

# JAPAN INTELLECTUAL PROPERTY ASSOCIATION

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September 26th ,2024

The Honorable Katherine K. Vidal,  
Under Secretary of Commerce for Intellectual Property  
Director of the United States Patent and Trademark Office  
600 Dulany Street  
Alexandria, VA 22314

**Re: Experimental Use Exception Request for Comments  
[Docket No.: PTO-C-2024-0023]**

Dear Director Vidal:

We, the Japan Intellectual Property Association "JIPA", are a private user organization with about 1,000 major Japanese companies as members. When appropriate opportunities arise, we offer our opinions on the intellectual property system of other countries and make recommendations for more effective implementation of the systems.

Having learned a request for comment on Experimental Use Exception PTO-C-2024-0023, we would like to offer our opinions for your consideration. I am attaching the opinion as follows.

Your consideration on our opinions would be greatly appreciated.

Sincerely yours,



Tomonori Okuwaki  
Managing Director  
Japan Intellectual Property Association

## **Attachment**

### **Comments on Experimental Use Exception Request for Comments [Docket No.: PTO–C–2024–0023]**

Regarding the proposed legislation on the experimental use exception under the current public comment process, JIPA believes that such legislation is unnecessary. The patent system is designed to encourage technological progress and innovation by granting inventors exclusive rights for a certain period as a reward for disclosing their superior technology. Therefore, it is crucial to strike a balance between the public's use of technology and the protection provided by the patent system. We believe that the new legislation concerning the experimental use exception could significantly impact this balance, potentially affecting both the promotion of technological progress and the protection of patent holders' rights.

In the United States, the experimental use exception has been established through several past legal cases, and some aspects have been codified into law (for example, the so-called Bolar provision; 35 U.S.C. § 271(e)(1)). Various industries have adapted to the current experimental use exception in the U.S. based on the relevant case law and codified statutes. We do not currently see any technological field that has been adversely affected to the extent that would necessitate new legislation. Additionally, since the required scope of the experimental use exception may vary across different industrial sectors, if the established scope were to be altered during discussions of new legislation, it could cause confusion in the research and development efforts of various industries. Therefore, JIPA believes that new legislation on the experimental use exception is unnecessary.

We respectfully request that the patent system continues to operate and maintain an appropriate balance between the use and protection of technology without unduly affecting the scope of the experimental use exception as established by existing case law and codified provisions.

Lastly, JIPA falls under the category of “(8) intellectual property organizations or associations.” We appreciate your consideration.

End