

## Issues Regarding the Current Copyright System and Copyright Disputes in a Network Environment

Digital Contents Committee

When utilizing digital content and other works through networks, it is necessary to pay attention to provisions under the Copyright Law concerning each right, restrictions on rights and information on right management. On the other hand, when a copyright infringement occurs it is necessary for infringed to make an assertion and give proof in relation to the relevant copyright holder, copyrightability and the act of infringement they demand injunction, and it is necessary for infringed to make an assertion and give proof in relation to the existence of tort when demanding compensation for damages. The usual means of defense against such assertion and proof are to claim that the suspected infringer has a license or that the assertion violates restrictive provisions under the Copyright Law or falls under abuse of right. With respect to providers' liability for the case where information infringing a copyright is being distributed through networks, their liability concerning measures to prevent transmission and disclosure of information about senders is limited by the Law on Limiting Service Providers Liability. Useful judicial precedents when considering the copyright system in a network environment are cases of infringement by P2P file sharing, discussions regarding links on websites and temporary copies, and cases relating to functional works such as databases and programs. This report introduces these judicial precedents and describes problems and other matters.

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## Examination of the Status of "Statutory Invention" in Data Structure Inventions

Software Committee

According to the current Examination Guidelines for Computer Software-related Inventions (CS Examination Guidelines), the question of whether or not a data structure invention has the status of a statutory invention is decided according to the determination standards for computer program inventions. However, it is not necessarily clear what specific types of "data structures" correspond to inventions under the Patent Law.

If the "basic concept of computer software-related inventions" were strictly applied to "data having a structure" or a "data structure," the patent claims would have to include the information processing by a program, although the "data structure" is the object of the processing by the program. Thus, there could be cases where data structure inventions that—unlike computer programs—cannot become the subject that conducts the processing may not receive appropriate protection.

This paper examines how the question of whether or not a "data structure" corresponds to an invention under the Patent Law, that is, the "status of a statutory invention" is determined when the CS

Examination Guidelines are strictly applied, as well as what kinds of determination standards and practices are desirable for appropriately protecting data structures.

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## Revision of Section 35 of the Japanese Patent Law and Corporate Responses Thereto

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While lawsuits are being filed frequently over remuneration for assignment of employees' inventions to companies and court decisions requiring companies to pay unexpectedly large amount of remuneration are being made one after another, Section 35 of the Japanese Patent Law was reviewed and its revision was incorporated in the “bill for partial revision of the Japanese Patent Law and other laws to expedite patent examination.” The bill has become law at the 159th ordinary session of the Diet. Revised Section 35 of the Japanese Patent Law will come into force on April 1, 2005.

The purpose of the revision of Section 35 of the Japanese Patent Law is to show the highest possible respect to voluntary agreements for deciding reasonable remuneration made between employers and employees, in response to the Supreme Court decision on the Olympus case holding that “companies cannot unilaterally decide remuneration for assignment of employees' inventions to themselves and ultimately the court will determine the remuneration.” Specifically, Section 35 after the revision attaches importance to the circumstance of consultation between employers and employees and other procedures in formulating the standard for deciding remuneration, and provides that payment of remuneration decided through such process will be respected as long as it is reasonable.

In response to this revision, it has become an urgent task for companies to review company regulations for the handling of employees' inventions. Companies are thus considering and putting into practice necessary revisions while referring to the “Collection of Example Procedures” issued by the Japan Patent Office and the “Guidelines based on the New Employee's Invention System” prepared by JIPA for members. This report cites major issues to be taken into account when establishing and putting into practice company regulations and shows specific views, as well as mentioning appropriate ways of dealing with employees' inventions in Japan in the future.

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