

## How the Patent System Works

### Disclosure of the Invention and Monopoly

The word “patent” is said to have derived from the Latin word “patentes” (which means “to disclose”). This is basically how the patent system works; instead of keeping an invention to oneself as know-how, the invention is disclosed to the public and compensation for the disclosure, a patent, which is monopoly, can be obtained for a certain period of time.

The significance of the patent system lies in that monopoly can be obtained for a certain period of time compensation for disclosure of an invention. However, in 1971, the Patent Law was revised and the early publication system was adopted. That is, in general, all applications, regardless of whether the application is to be patented or not, will be published in the publication of unexamined applications after 1 and a half years has passed and will be laid open. As a result, the theory of a patent being a right that is granted compensation

for disclosure has been forced to change a great deal.

### Invention upon invention

Rather, the system is now based largely on the invention stimulation theory, which aims for one who learns of another’s invention as a result of disclosure to further improve the invention. In other words, the system encourages an inventor to invent upon an invention.

By the way, how does a patent, which is obtained in return for disclosure of an invention, contribute to and influence a company?

There are many concepts regarding the character of a patent, but in terms of actual practice, it is without doubt a right that allows for exclusive use of an invention.

### Battle between Patentee and a Third Party

In order to protect these benefits, the patentee will take various measures against a third party. On the other hand, a third party will devise ways to use the invention without infringing the patent and try to make profit.

In this way, conflict regarding the patent arises between the patentee and the third party.

Conflicts start in various ways and also end in various ways. Naturally,

the conflict begins by actions by the patentee. For example, the patentee can directly send a warning letter to the infringer (or alleged infringer) in an orthodox manner or may use a sneaky tactic such as demanding a customer of the infringer not to carry the infringer's product.

#### License by Agreement and Claiming License based on Prior Use

The alleged infringer can deal with the attacks of the patentee in various ways. In the case that the alleged infringer is clearly infringing the patent, he/she can approach the patentee to obtain a license by agreement or can try to persuade the patentee to put the past behind, in exchange for changing the design of the infringed product, so that infringement no longer exists. The alleged infringer can also argue that he/she has been using the invention prior to the filing of the application and therefore has a license based on prior used.

The alleged infringer can also investigate whether the patent has a defect, that is a reason for invalidation (for example the invention had already been invented at the filing date). If the patent is defective, the results of the investigation can be used to invalidate the patent or the alleged infringer can negotiate with the patentee based on the findings, to lead to compromise.

In the case that the alleged infringer is clearly not infringing the patent, the misunderstanding by the patentee can be cleared up by informing the patentee of this.

#### Patent Specification is written right

The patent specification, which can be called written right, is a document describing the content of the invention. However, the specification may be interpreted differently depending on the person.

For example, let's say a company sells a new product that the company has determined "does not infringe another's patent". However, the patentee may think that the product "clearly infringes his/her patent". When both parties firmly hold their own ground, the conflict may develop into a lawsuit for the court to determine who is the justice. When the conflict develops into a lawsuit, the results are clear, but a great deal of work is required on both parts.