



December 1, 2021

SCP/33 JPAA Statement

ACP

We, the Japan Patent Attorneys Association, as representatives of patent practitioners in Japan, would like to provide the comment again on the confidentiality of communications between clients and their patent advisors as shown below because this is a critical issue for patent practitioners.

We strongly believe that the confidentiality of communications between clients and their patent advisors is a crucial legal concept, especially in the era of global business. It is essential for protecting sensitive trade secrets of client companies or patent holders from forced disclosure to third parties, but not for concealing material prior arts from the Patent Office.

As we repeatedly explained in previous SCP meetings, under the Japanese Civil Procedural Code, patent attorneys are not forced to give testimony if a given question is related to confidential information known through the course of their work. In Japan, only a person who has passed a competitive examination concerning IP laws including laws related to trade secrets can be registered as a patent attorney and has a sufficient ability to handle the confidential information of a client. Furthermore, the Japanese Patent Attorneys Act prescribes the confidentiality obligation of patent attorneys with penalties for violation of their duties. The purpose of these articles is, in essence, to protect clients' confidential information.

Since we now have the ability to communicate internationally through digital networks, secret information which is released in one country is publicly accessible in any country worldwide. Accordingly, there is a substantial risk to conduct business in a country where confidentiality is not appropriately protected, which can be a major factor to constrain lively economic activities in such a country. As a consequence, such countries suffer from the disadvantage that they cannot enjoy economic development. On the other hand, in a country providing a safe business environment where confidentiality is properly protected, investments from foreign countries are encouraged so that such countries can enjoy economic development.

In countries where the attorney-client privilege is granted on a comity basis, applicants of countries where the ACP is not granted may not be able to keep their communications with advisors in foreign countries confidential, which would be serious disadvantage to the business of the applicant in that country.

We firmly believe that so-called attorney client privilege is a crucial legal concept, and in this SCP meeting we should continue our discussions on this matter with the participation of every member country. We also believe the so-called "Soft Law Approach", which establishes a minimum standard first, is the best way of advancing this discussion.

Patents and health

The new coronavirus(Sars-cov-2) is spreading all over the world and has greatly affected economic activity, and each of our lives. In the midst of this pandemic, various companies and institutions, including Toyota Motor Corporation, have declared, without seeking compensation, that they will not assert any Intellectual Property Rights (patent, utility

model, design or copyrights) against any activities whose sole purpose is stopping the spread of the new coronavirus infection(COVID-19). A scheme of the action is titled: "OPEN COVID-19 DECLARATION." At the moment (November 15, 2021), 102 organizations agree with the idea, and the number of its covering intellectual property rights amounts to 927,897. The framework will remain effective until the day when the World Health Organization (WHO) declares that the COVID-19 outbreak no longer constitutes a Public Health Emergency of International Concern. The Japan Patent Attorneys Association contributes the Declaration with endorsement and co-sponsorship.

The inventions available under the Declaration give us hope that a variety of new technologies will emerge for the battle against the pandemic. For example, Kyoto University, one of the founders of this declaration, has more than 4,800 patents, including patents related to regenerative medicine such as iPS cells, which can be used for the development of vaccines and therapeutic agents.

Finally, we pray from the bottom of our heart for the early recovery of the affected people and that this situation will quickly be contained, and that society as a whole can soon regain a peaceful daily life.

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