

As a result of the study, it has become evident that, as the current trend, the prior user's rights are found in a good percentage of the recent trials, and determination on "commercial preparation" is flexibly made, and with regard to the "modification of working mode/scope", the prior user's right was found to be granted for a working mode modified within "an extent in which the identity is kept", "an extent of the same technical idea", and "an extent in which the identity with more specific concept is kept".

This paper also considers judgments made by courts on evidence for proof of the prior user's rights referred in these decisions, and points out the importance of providing three types of materials that are "drawings", "slips or checks etc." and "an actual article" as the evidence for proof of the prior user's right, and discusses the manner of preparation and preservation of relevant documents and other materials necessary for claiming the prior user's right, which is the matter patent practitioners now have to keep in mind.

Furthermore, the paper also includes the result of a survey conducted over a number of enterprises in effort to see whether they would claim their prior user's right in their negotiations or lawsuits, how they would prepare and preserve their evidence and so forth, and summarizes matters to be noted in preserving the evidence under the potential intention to use the evidence in an argument based on the prior user's right or a claim therefor.

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Exploiting Intellectual Property Through Company Management — New method of managing IP by stressing knowledge management —

The First Subcommittee,
Intellectual Property Management Committee

With the advancement from an information-oriented society to a knowledge society, the environment for business operations is drastically changing. In recent years, various new business methods have been proposed and employed to adapt to the knowledge society, and they have demonstrated their effectiveness. But what allows businesses to continue to exist and develop is, ultimately, the exploitation of knowledge. From this viewpoint, any business method may be seen as a tool for exploiting this knowledge. Since intellectual properties comprise one part of the important knowledge that companies possess, the way of thinking of these new business methods should of course be applied also to the exploitation of those intellectual properties.

Among a wide variety of business methods, this article selects for discussion "knowledge management" as a process method for exploiting intellectual properties in businesses and "EVA, MVA" as a means for assessing the degree of contribution of intellectual properties in businesses. It first summarizes what they are, and then explains the visions of companies and the position their intellectual property strategies occupy in relation to these visions. It presents four representative examples of intellectual property strategies, and for each of the examples, discusses specific cases of intellectual property management that implement the knowledge management method, and methods for assessing degree of contribution that uses EVA and MVA. In conclusion, the article proposes the following three suggestions: (1) provide an explicit vision of a company with regard to the exploitation of its knowledge, and develop an intellectual property strategy based on that vision; (2) introduce the knowledge management method in implementing the intellectual property strategy and so reorganize the company's intellectual property

management system; and (3) provide clear indices that indicate the state of utilization of its intellectual properties.

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Study of US Design Patents for Partial Designs

Design Committee

With the introduction of a partial design system in 1999, for the first time, protection was provided in Japan for partial designs (“designs-in-part”). However, in the United States, although there exists no independent system specifically for designs as in Japan, protection of partial designs (“portion of design”) as a type of design protection under the Patent Law started much earlier than in Japan.

In this situation, where there are major differences in design protection methods between the U.S. and Japan, it is difficult to obtain effective design rights in the United States through the use alone of know-how fostered in Japan regarding partial design applications.

To gain an understanding regarding partial design protection within the United States, it is first indispensable to foster that understanding through a comparison of partial design protection in the United States with the Japanese design system.

The present report provides a detailed investigation regarding similarities and differences between the Japanese and American systems. In addition, an analysis is made of actual partial design registration cases in the United States, and statements are made from a system user’s perspective concerning application methods for optimal partial designs in the U.S.

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