

(By Courier and FAX)

August 7, 2017

To: Mr. Rajiv Aggarwal
Joint Secretary of the Department of Industrial Policy and Promotion
Ministry of Commerce and Industry
Government of India

From: Hideaki Togawa
Special Committee for Issues on Intellectual
Property Rights, Chair of the Committee
Japan Machinery Center for Trade and Investment

**Requests for introduction of PPH and
relaxation of requirement for early examination**

Japan Machinery Center for Trade and Investment (the Center) is a non-profit organization established in 1952 for sound development of machinery trades and investments. The members are 241 companies, large and medium sized, making exports and direct investments overseas of a broad range of machinery products, in the areas of manufacturing, trading and engineering of electronic or electric equipment, office machineries and industrial machineries.

Special Committee for Issues on Intellectual Property Rights of the Center has studied the systems of intellectual property rights in Japan and foreign countries, and has a strong interest in the patent system of India.

In recent years, India has continued its remarkable economic development, and it is regarded as a promising business destination for companies in the Japanese machinery industry.

Although the number of patent applications in the electrical, electronic and mechanical fields from Japan to India has been increasing, the waiting period for examination has been prolonged along with it, which is a serious problem for companies in the Japanese machinery industry.

According to the Japan Patent Office (the JPO), the JPO visited India

in May 2017 to conclude an action plan to expand cooperative relationships with India in the field of intellectual property, and the JPO asked for introduction of PPH and relaxation of requirement for early examination by talks with Mr. Rajiv Aggarwal, the Joint Secretary of the Department of Industrial Policy and Promotion (DIPP) and Mr. O P Gupta, the Controller General of Patents, Designs and Trade Marks (CGPDTM). At the meeting, they gave kind suggestions that they will seriously consider the early examination if we requested specific concrete requirements to be desired.

In recent years, India has been making policy changes in the direction of emphasizing intellectual property, and making efforts to promote examination such as increasing the number of examiners greatly, amending patent rules and introducing an early examination system, but we think that there is room for improvement.

Some of our member companies have a considerable number of pending application in India, and some companies have trouble implementing the invention in India.

Taking the above into consideration, we hereby request the introduction of PPH and relaxation of requirements for early examination as follows:

1. Regarding introduction of PPH

(1) Advantages of introduction of PPH

With the introduction of PPH, it will be possible to mutually use the results of the prior art investigation and the examination results with the International Searching Authority and patent offices in each countries, so we believe that the burden of examination by the Indian Patent Office can be reduced.

In addition, it is possible to early grant a patent right for an application with a high possibility of meeting the patent requirements by reviewing using the results of the prior art investigation and the examination result of many countries, so we believe that the stabilizing and reliability of a patent right in India can be improved.

Furthermore, early acquisition of stable patents is a great benefit for applicants as well.

(2) Requests for introduction of PPH

We request the introduction of PPH between India and Japan and PCT-PPH not requiring designation of India to International Searching Authority or International Preliminary Examining Authority.

2. Regarding relaxation of requirements for early examination

(1) Problems of current early examination system

The current early examination system in India is required to satisfy the requirement of (a) an application by a start-up company, or (b) an international application based on PCT and designation of India to International Searching Authority or International Preliminary Examining Authority.

However, with regard to requirement (a), there is almost no possibility that companies outside India will meet the requirement of “start-up company”. Regarding requirement (b), Japanese companies need to file PCT in English or Hindi to the Indian Patent Office, and we think that hurdle is higher than PCT application to Japanese Patent Office for Japanese companies. In sum, the current early examination system in India is difficult for Japanese companies to use.

(2) Requests regarding early examination system

(i) If it falls under any of the following, it is requested that it be subject to early examination:

- A) When the applicant, the assignee or the licensee has begun to implement the invention.
- B) The applicant, the assignee or the licensee has a specific schedule to implement the invention.
- C) A third party has implemented the invention.

(ii) We would like to clarify the period until the grant of a patent right in the case of using the early examination system in patent rules or operations.

Very truly
yours,

A handwritten signature in black ink, appearing to read 'Makoto Endo'.

Makoto
Endo

BLJ LAW OFFICE

on behalf of

Japan Machinery Center for Trade and Investment