

enforcement should be achieved from the viewpoint of the balance between the patent right holder and a third party.

This article has been published in “*CHIZAI KANRI*” (Intellectual Property Management) Vol. 50, No. 7, pp.987-1007, 2000.

---

## Background and Present State of Business Method Patents

Multimedia & Software Committee

In this article, the background and present state of business method patents that are lately attracting much attention are discussed, and the challenges that the patent system currently faces or will face in the future are explained in both general and specific terms. As a background to the current development, there is the booming popularity of the electronic commerce and the change in the styles of businesses caused thereby. There exist problems on the patent systems that have dissimilarities as well as similarities in the trilateral countries, US, Europe and Japan. For example, while a useful, concrete and tangible result is demanded for the validity in US, the use of hardware and a technical effect are demanded in Japan. Also, there are some differences in the criteria for the inventive step, such that non-obviousness is discussed in US, but in Japan, an invention is deemed to have no inventive step when it is a diversion from another field. However, there are some commonalities in the attitudes of the trilateral patent offices that they all require a patent subject matter to have a technical aspect, and that they reject those of mere ideas.

Furthermore, there are issues relating to the examination practices (criteria for determining patentability), prior art search and accumulation of examination results etc. for business method patents in US and Japan. Since in the future, late patent applications will be handled as public known references, the determination of novelty and inventive step is expected to be facilitated. The issues of infringement in business method patents are complex, and there are many problems that must be addressed in the future, such as those issues involving the principle of territoriality. The trilateral countries are urged to establish a system to collect, share and publish prior art documents, and are expected to construct adequate patenting systems through further developing the trilateral joint search project etc.

This article has been published in “*CHIZAI KANRI*” (Intellectual Property Management) Vol. 50, No. 9, pp.1333-1341, 2000.