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Japan: The government of Japan announces the Intellectual Property Strategic Program 2022. Important changes on the horizon for patents owned jointly by universities and commercial companies

Naho Ebata, Mami Hino (Abe, Ikubo & Katayama) · Tuesday, August 23rd, 2022

On June 3, 2022, the Japanese government announced its Intellectual Property Strategic Program 2022. The Intellectual Property Strategic Program sets out the government's policies and future actions for promoting the creation, protection and exploitation of intellectual property in a focused and systematic manner. It is discussed and decided every year by the Intellectual Property Strategy Headquarters, an organization established in the Cabinet since 2003 and chaired by the Prime Minister.

The main target of the Intellectual Property Strategic Program 2022 is to transform the economy and society so that motivated individuals and players can fully utilize intellectual properties and intangible assets existing in the society. The following eight policies have been considered important therein as Japan's current IP strategy: (1) strengthen the IP ecosystem for startups and universities, (2) strengthen mechanisms to promote investment in and utilization of IP and intangible assets, (3) promote strategic use of international standards, (4) improve environments for data distribution and utilization for the realization of a digital society, (5) develop strategies for digital contents, (6) strengthen IP utilization by small and medium-sized enterprises / in local regions and areas / in the field of agriculture, forestry and fisheries, (7) strengthen systems, operations and human resource infrastructure supporting IP utilization, and (8) rebooting Cool Japan in anticipation of the post-COVID world.

Among the eight policies, we find the first policy, i.e., "(1) strengthen the IP ecosystem for startups and universities" (the "First Policy"), to be particularly interesting. The aim of the First Policy is to establish an environment where startups can flexibly, swiftly and efficiently develop new business utilizing technology and ideas created in universities. The details of the First Policy include the following:

- facilitate the use of shares and share options issued by startups as consideration for acquiring intellectual property from universities;
- assist universities in obtaining a strong patent portfolio with a view to business, for example by creating a scheme for funding the prosecution of foreign patent applications, getting startups involved in the development of IP strategies at an early stage, and strengthening the IP management function of the IP division and TLO (Technology Licensing Organization) of

universities;

- in case of jointly owned patents between a company and university, allow the university to grant licenses to third parties (such as startups) without the consent of the company, on condition that the company does not exploit the invention for a certain period of time without a legitimate reason;
- create a system for visualizing intellectual property stocked in companies and universities which can be licensed out, and effectively matching the intellectual property to startups;
- systemize IP strategy support services for startups, including the development of professional human resources well-acquainted with both IP strategy and business, and the matching of appropriate professionals in each stage of business;
- facilitate the provision of management assets in large companies to startups for open innovation and a win-win relationship;
- correct and prevent unfair conduct by large companies in their transactions with startups; and
- create and publish the “University IP Governance Guideline (temporary name)” to spread the ideas and processes of IP management in universities throughout the country.

The First Policy will likely activate the creation and growth of startups, and also bring about changes to the IP strategies of companies. This is especially the case for item (iii) of the First Policy, which allows universities to grant licenses of patents to third parties without the consent of other co-owners of the patents if the patent inventions are not exploited for a certain period of time without a legitimate reason. This will have a large impact on companies that have been collaborating research projects and jointly filing patents with universities. Companies will have to check which patents are jointly owned with universities and whether the subject patents have been used or licensed to third parties. Their strategies and funding policy for research collaboration with universities may require revisions in light of the risk of a potential license to a competitor.

Item (iii) of the First Policy may involve a revision to the Patent Act which stipulates under Article 73, paragraph 3 that a joint owner of a patent cannot license the patent without the consent of the other joint owner. There is also a possibility that a special law that applies to universities will be introduced to achieve item (iii) of the First Policy. We will need to keep a careful watch over whether and when this law revision will take place. IP associations and industries may also consider submitting opinions if the proposed law revision becomes open for public comments.

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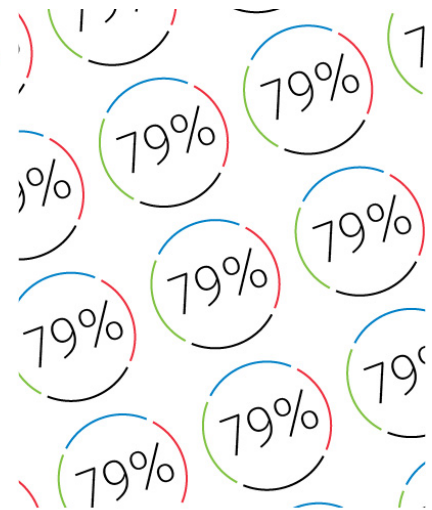
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