



SHIGA
INTERNATIONAL
PATENT
OFFICE
JAPAN

SHIGA IP NEWS

Volume 59 December 2020

IN THIS ISSUE

- ◆ **Survey on Start-ups by the Fair Trade Commission - About 15% of start-ups suffered unfavorable treatment -**
- ◆ **Japanese Companies Lead the World in the Number of Applications for Battery Technology**
- ◆ **On-site Investigation by Experts**
- ◆ **Statistics on Customs Seizures in the First Half of 2020**

Survey on Start-ups by the Fair Trade Commission - About 15% of start-ups suffered unfavorable treatment -

The Fair Trade Commission (FTC) has released an interim report on a survey of business conditions among start-ups and major companies.

According to the report, approximately 15% of start-ups experienced some form of “unjust or unreasonable terms” over intellectual property and technical knowledge, and 75% of those startups claimed that they were forced to accept those unfair terms due to worries about possible negative impacts on their future business relationships.

A hearing on the survey by the FTC clearly shows the actual conditions in which some start-ups were forced to make unfavorable contracts with large companies. In the survey, some start-ups revealed conditions such as: “a partner company disclosed our own important data including algorithms to other companies” and “the contract contained clauses in favor of major companies, requesting that only the start-up is to disclose confidential information.”

Large companies that take unfair advantage of start-ups while using their own advantageous position could be subject to the “Abuse of Superior Bargaining Position” clause as stipulated in the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade. The FTC is planning to continue with a more detailed survey.

Examples of Unjust or Unreasonable Terms

- Non-disclosure Agreement (NDA)
- Proof of concept (PoC) contract: Although the start-up conducted a PoC beyond the coverage of an original contract, the major company (the partner company) did not pay for the PoC.
- Joint research agreement: The terms and conditions of the agreement state that IP rights belong to the major company. The major company filed a patent application for technologies owned by the start-up without their permission.
- Licensing contract: The major company insisted that the start-up make an exclusive contract for manufacturing and sales which would disadvantage the start-up.

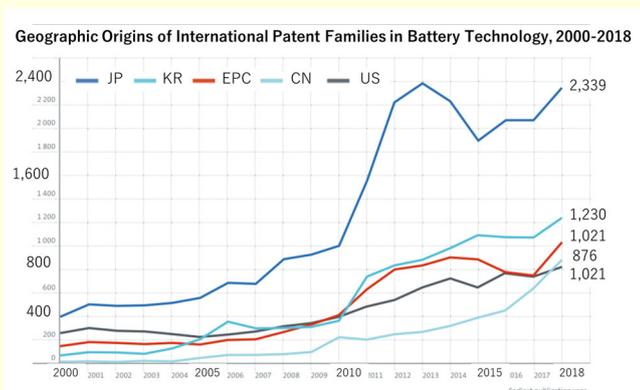
Future Actions to Be Taken by the FTC

- To determine if the issues revealed by the survey violate any of the terms of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade in order to ensure an environment in which start-ups are able to compete fairly and freely.
- To conduct a further hearing on the survey and compile a report of the fact-finding survey that would summarize an assessment of the issues from the viewpoint of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade.

Japanese Companies Lead the World in the Number of Applications for Battery Technology

On September 22, 2020, the European Patent Office (EPO) and the International Energy Agency (IEA) announced a joint study titled "Innovation in batteries and electricity storage – A global analysis based on patent data". The study shows that the number of patent applications for battery technology is increasing every year, and a third of them are filed by Japanese companies, indicating that Japanese companies are leading the world in this field.

In 2018, more than 6,000 new international patent families for battery and other energy storage technologies were filed, which represents a nearly seven-fold increase from 2010. The study summarizes that the growth reflects the important role of energy storage capacity in the transition to clean energy technologies. According to the study, 2,339 patent families (about a third of the applications in 2018) came from Japan, followed by South Korea with 1,230 families. Japan leads the world, having 41% of the world's inventors involved in the relevant patent applications filed in 2014-2018. The study highlights that "Japan was already paving the way worldwide in the 2000s, but further reinforced its lead at the turn of the last decade".



Breaking down the number of patent applications by company, seven of the top ten tiers are based in Japan. The rankings are as follows:

Rank	Company Name	Number of Cases
1	Samsung (KR)	4,787
2	Panasonic (JP)	4,046
3	LG Electronics (KR)	2,999
4	Toyota (JP)	2,564
5	Bosch (DE)	1,539
6	Hitachi (JP)	1,208
7	Sony (JP)	1,096
8	NEC (JP)	800
9	Nissan (JP)	778
10	TOSHIBA (JP)	730

In recent years, the number of patent applications for batteries, which are essential for the popularization of electric vehicles (EVs) and renewable energies, has been growing. International competition in battery development has become increasingly fierce. The number of patent applications for batteries continued to grow rapidly from 2005 to 2018 with an average annual growth rate of 14%, which is four times higher than the average for all technology fields. This indicates that batteries are being developed at an exponential rate compared with other technologies. However, the large number of patent applications for batteries filed by Japanese companies has not been directly linked to the expansion of the domestic EV market; a comparison of EV sales in 2019 shows that 1.22 million EVs were sold in China, compared to just 40,000 in Japan.

[Reference]

EPO-IEA study: rapid rise in battery innovation playing key role in clean energy transition

<https://www.epo.org/news-events/news/2020/20200922.html>

On-site Investigation by Experts

An inspection system was established and came into force on October 1, 2020, in accordance with revisions to the Patent Law in 2019, where most of the revisions came into force on April 1, 2019. Under the newly implemented inspection system, as a way to collect evidence for a patent infringement trial, the Court designates technical experts impartial to both the plaintiff (patentee) and the defendant (alleged infringer) and allows them to enter the offices and factories of the alleged infringer in order to conduct an inspection which is necessary for proving patent infringement. The experts then submit an inspection report to the Court.

Evidence collection resulting from on-site investigations enables patent holders to easily obtain evidence in cases where infringement cannot be easily determined due to difficulties in collecting evidence, such as computer programs, production methods, etc. which are not easily accessible for any one party even by taking a product apart, B2B products that are rarely on the consumer market, or in cases where the evidence cannot be removed such as large-scale factory equipment. In such cases, patent holders were unable to obtain evidence.

Upon request by the patent holder, the Court issues an order of inspection if the Court finds that all of the following requirements are satisfied.

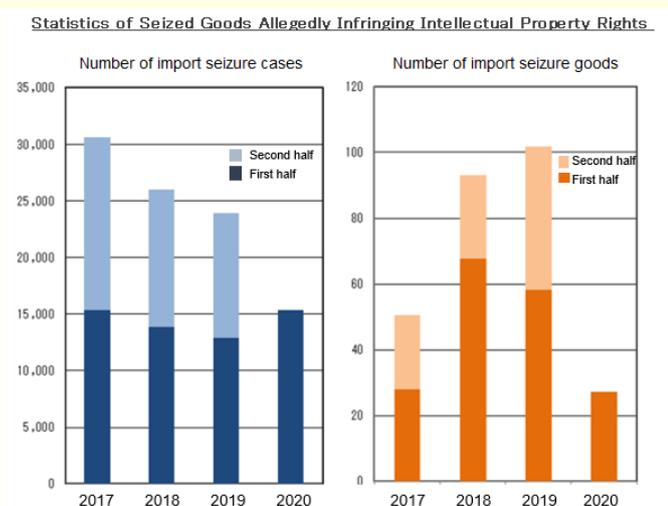
- There is a need to prove an act of infringement: Necessity
- There is a probability of infringement: Probability
- Other means for adequate evidence collection are unavailable: Replaceability
- Excessive burden due to the inspection on the alleged infringer can be avoided: Appropriateness

The following measures to protect confidentiality are also introduced.

- Motion by an inspected party to challenge appointment of an expert
- Inking out of confidential information on reports
- Criminal penalties for experts who leak confidential information

Statistics on Customs Seizures in the First Half of 2020

The Ministry of Finance has announced seizure statistics at Japan Customs nationwide for items that allegedly infringed intellectual property rights in the first half of 2020. The number of import seizure cases was 15,344 cases (up 18.7% compared to the previous year), reaching over 15,000 cases for the first time in the last three years. The number of import seizure goods was 272,567 which is down 53.3% from the previous year. Although the number of seized import goods has decreased, the number of import seizure cases remained at a high level.



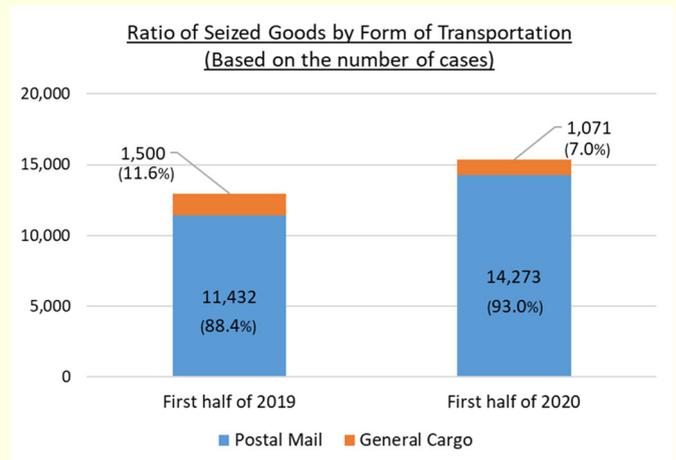
[Reference]

“Statistics of seized goods allegedly infringing intellectual property rights in the first half of 2020”

https://www.mof.go.jp/customs_tariff/trade/safe_society/

chiteki/cy2020_1/20200911a.htm (Ministry of Finance, Japan) Chart processed by Shiga International Patent Office (Japanese Website)

Taking a look at statistics on import injunction cases by form of transportation, the number of cases via general cargo slightly decreased whereas the number of cases via postal mail has increased. This shows that importers, including private importers, handled imports in smaller lots rather than in big lots.



[Reference]

“Ratio of seized goods by form of transportation (based on number of cases)”

https://www.mof.go.jp/customs_tariff/trade/safe_society/chiteki/cy2020_1/20200911a.htm (Ministry of Finance, Japan) Chart processed by Shiga International Patent Office (Japanese website)

The majority of import seizure cases by product were counterfeit goods of luxury brands infringing trademarks (14,990 cases in total). This accounts for 97.4% of the total number of import seizure goods (up 19.2% from the previous year). Subsequently, the number of cases of counterfeit character goods infringing copyrights was 218 accounting for 1.4% of the total number of import seizure cases (up 0.5% from the previous year). In addition, in terms of the number of import seizure goods, trademark infringement reached 187,129 items, accounting for 68.7% of the total number of import seizure goods (down 63.6% from the previous year). That trend remains unchanged; however, it is worth noting that the number of import seizure goods with patent infringement of grip stands used for mobile phones reached 31,142 items which accounts for 11.4% of the total number of import seizure goods (up 723.4% from the previous year).