

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 December 18, 2023)

Based on the provisions of Article 66, paragraph (1), paragraph (2), and paragraph (10), Article 79, paragraph (1) and paragraph (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 that 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 established as follows.

(Sending of Documents to the Prime Minister)

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

(2) Sending of the documents referred to in the preceding paragraph may be made by using an electronic data processing system connecting a computer (including input and output devices; the same applies below in this paragraph) used by the Japan Patent Office and a computer used by the Cabinet Office via 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) The request under the provisions of the first sentence of Article 66,

paragraph (2) of the Act (simply referred to as the "request" below in this paragraph) must be filed by a written request using Form No. 1 which states the following matters:

- (i) the content of the invention for which the request is filed and the section of the description, etc. provided for in Article 65, paragraph (1) of the Act where that invention is stated; and
 - (ii) the reasons for the request.
- (2) The request referred to in the preceding paragraph may be filed by using an electronic data processing system provided for in Article 2, paragraph (1) of the Act on Special Provisions for Procedures Related to Industrial Property Rights (Act No. 30 of 1990).
- (3) A person who files the request referred to in paragraph (1) may enter the identification number provided for in Article 2, paragraph (1) of the Enforcement Regulations 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 "Enforcement Regulations of the Act on Special Provisions" in the following paragraph and paragraph (4) of the following Article) in the written request referred to in paragraph (1). In such a case, the entry of the domicile or residence provided for in Article 1, paragraph (3) of the Enforcement Regulations of the Patent Act (Order of the Ministry of International Trade and Industry No. 10 of 1960) as applied mutatis mutandis pursuant to Article 7 may be omitted.
- (4) The provisions of Article 10-2 and Article 13, paragraph (1) of the Enforcement Regulations of the Act on Special Provisions apply mutatis mutandis to a person who files a request referred to in paragraph (1) by using an electronic data processing system pursuant to the provisions of paragraph (2). In such a case, the phrase "in the document in the provisions of laws and regulations related to patent, etc. prescribed for those specified procedures" in Article 10-2, paragraph (1) of the Enforcement Regulations of the Act on Special Provisions is deemed to be replaced with "in 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) pursuant to the provisions of that paragraph" and the phrase "Article 10-2, paragraph (1)" in Article 13, paragraph (1) of the Enforcement Regulations of the Act on Special Provisions is deemed to be replaced with "Article 10-2, paragraph (1) as applied mutatis mutandis pursuant to Article 2, paragraph (4) of the Order on Non-Disclosure of Patent Applications Based on 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 Notice on the Determination Not to Send the Documents to Be Sent)

Article 3 (1) The request under the provisions of Article 66, paragraph (10) of the Act must be filed by a written request using Form No. 2.

(2) The written request referred to in the preceding paragraph must be submitted by the day on which the period provided for by Cabinet Order referred to in Article 66, paragraph (1) of the Act elapses that commences on the day of filing the patent application (if the patent application is one stated in the left-hand column of the Table referred to in paragraph (4) of the Act, the day listed in the right-hand column of the Table respectively corresponding the categories 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 for in the right-hand column of the Table related to that category)).

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

(4) The provisions of Article 10-2 and Article 13, paragraph (1) of the Enforcement Regulations of the Act on Special Provisions apply mutatis mutandis to a person who files the request referred to in paragraph (1) by using an electronic data processing system pursuant to the provisions of paragraph (2) of the preceding Article as applied mutatis mutandis pursuant to the preceding paragraph. In such a case, the phrase "in the document in the provisions of laws and regulations related to patent, etc. prescribed for those specified procedures" in Article 10-2, paragraph (1) of the Regulations for Enforcement of the Act on Special Provisions is deemed to be replaced with "in the written request referred to in Article 3, 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) pursuant to that paragraph" and the phrase "Article 10-2, paragraph (1)" in Article 13, paragraph (1) of the Enforcement Regulations of the Act on Special Provisions is deemed to be replaced with "Article 10-2, paragraph (1) as 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 on Documents for Dispositions to Dismiss Patent Applications)

Article 4 The disposition to dismiss a patent application under the provisions of Article 69, paragraph (4), Article 73, paragraph (8) (including as applied mutatis mutandis pursuant to Article 74, paragraph (3) of the Act), and Article 78, paragraph (7) of the Act is to be made by using a document stating the following matters:

- (i) the number of the patent application;
- (ii) the name of the patent applicant or their agent;
- (iii) the reason for the disposition; and
- (iv) the date of the disposition.

(Prior Confirmation Regarding Prohibition of Foreign Applications)

Article 5 (1) The request for confirmation under the provisions of Article 79, paragraph (1) of the Act must be filed by a written request using Form No. 3 which states the following matters:

- (i) the name and domicile or residence of a person who intends to file a foreign application provided for in Article 78, paragraph (1) of the Act (simply referred to as a "foreign application" in the following item and item (iii));
- (ii) when seeking to file a foreign application for an invention associated with the results of technology-related research and development with which it has entrusted another person by the State or a national research and development agency (meaning a 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); the same applies below in this item), or of software development that it has contracted by the State or a national research and development agency, from the person it has entrusted or the person it has contracted, for which the State or the national research and development agency has decided not to acquire the right to be granted a patent for the invention pursuant to the provisions of Article 17, paragraph (1) of the Industrial Technology Enhancement Act (Act No. 44 of 2000) (if the national research and development agency has entrusted or outsourced the development, paragraph (1) of that Article as applied mutatis mutandis pursuant to paragraph (2) of that Article), that fact; and
- (iii) when seeking to file a foreign application for an invention associated with the results of research and development related to technology which is entrusted by the State, for which the State has decided to take over only part of the right to be granted a patent for the invention pursuant to the provisions of Article 22 (limited to the part related to item (i)) of the Act on Revitalization of the Creation of Scientific Technology and Innovation (Act

No. 63 of 2008), that fact.

- (2) A document stating the content 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 state the following matters:
 - (i) the title of the invention;
 - (ii) a brief explanation of the drawings; and
 - (iii) a detailed explanation of the invention.
- (4) The document referred to in paragraph (2) must be prepared by using Form No. 4 and the required drawings referred to in that paragraph must be prepared by using Form No. 5.
- (5) The matters to be stated in the document referred to in paragraph (2) and the explanation contained in the required drawings may be stated in English.
- (6) The payment of the fees provided for in Article 79, paragraph (6) of the Act is to be made by submitting a written request referred to in paragraph (1) attached with revenue stamps equivalent to the amount specified by Cabinet Order which is provided for in paragraph (5) of that Article.

(Service)

- Article 6 (1) The document to be served which is referred to in Article 85, paragraph (1) of the Act is a certified copy of the disposition of dismissal under the provisions of Article 69, paragraph (4), Article 73, paragraph (8) (including as 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 certifying that the certified copy is not different from the original copy, and an official designated by the Commissioner of the Japan Patent Office must affix their name and seal to the certified copy.
 - (3) The provisions of Article 16, paragraphs (3) through (5) of the Enforcement Regulations of the Patent Act apply *mutatis mutandis* to the service referred to in Article 85, paragraph (1) of the Act.

(Application, *Mutatis Mutandis* of the Enforcement Regulations of the Patent Act)

- Article 7 The provisions of Article 1, paragraphs (2) through (5) and Article 2 of the Enforcement Regulations 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 on the date of enforcement of the provisions stated in Article 1, item (v) of the Supplementary Provisions of the Act.