

7 Desirable System Concerning Licenses and Right to Obtain a Patent

In recent years, it has become essential to effectively exploit intellectual property, including patents, in order to promote innovation and strengthen the industrial competitiveness of Japan. In such circumstances, a Fiscal 2008 JPO Study Report on the Issues of the Industrial Property System, titled “Further Exploitation of Intellectual Properties,” put into shape a direction recognizing that it is reasonable to introduce the system of automatic perfection as a perfection system for licenses, to establish a new monopolistic license system, and to permit the establishment of a pledge on the right to obtain a patent, from the perspective of protection of licensees and increasing needs for early exploitation from the stage of filing a patent application.

In this research and study, we conducted questionnaire and interview surveys in Japan as well as overseas surveys (the United States, Germany, the United Kingdom, France, China, and South Korea) on these matters. We thereby conducted surveys and analysis on needs in Japan as well as from the perspective of harmonization of systems with other countries.

I Introduction

1 Background and purpose of this research and study

In recent years, it has become essential to effectively exploit intellectual property, including patents, in order to promote innovation and strengthen the industrial competitiveness of Japan. In particular, the situations in which a patent is exploited through licensing are expected to increase due to the future progress of open innovation. In addition, the economic value of the right to obtain a patent is increasing, and there is the increasing need for early exploitation from the stage of filing a patent application. Under such circumstances, a research and study titled “Further Exploitation of Intellectual Properties” (hereinafter called “FY2008 Study”) was conducted in fiscal 2008, against a backdrop of the awareness of the problem that it is necessary to review the system concerning licenses and the right to obtain a patent.

The FY2008 Study put into shape a direction of the review of the system concerning licenses and the right to obtain a patent as follows: (i) It is reasonable to introduce a system under which a non-exclusive licensee is entitled to assert his/her non-exclusive license against third parties, as long as the non-exclusive licensee can prove the existence of a license agreement, even if the non-exclusive license is unregistered (system of automatic perfection); (ii) It is reasonable to abolish the current exclusive license system and establish a new monopolistic license system that grants the right to request an injunction, etc.

against third parties without authority to a certain extent, even if the license is not registered with the Japan Patent Office (JPO); (iii) It is reasonable to permit the establishment of a pledge on the right to obtain a patent for which an application is pending, which is prohibited under the current system.

In this regard, it is necessary to more accurately understand the matters pointed out concerning the issues related to the current system, which served as a premise of discussion, as well as needs and problems in terms of practice, in introducing the system of automatic perfection, establishing a new monopolistic license system, and permitting the establishment of a pledge. In addition, it is necessary to conduct further survey and analysis on the systems of other countries in order to promote harmonization of systems with other countries.

Consequently, this research and study was conducted through survey and analysis of matters concerning licensing and the right to obtain a patent, including the points at issue that were newly pointed out in the FY2008 Study, with the aim of contributing to discussion on a desirable system concerning licenses and the right to obtain a patent in Japan.

2 Method of this research and study

In this research and study, we conducted questionnaire and interview surveys in Japan and overseas with regard to (i) perfection of a license, (ii) monopolistic license, and (iii) early exploitation of the right to obtain a patent, and

carried out analysis and held discussions based on the results of those surveys. Incidentally, overseas questionnaire and interview surveys covered the United States, Germany, the United Kingdom, France, China, and South Korea.

II Perfection of a License

1 Introduction

Based on the awareness of problems concerning the current registration system, FY2008 Study concluded that it was reasonable to introduce the system of automatic perfection, as a system that enables appropriate protection of non-exclusive licenses and is in harmony with the systems of other countries.

In introducing the system of automatic perfection, it is necessary to conduct further survey and analysis on the matters pointed out concerning the issues related to the registration-required perfection system, which served as a premise of discussion, and the systems of perfection of a license, etc. of other countries.

2 Outline of the current system

(1) Registration-required perfection system

A non-exclusive license that has been registered with the JPO can be asserted against third parties, including a transferee of a relevant patent right (Article 99(1) of the Patent Act).

In addition, in the case where a licensor went bankrupt, if a relevant non-exclusive license had been registered, the right of the licensor's bankruptcy trustee to cancel a license agreement concerning the non-exclusive license would be restricted (Article 56(1) of the Bankruptcy Act).

Regarding the registration of a non-exclusive license, there are the non-exclusive license registration system, under which non-exclusive licenses are individually registered in units of patent right, and the specified non-exclusive license registration system, under which non-exclusive licenses are registered in a comprehensive manner in units of license agreement.

(2) Recent legal revision concerning the registration system

Through revision of the Act on Special Measures Concerning Industrial Revitalization and Innovation of Industrial Activities in 2007, the specified non-exclusive license registration

system was established. The system enables non-exclusive licenses that have been granted based on a comprehensive license agreement to be registered collectively in units of license agreement.

In addition, through revision of the Patent Act in 2008, a system to restrict disclosure to the public was introduced with regard to the names of licensees and the scope of licenses, which companies, etc. have a strong need to keep secret.

3 Discussion concerning the review of the registration system

(1) Indication of the issues related to the registration-required perfection system

The following actual practices have been pointed out as the issues related to the registration-required perfection system: (i) It is difficult to register non-exclusive licenses because in practice, hundreds or thousands of patent rights are often licensed in batches; (ii) The registration rate is extremely low; (iii) There are established common practices for which registration is not a precondition, for example, the practice in which a person who intends to receive transfer of a patent right exercises due diligence with regard to the existence and content of relevant licenses before transaction; (iv) Those who exercise patent rights have been diversifying due to new entry of overseas enterprises that acquire Japanese companies.

(2) Direction of measures

The FY2008 Study proposed the system of automatic perfection (i) in view of actual practices, and (ii) as a system that is in harmony with the systems of other countries and is highly usable. Under the system of automatic perfection, a non-exclusive licensee is entitled to assert the non-exclusive license against third parties as long as he/she can prove the existence of a license agreement, even if the non-exclusive license is unregistered.

In introducing the system of automatic perfection, it is necessary to conduct further survey and analysis on the matters pointed out concerning the issues related to the registration-required perfection system, which served as a premise of discussion, as well as the system of perfection of a license, etc. in other countries. Moreover, as the FY2008 Study pointed out that "Further discussion would be necessary with regard to legal relationship in the case where a

non-exclusive licensee is entitled to assert the non-exclusive license to third parties,” it is necessary to organize this point.

4 Survey, analysis and discussion in introducing the system of automatic perfection

(1) Difficulty in using the registration system

(i) Results of the questionnaire survey in Japan

The questionnaire survey in Japan covered (i) reasons for not having registered a non-exclusive license, (ii) reasons for having difficulty in registering a non-exclusive license, (iii) effects of the recent reform of the registration system, and (iv) reasons for still having difficulty in registration in practice.

As a result of asking those who have not registered a non-exclusive license obtained from Japanese company, etc. about reasons for not having registered, 24.0% answered “4. It is disadvantageous or difficult to register.”

As a result of asking those who gave the aforementioned answer as reasons for not having registered about more specific reasons, 87.0% answered “2. The existence of an agreement will be disclosed to the public,” 82.6% answered “3. The content of an agreement (the name of the licensee, the scope of the non-exclusive license, etc.) will be disclosed to the public,” and 37.0% answered “1. Registration requires efforts and costs.”

(ii) Results of the interview survey in Japan

The interview survey in Japan covered (i) reasons for not having registered a non-exclusive license and (ii) reasons for considering that no problem will occur even if a non-exclusive license is unregistered.

As a result of asking interviewees who have not registered a non-exclusive license obtained (eight enterprises) about their reasons, all of them answered that they considered that no particular problem would occur even if the non-exclusive license was unregistered.

As a result of asking them (eight enterprises) about the reasons of considering so, many of them answered the reasons that are based on the prospect that even if the patent right is transferred, the license agreement will be taken over in relation to the transferee or will be respected. For example, they answered that the licensor was a responsible partner (six out of the

eight enterprises), and that it was common practice to respect license agreements (five out of the eight enterprises).

(2) Low rate of use of the registration system

(i) Results of the questionnaire survey in Japan

The questionnaire survey in Japan covered (i) the registration rate of non-exclusive licenses, (ii) the existence of common practice of registering non-exclusive licenses, and so on.

As a result of asking those who answered that he/she had obtained non-exclusive licenses from a Japanese company, etc. about the registration rate of non-exclusive licenses obtained, 82.6% answered “a. 0%,” and 4.6% answered “b. Less than 1%.”

(ii) Results of the interview survey in Japan

The interview survey in Japan covered (i) the cases where a non-exclusive license is registered.”

As a result of asking interviewees who have registered a non-exclusive license obtained from Japanese company, etc. (six enterprises) about the cases where a non-exclusive license is registered, one cited the case where the licensor is assumed to transfer the patent right to a third party and another cited the case where the licensor could go bankrupt.

(3) Actual practice in terms of patent right transactions

(i) Results of the questionnaire survey in Japan

The questionnaire survey in Japan covered (i) preliminary search in receiving the transfer of a patent right, (ii) method of search before receiving the transfer of a patent, (iii) reasons for conducting search by due diligence, (iv) disclosure of information to transferor, (v) common practice of not requesting an injunction, etc. against a licensee who has not registered the relevant license, and (vi) whether there has been the case where an unexpected unregistered licensee existed.

As a result of asking those who have received the transfer of a patent right, etc. about actions they took in preparation for the situation in which a non-exclusive license has already been granted for the patent right, etc., 49.4% answered that they confirmed by some sort of search whether a non-exclusive license has been granted, that is, “4. Check on the registry and ask the

transferor (including due diligence).”

Moreover, when asked about the specifics of search, 52.6% answered “3. Confirm by checking on the registry and asking the transferor (including due diligence),” and 39.5% answered “2. Confirm only by asking the transferor (including due diligence).” Thus, out of those who conduct some sort of search when receiving the transfer of a patent right, etc., 92.1% make confirmation at least by asking the transferor (including due diligence).

(ii) Results of the interview survey in Japan

The interview survey in Japan covered (i) preliminary search in receiving the transfer of a patent right, (ii) the effects of due diligence, (iii) influence of the system of automatic perfection on the practice of due diligence, and (iv) safety of transactions if a system of automatic perfection is introduced.

As a result of asking interviewees who have received the transfer of a patent right (seven enterprises) about the method of confirming whether a non-exclusive license has been granted for the relevant patent right, all of the interviewees answered that they exercised some sort of due diligence.

(4) Survey and analysis from the perspective of harmonization of systems with other countries

We conducted surveys on the requirements for perfection of a license (the requirements that a licensee has to fulfill to assert a license against a transferee, in the case where the patentee transferred the relevant patent right to a third party after granting the license) and so on.

There is no requirement for perfection of a license in the United States and Germany (automatic perfection). In the United Kingdom and France, registration is required to assert against a transferee in good faith (system of perfection against a third party in bad faith). In South Korea, registration is required (registration-required perfection). For China, this point was not clear.

(5) Succession of a license agreement

This section discusses whether a license agreement itself is succeeded by a third party, such as a transferee of a patent right, in the case where a non-exclusive licensee is entitled to assert the non-exclusive license against third parties, including a transferee of the relevant patent right.

Examining the transfer of the status of lessor in a real property lease agreement, it is possible to think that the status of lessor is transferred since a lessee will not incur any disadvantage due to the transfer of the status of lessor in the case where the lessee is entitled to assert the right of lease of the real property against third parties.

Examining, based on this idea, whether a license agreement is succeeded in the case where a non-exclusive licensee is entitled to assert the non-exclusive license against third parties, a license agreement is an agreement which includes various claim-obligation relations, and when a license agreement is succeeded, the licensee may incur disadvantage in some cases while the licensee may not incur any disadvantage in other cases. Therefore, out of various claim-obligation relations that are included in the license agreement, claims and obligations which do not cause disadvantage to the licensor will be succeeded.

In discussion on the revision of the law of obligations of the Civil Code, transfer of the contractual status is now also under discussion. In examining this point at issue, it is also necessary to pay attention to the discussion on the transfer of the contractual status under the Civil Code.

III Monopolistic License

1 Introduction

Based on the awareness of problems, such as the low rate of use of the exclusive license system and insufficient protection based on monopolistic non-exclusive licenses, the FY2008 Study concluded that it was reasonable to establish a new monopolistic license system as a system that adapts to the actual practices and is in harmony with the systems of other countries, after abolishing the exclusive license system.

In establishing the new monopolistic license system, it is necessary to conduct further survey and analysis on the matters pointed out concerning the issues related to the current monopolistic license system, which served as the premise of discussion, and the monopolistic license systems of other countries.

2 Outline of the current system

There are two types of “monopolistic license,” which is granted only to a single licensee. Specifically, those are “exclusive license” under the Patent Act (Article 77(1) of the

Patent Act), and “monopolistic non-exclusive license” which is a non-exclusive license under the Patent Act (Article 78(1) of the Patent Act) but for which the parties to the agreement have agreed on the exclusivity of the license.

3 Discussion concerning the review of the monopolistic license system

(1) Matters pointed out concerning issues related to the monopolistic license system

Actual practices as follows are pointed out as issues related to the monopolistic license system: (i) In terms of practice, it is difficult to register exclusive licenses, and also, exclusive licenses for which registered matters are disclosed to the public have a negative effect; (ii) A monopolistic non-exclusive licensee is not entitled to request an injunction where a third party that is in a competitive relationship with the non-exclusive licensee works the relevant patented invention, nor is it even entitled to request an injunction against third parties lacking authority.

(2) Direction of measures

The FY2008 Study proposed the establishment of a new monopolistic license system after abolishing the exclusive license system. The study concluded as follows: It is reasonable that under the new monopolistic license system, a license becomes effective based on an agreement, and the licensee of an unregistered monopolistic license is also entitled to exercise right against those who work the relevant patent lacking authority, and the licensee of a registered monopolistic license is entitled to exercise rights against third parties that are in a competitive relationship against the licensee. In addition, the study also concluded that it was reasonable to minimize the registered and disclosed matters.

In establishing a new monopolistic license system, it is necessary to conduct further survey and analysis on the matters pointed out concerning the issues related to the current monopolistic license system, which served as the premise of discussion, and the monopolistic license systems of other countries. Moreover, the FY2008 Study pointed out “It is necessary to consider the advisability and possibility of giving a statutory effect that is effective to third parties to an agreement that restricts the exercise of right by a monopolistic licensee (so-called opposition

agreement);” therefore, it is necessary to sort out this point.

4 Survey, analysis and discussion in establishing a new monopolistic license system

(1) Status of use of the current monopolistic license system (exclusive license and monopolistic non-exclusive license), by type of business

(i) Results of the questionnaire survey in Japan

The questionnaire survey in Japan covered the status of use of the current exclusive license and monopolistic non-exclusive license systems, and analysis was conducted on the results thereof by type of business.

(2) Low rate of use of the exclusive license system

(i) Results of the questionnaire survey in Japan

The questionnaire survey in Japan covered (i) reasons for obtaining a monopolistic non-exclusive license instead of an exclusive license, (ii) reasons for granting a monopolistic non-exclusive license instead of an exclusive license, (iii) reasons for having difficulty in registering an exclusive license, (iv) the idea about the point that an exclusive license does not become effective without registration, and (v) the negative effects of disclosure of information concerning an exclusive license.

As a result of asking those who have used the current monopolistic license system (exclusive license and monopolistic non-exclusive license) about their thoughts about the point that an exclusive license does not become effective without registration, 40.5% answered “1. The system is hard to use because an exclusive license does not become effective without registration.”

As a result of asking those who have used the current monopolistic license system (exclusive license and monopolistic non-exclusive license) about their thoughts about the point that, for an exclusive license, all of the registered matters, including the content of the exclusive license, are disclosed to the public, while for a monopolistic non-exclusive license, the name of the licensee, the scope of working, etc. are not disclosed to the public and disclosed only to certain interested persons even if the license is registered, 30.1% answered “1. The system is

hard to use because the content of an exclusive license is disclosed to the public.”

(ii) **Results of the interview survey in Japan**

The interview survey in Japan covered (i) the points that should be improved with regard to exclusive license and (ii) thoughts about the registered and disclosed matters under the new monopolistic license system.

As a result of asking interviewees who use the monopolistic license system (nine enterprises) about the points that should be improved with regard to exclusive license, two of them cited the point that the registered matters for an exclusive license are disclosed to the public, and four of them answered that they saw no particular problem.

(3) Insufficient protection by monopolistic non-exclusive license

(i) **Results of the questionnaire survey in Japan**

The questionnaire survey in Japan covered (i) reasons for having received the establishment of an exclusive license, (ii) reasons for having established an exclusive license, and (iii) thoughts about the point that a monopolistic non-exclusive license cannot be asserted against third parties.

As a result of asking those who have used the current monopolistic license system (exclusive license and monopolistic non-exclusive license) about their thoughts about the point that a monopolistic non-exclusive licensee is not entitled to request an injunction even against those who work the relevant patent without authority and the point that where a patent right is transferred, a monopolistic non-exclusive licensee is not entitled to assert the monopolistic non-exclusive license against a new patentee, 24.2% answered “2. The system is hard to use because, in the case where a patent right has been transferred to a third party, the monopolistic non-exclusive licensee is not entitled to assert against a new patentee that he/she is entitled to work the patent in a monopolistic manner,” and 20.4% answered “1. The system is hard to use because a monopolistic non-exclusive licensee is not entitled to request an injunction even against those who work the relevant patent right lacking authority.”

(ii) **Results of the interview survey in Japan**

The interview survey in Japan covered (i) the points that should be improved with regard to

monopolistic non-exclusive license, (ii) thoughts about the right to request an injunction under the new monopolistic license system (from the standpoint of a patentee), and (iii) thoughts about the right to request an injunction under the new monopolistic license system (from the standpoint of a third party).

As a result of asking interviewees who use the monopolistic license system (nine enterprises) about the points that should be improved with regard to monopolistic non-exclusive license, two of them answered that it would be better if monopolistic non-exclusive licensees have the right to request an injunction, and four of them answered that they saw no particular problem.

(4) Survey and analysis from the perspective of harmonization of systems with other countries

We conducted a survey about the requirements for asserting the exclusivity of a license (in the case where a patentee transferred a patent right to a third party after granting a monopolistic license, the requirements that the monopolistic licensee has to fulfill to prohibit a transferee of the patent right to work the patent right by him/herself and to grant a license for the patent right to another person).

With regard to the requirements for asserting the exclusivity of a license, there is no particular requirement in the United States and Germany (automatic perfection). In the United Kingdom and France, registration is required to assert against a transferee in good faith (system of perfection against a third party in bad faith). In South Korea, registration is required (registration-required perfection). For China, this point was not clear.

(5) Opposition agreement

This section considers the advisability and possibility of giving an opposition agreement a statutory effect that is effective to third parties.

First, the effect of an opposition agreement that is effective to third parties is examined.

In this regard, an opposition agreement between a licensor and a licensee is fundamentally effective only between them, and it has no influence on the rights under substantive law in terms of the relationship between the licensee and a patent infringer. Therefore, the licensee is considered to be still able to file an infringement lawsuit against the patent infringer. In that case, it is not possible to say that the

opposition agreement is effective to third parties.

Then, in order to say that an opposition agreement is effective to third parties, it is necessary to ensure by an opposition agreement between a licensor and a licensee that no rights under substantive law will arise in terms of the relationship between the licensee and a patent infringer.

Next, the following compares advantages and disadvantages from the standpoint of licensor, licensee and patent infringer, respectively, in the case where an opposition agreement is recognized as effective to third parties.

In this regard, one of the advantages for licensor is the point that if an opposition agreement is recognized as effective to third parties, a licensor can avoid the risk that the relevant patent is determined to be invalid in an infringement lawsuit, which is against the licensor's intention, by making an opposition agreement with the licensee in the license agreement. On the other hand, one of the disadvantages for licensee is the point that if an opposition agreement is recognized as effective to third parties, the licensee will not be able to file an infringement lawsuit under substantive law and thus will not be able to eliminate infringement on his/her own if he/she makes an opposition agreement with the licensor.

Recognizing an opposition agreement as effective to third parties has possible advantages and disadvantages from the standpoint of licensor, licensee and patent infringer, respectively. Therefore it is necessary to examine whether to recognize an opposition agreement as effective to third parties, in light of which advantages and disadvantages should be counted more.

V Early Exploitation of the Right to Obtain a Patent

1 Introduction

The FY2008 Study concluded that it was reasonable to permit the establishment of a pledge on the right to obtain a patent, based on the awareness of the problem that there is increasing need for early exploitation from the stage of filing a patent application.

In permitting the establishment of a pledge and establishing the registration and public notice system, it is necessary to conduct further survey and analysis on the needs in terms of practice, which served as the premise of discussion, and

security interest, etc. on the right to obtain a patent in other countries.

2 Outline of the current system

Pledge, security by transfer and security by provisional registration are cited as security interests which may be established on intellectual property. Differently from the patent right, for the right to obtain a patent, the current system prohibits establishing a pledge thereon, nor is there a provisional registration system.

In addition, there is no means of registering and publicly notifying change in the right to obtain a patent after filing.

3 Discussion on early exploitation of the right to obtain a patent

(1) Matters pointed out regarding the prohibition of establishment of a pledge on the right to obtain a patent

There is no other way but to rely on security by transfer in order to offer the right to obtain a patent as security, because it is prohibited to establish a pledge on the right to obtain a patent.

(2) Matters pointed out regarding the non-existence of a system to register the right to obtain a patent

The following inconveniences caused by the non-existence of a system to register and publicly notify the right to obtain a patent after filing are pointed out: (i) It is not easy to surely confirm the conditions of a right, including the propriety of perfection; (ii) As there is no means of asserting restriction on disposition (attachment) against third parties, if the right to obtain a patent is disposed of contrary to an attachment order, the attaching creditor may be harmed.

(3) Direction of measures

Consequently, the FY2008 Study proposed to end prohibition on the establishment of a pledge on the right to obtain a patent after filing, and proposed the establishment of a registration and public notice system at the same time.

In permitting the establishment of a pledge and establishing a registration and public notice system, it is essential to conduct further survey and analysis on the needs in terms of practice and the systems of other countries. In addition, new burdens, such as registration license tax, may occur if a registration and public notice system is established for the right

to obtain a patent. Therefore, in this research and study, we consider whether it is possible to establish a requirement for asserting restriction on disposition of the right to obtain a patent against third parties, in the case where the establishment of a registration and public notice system is not assumed.

4 Survey, analysis and discussion on early exploitation of the right to obtain a patent

(1) Prohibition of establishment of a pledge on the right to obtain a patent

(i) Results of the questionnaire survey in Japan

The questionnaire survey in Japan covered (i) the existence of a security interest established on a patent right, (ii) the existence of a pledge established on a patent right, (ii) the existence of a security interest established on the right to obtain a patent after filing, (iv) whether they would want to use a pledge established on the right to obtain a patent after filing, and so on.

As a result of asking all respondents whether they would want to use a pledge that is established on a right for which an application is pending, even taking into account efforts and costs for registration that are expected to arise along with the establishment, if it is permitted to establish a pledge on a right for which an application is pending, 0.7% answered “1. Definitely want to use,” and 19.1% answered “2. Want to use if the occasion arises.” Those who want to use accounted for 19.8% in total.

In addition, according to counting by considering small and medium sized enterprises as the population (32 enterprises), 3.1% answered “1. Definitely want to use,” and 46.9% answered “2. Want to use if the occasion arises.” Those who want to use accounted for 50.0% in total.

(2) Survey and analysis from the perspective of harmonization of systems of other countries

We conducted a survey on whether there is a registration system concerning change in the right to obtain a patent.

The United States, Germany, the United Kingdom and France have a registration system concerning change in the right to obtain a patent. China and South Korea do not have a registration system concerning change in the right to obtain a

patent.

In addition, we conducted a survey on the effect of registration (whether registration is a requirement for asserting against third parties) of change in the right to obtain a patent, such as transfer, in countries that have a registration system concerning change in the right to obtain a patent.

Regarding transfer, registration is the requirement for asserting against third parties in the United States, the United Kingdom and France, while registration is not the requirement for asserting against third parties in Germany.

(3) Requirement for asserting restriction on disposition of the right to obtain a patent against third parties

This section considers whether it is possible to establish a requirement for asserting restriction on disposition of the right to obtain a patent against third parties, even where a registration and public notice system for the right to obtain a patent is not assumed.

First, considering requirement for asserting restriction on disposition of real property and general nominative claim against third parties, for real property, the requirement for asserting restriction on disposition against third parties is the same registration as the requirement for asserting transfer of real property against third parties (Article 177 of the Civil Code). For general nominative claim, court precedent indicates that relative merits between the transfer of a claim and an attachment order should be determined in the same manner as in the case of double transfer of a claim. In addition, regarding restriction on disposition of real property, a court clerk has the obligation to commission registration (Article 48(1) of the Civil Execution Act). For restriction on disposition of general nominative claim, an execution court has the obligation to serve an attachment order to a third party obligor (Article 145(3) of said Act). Therefore, for both real property and general nominative claim, there are arrangements to ensure that the requirement for asserting restriction on disposition against third parties is fulfilled without fail in the course of civil execution procedures.

Examining the requirement for asserting restriction on disposition of the right to obtain a patent against third parties in light of the above, under the Patent Act, a “notification” to the JPO is the requirement for the transfer of the right to obtain a patent to become effective (Article 34(4)

of the Patent Act). Therefore it is also possible to think that the requirement for asserting restriction on disposition of the right to obtain a patent against third parties is equivalent to a “notification” to the JPO. In that case, the possible requirement for asserting restriction on disposition of the right to obtain a patent against third parties is that (a) an attaching creditor gives a “notification” of restriction on disposition to the JPO, or that (b) the court gives a “notification” (or a notice or service equivalent thereto) of restriction on disposition to the JPO.

However, when employing the idea as above, it is necessary to pay attention to (a) whether it is possible to organize things in the manner that the requirement for asserting against third parties is fulfilled not by the obligatory act of the court but by the act of an attaching creditor him/herself, and to (b) whether it is possible to establish a new type of procedure, “notification” (or notice or service as that equivalent to “notification”) by the court, because such a procedure may become necessary.

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