

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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