

July 10, 2007

To the person in charge of public comments
Industrial Revitalization Division
Economic and Industrial Policy Bureau
Ministry of Economy, Trade and Industry

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Japan Intellectual Property Association (JIPA)

Opinions on the Draft Cabinet Order for Partial Revision of the Order for Enforcement of the Act on Special Measures for Industrial Revitalization, etc.

We would appreciate it if you could take into consideration our opinions stated below regarding the topic mentioned above.

Opinion I

<Outline of the Opinion>

With regard to the phrase “without delay” that appears in Article 19(1)(i) of the Industrial Technology Enhancement Act, we would like to request the Cabinet Order for the said Act to include the following provision: “The contractor and the government may, by agreement, set a reasonable due date for reporting to the government about specific research and development results achieved.”

<Details of the Opinion and Reason Therefor>

We, who are engaged in industry, greatly appreciate the enactment of Article 19 by way of the revision to the Industrial Technology Enhancement Act, which has established the Japanese version of the Bayh-Dole system as a permanent system and extended its application to software development.

The revised Industrial Technology Enhancement Act provides for a requirement to be satisfied for attributing rights in development results to the contractor. This requirement is stipulated in Article 19(1)(i) as follows: “The contractor, etc. shall promise to report to the government, without delay, any specific research and development results achieved.” Under the former Act on Special Measures for Industrial Revitalization, in the case which corresponds to the provision of the said item, it has been a common practice to set the due date for reporting under a contract, e.g. “within

XX days,” irrespective of the types of results. This practice has also been used in many model contracts developed by the government agencies.

However, as the size of a development project expands, the number of pieces of software developed in the course of the project increases enormously, and we are therefore required to produce an enormous number of operation manuals and other relevant (copyrightable) works. Since it is not always possible to completely produce all these materials simultaneously, a uniform due date for reporting (“within XX days”) would cause the situation where rights that should have been attributed to or retained by the contractor are transferred to the government.

For instance, let us assume that the due date is set as “within 60 days.” Whether or not it is possible to completely develop a piece of software and also completely produce an operation manual for the software within 60 days depends largely on the size of the software to be developed.

For this reason, in order to enable us to satisfy the requirement “without delay” prescribed in Article 19(1)(i) of the Industrial Technology Enhancement Act more flexibly, we would like to request the Cabinet Order for the said Act to include a necessary provision, e.g. “With regard to the requirement “without delay” prescribed in Article 19(1)(i) of the Industrial Technology Enhancement Act, the contractor and the government may, by agreement, set a reasonable due date for reporting to the government about specific research and development results achieved.”

Opinion II

<Outline of the Opinion>

Article 11 to be added to the Ordinance for Enforcement of the Industrial Technology Enhancement Act includes copyrights in the scope of rights that the government may choose not to receive from the contractor [the government may leave in the contractor’s ownership]. Is it appropriate to construe that all rights prescribed in the Copyright Act will be covered by this provision?

<Details of the Opinion and Reason Therefor>

We, who are engaged in industries, greatly appreciate the enactment of Article 19 by way of the revision to the Industrial Technology Enhancement Act, which has established the Japanese version of the Bayh-Dole system as a permanent system and extended its application to software development.

Upon the enactment of Article 19 of the Industrial Technology Enhancement Act, Article 11 will be added to the Ordinance for Enforcement of the said Act. The new Article of the said Ordinance provides that copyrights shall be included in the scope of

rights that the government may choose not to receive from the contractor as prescribed in Article 19(1) of the said Act.

In the projects for technology research sponsored by the government or projects for software development outsourced by the government, various copyrightable works are produced as research and development results, including computer programs as well as technical instructions and research papers. Under the new Article of the said Ordinance, the contractor may retain copyrights in these works produced in the government-sponsored or contracted projects.

We understand that with regard to these works, all rights prescribed in the Copyright Act (excluding the rights prescribed in Articles 18 to 20 of the Copyright Act that are personal and exclusive to the author (the contractor) from the time of creation of the work) will be covered. We would like to know whether our understanding is correct.