

<日本>



中小企業における知的財産権の役割

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近年、日本における従来の大企業を中心とした国内特許出願件数が伸び悩む中、特許庁は、特許料等の減免をはじめ、中小企業、スタートアップの知財活動を支援する取り組みに力を入れている。

その一環として、特許庁は、HPに中小企業向け情報を掲載し、知的財産制度の簡易な説明と共に、特許をはじめとする知的財産権の取得・活用の意義（効果）として、①有利な事業展開、②技術開発力の向上、③販売力の向上、④社内活性化を挙げている。

この点は、通常、知財部等の専門部署を社内に擁し、一定の制度理解および実務経験があることを前提とする大企業向けに作成されたものでないだけに、興味深い。

経験的に、発明相談等を通じて接する中小企業の依頼人は、模倣防止（上記①）を出願依頼の表向き最大の理由としつつも、権利取得を取引先等とビジネスを円滑に進めるための一種のブランド（上記③）として捉える傾向がより大きいと感じる。

従業員の士気向上などの上記④も、組織の規模を考えると、重要な要素となり得ると考えるが、一代理人として、特に中小企業の方により着目していただきたいのは、上記②の観点（技術開発力の向上）である。

特許庁の上記HPは、上記②を、「自社技術の強みを見える化」および「競合者間における競争力の強化」と説明している。

概して、中小企業等においては、知的財産の観点から、他社の出願・権利取得状況を把握する以前に、自社の現在の状況を客観的に把握することについても、十分な人的資源を割くのが難しいという現実がある。

特に、最初の出願依頼の打診を契機として、先行技術等を調べ始めた段階で、

本格的なパテントマップの作製とまではいかなくとも、そうした状況が明るみとなるケースがあり、ときに、他所を通じた過去の権利取得についての問題点が見つかることもある。

< Japan >

Roles of intellectual property rights for small and medium-sized companies

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Recently, as the number of domestic patent applications filed predominantly by large companies stays stagnant in Japan, the Japan Patent Office or JPO has become focused on assisting small and medium-sized companies and start-ups in their intellectual property-related activities by making, for example, patent fee reduction or exemption applicable to them.

As part of such efforts, the JPO has started providing usable information to small and medium-sized companies through its web page (available in Japanese only : <https://www.jpo.go.jp/support/chusho/index.html>) which includes not only a brief explanation of the intellectual property law system but also benefits (advantageous results) to be gained from acquiring and exercising intellectual property rights : (a) advantageous business development, (b) expanding capacity for technological development, (c) boosting sales, and (d) internal revitalization (of a company).

Those benefits listed above seem to be interesting in that the web page is not directed to large companies which normally have a specialized department such as IP department and a certain understanding of the intellectual property law system and hands-on experience in it.

Empirically, clients from small and medium-sized companies to whom consultation on a new patent application is provided tend to aim at securing a sort of “brand” ((c) above) that could facilitate their business activities with business partners, rather than precluding imitation ((a) above) though this can officially be their principal reason for seeking a patent right.

It is understandable that improving morale among employees included in (d) above could be an important element for small and medium-sized companies in consideration of the size of their business, however in the eyes of an agent, what should be more focused on by them is “expanding capacity for technological development” as in (b) above.

The JPO’s web page explains about (b) above as “visualizing technical strengths of their own” and “enhancing competitiveness against their business rivals.”

Generally, for small and medium-sized companies, in reality, it is likely to be difficult to allocate enough human resources for grasping their own activities objectively from a perspective of intellectual property such as the content and status of ongoing applications and rights already acquired, much less for grasping their competitors'.

There is a case that such a situation is revealed when presearching prior-art after being approached about a possibility of representing them to file a new patent application, though this is far from a full-fledged patent mapping, and sometimes it happens that a problem with their past applications filed through a different channel is brought to light.