



ハーモナイゼーション？

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パリ条約に始まり、ニース協定、ロカルノ協定、特許協力条約 (PCT)、ストラスブール協定、マドリッド協定議定書、TRIPs 協定、商標法条約 (TMT)、ハーグ協定のジュネーブ改正協定、特許法条約 (PLT)、シンガポール条約 (STLT)、意匠法条約 (DIT) など、様々な条約が採択されてきました。これらの条約はすべて知的財産制度の国際調和に関する条約であるといえます。

パリ条約の採択から 100 年以上が経過し、これまで発効されてきた諸条約により、各国の知的財産制度に国際調和がもたらされたかのように思われます。しかしながら、実務に携わっていると、下記のような国ごとの違いがあるだけでなく、国ごとに自国の事情に合わせて制度が発展していることから、「知的財産制度の国際調和」と逆行する流れがあるともいえます。

(特許) ソフトウェア発明の取扱、図面データの取扱、進歩性判断、外国語書面出願制度の有無、維持金制度の有無、早期審査制度の有無 (PPH の実効性など)

(意匠) 部分意匠制度の有無、実体審査の有無、図面作成ルール (線の太さ、陰影、稜線の取扱など)、願書の記載事項 (物品の説明、意匠の説明)

(商標) 指定商品・指定役務の明確さ、指定商品・指定役務の類否判断

(全般) 権利期間、審査官インタビュー制度の有無や程度

このように、国ごとに制度や運用が異なっているにも関わらず、デジタル化の流れが進んだことによるのか、各国の最新の制度や運用を説明した書籍等が出回りにくくなっており、各国の最新の制度や運用の情報を入手しにくくなってきていると感じます。

そこで、各国の最新の制度や運用を入手するために、現地実務に精通した各国の弁理士と提携することが今まで以上に重要になってきているといえるでしょう。

Harmonization?

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Beginning with the Paris Convention, a number of treaties have been adopted over time, including the Nice Agreement, the Locarno Agreement, the Patent Cooperation Treaty (PCT), the Strasbourg Agreement, the Madrid Protocol, the TRIPs Agreement, the Trademark Law Treaty (TLT), the Geneva Act of the Hague Agreement, the Patent Law Treaty (PLT), the Singapore Treaty (STLT), and the Design Law Treaty (DLT). All of these can be regarded as treaties concerning the international harmonization of intellectual property systems.

More than a century has passed since the adoption of the Paris Convention, and it may appear that international harmonization of national intellectual property systems has been achieved through these various treaties. However, in practical work, one encounters not only differences among countries as described below, but also the fact that each system has evolved to reflect national circumstances. Thus, there are trends that could be seen as running counter to “international harmonization of intellectual property systems.”

(Patents) – Treatment of software-related inventions ; handling of drawing data ; assessment of inventive step ; foreign-language filings ; maintenance fee systems ; Accelerated examination systems (including the effectiveness of PPH programs).

(Designs) – A partial design system ; substantive examination ; drawing rules (line thickness, shading, treatment of ridgelines, etc.) ; required items in the application form (explanations of articles and designs).

(Trademarks) – Clarity of designated goods and services ; criteria for determining similarity of designated goods and services.

(General) – Duration of rights ; examiner interview systems.

Despite these national differences in systems and practices, perhaps due to the growing trend toward digitalization, books and other resources explaining the latest systems and practices of each country have become less available. As a result, it is becoming increasingly difficult to obtain up-to-date information on national IP systems and practices.

Accordingly, it can be said that collaboration with patent attorneys in each country who are well-versed in local practice is becoming more important than ever for obtaining accurate and current information on each country’s systems and operations.