一体的に講ずることによ

る安全保障の確保の推進に関する法律に基づく特許出願の非公開に関する命令第三条第四項において準用する第十条の二第一項」と読み替えるものとする。

(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".

(出願の却下の処分の記載事項)

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

第四条 法第六十九条第四項、第七十三条第八項（法第七十四条第三項において準用する場合を含む。）及び第七十八条第七項の規定による特許出願の却下の処分は、次に掲げる事項を記載した文書をもって行うものとする。

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:

一 特許出願の番号

(i) the number of the patent application;

二 特許出願人及び代理人の氏名又は名称

(ii) the names of the applicant for the patent or the agent;

三 処分の理由

(iii) the reasons for the disposition;

四 処分の年月日

(iv) the date of the disposition.

(外国出願の禁止に関する事前確認)

(Prior Confirmation Regarding Prohibition of Foreign Applications)

第五条 法第七十九条第一項の規定による確認の求めは、次に掲げる事項を記載した様式第三による申出書によってしなければならない。

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:

一 法第七十八条第一項に規定する外国出願（次号及び第三号において単に「外国出願」という。）をしようとする者の氏名又は名称及び住所又は居所

(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));

二 国若しくは国立研究開発法人（独立行政法人通則法（平成十一年法律第百三号）第二条第三項に規定する国立研究開発法人をいう。以下この号において同じ。）が委託した技術に関する研究及び開発又は国若しくは国立研究開発法人が請け負わせたソフトウェアの開発の成果に係る発明であって、その発明について特許を受ける権利につき産業技術力強化法（平成十二年法律第四十四号）第十七条第一項（国立研究開発法人が委託し又は請け負わせた場合にあつては、同条第二項において準用する同条第一項）の規定により国又は当該国立研究開発法人が譲り受けないこととしたものを記載した外国出願をしようとする場合にあつては、その旨

(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;

三 国が委託した技術に関する研究及び開発の成果に係る発明であって、その発明について特許を受ける権利につき科学技術・イノベーション創出の活性化に関する法律（平成二十年法律第六十三号）第二十二條（第一号に係る部分に限る。）の規定

により国がその一部のみを譲り受けたものを記載した外国出願をしようとする場合にあっては、その旨

- (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 前項の申出書には、法第七十九条第一項の規定による確認の求めに係る発明（次項において単に「発明」という。）の内容を記載した書面及び必要な図面を添付しなければならない。
- (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 前項の書面には、次に掲げる事項を記載しなければならない。
- (3) The document referred to in the preceding paragraph must contain the following matters:
- 一 発明の名称
  - (i) the title of the invention;
  - 二 図面の簡単な説明
  - (ii) a brief explanations of the drawings;
  - 三 発明の詳細な説明
  - (iii) a detailed explanations of the invention.
- 4 第二項の書面は様式第四により、同項の必要な図面は様式第五により作成しなければならない。
- (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 第二項の書面に記載する事項及び必要な図面に含まれる説明は、英語で記載することができる。
- (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 法第七十九条第六項に規定する手数料の納付は、第一項の申出書に、同条第五項に規定する政令で定める額に相当する収入印紙を貼って提出することによって行うものとする。
- (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.

(送達)

(Service)

第六条 法第八十五条第一項の送達をすべき書類は、法第六十九条第四項、第七十三条第八項（法第七十四条第三項において準用する場合を含む。）及び第七十八条第七項の規定による却下の処分の際の謄本とする。

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 前項の謄本には、原本と相違がないことを認証する旨を記載し、特許庁長官が指定する職員が記名押印しなければならない。

(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 特許法施行規則第十六条第三項から第五項までの規定は、法第八十五条第一項の送達について準用する。

(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.

(特許法施行規則の準用)

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

第七条 特許法施行規則第一条第二項から第五項まで及び第二条の規定は、第二条第一項及び第三条第一項の申出並びに第五条第一項の確認の求めについて準用する。

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).

**附 則**

**Supplementary Provisions**

この命令は、法附則第一条第五号に掲げる規定の施行の日から施行する。

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.