

Research on Companies' Responses to the New Employee Invention System

I. Purpose of This Research

The Act Partially Amending the Patent Act, etc. (Act No. 55 of 2015) was approved and enacted on July 3, 2015, and was put into force on April 1, 2016. The Act, which includes provisions on the review of the employee invention system, aims to ensure companies' prompt implementation of IP strategies, while encouraging inventions.

Additionally, the House of Representatives and the House of Councillors made supplementary resolutions that the enforcement of this Act, such as the effects on incentives for employees, etc., should be surveyed and verified occasionally in light of the future changes in socioeconomic circumstances and that the Act should be reviewed as necessary.^{1 2}

Based on the supplementary resolutions, this research aims to clarify companies' responses to the new employee invention system, thereby preparing basic reference materials for the purposes of thoroughly disseminating the details of the amendment of the Act and for designing and planning consultation and assistance measures in relation to SMEs' efforts to develop their own employee invention rules, as well as basic reference materials to assist the verification of the operation of the new system.

II. Contents of This Research

1. Survey Methods

A questionnaire survey was conducted with 2,000 corporations (employers, etc.) and 7,000 natural persons (employees, etc.) nationwide. Responses were obtained from 834 corporations (388 large companies, 270 SMEs, 132 universities and public research institutes,³ and 44 others; response rate: 41.7%) and 1,958 employees, etc. (response rate: 28.0%).

After reviewing responses to the questionnaire, a hearing survey was conducted with 30 selected corporations (employers, etc.) for the purpose of ascertaining more detailed information and a more concrete understanding of backgrounds.

¹ Supplementary resolution on the draft Act Partially Amending the Patent Act, etc. (House of Representatives)
http://www.shugiin.go.jp/internet/itdb_rchome.nsf/html/rchome/Futai/keizaiBAEE6B873A1E2AE349257E57002371F7.htm
[Final access date: February 3, 2017]

² Supplementary resolution on the draft Act Partially Amending the Patent Act, etc. (House of Councillors)
http://www.sangiin.go.jp/japanese/gianjoho/ketsugi/189/f071_070201.pdf
[Final access date: March 2, 2017]

³ Universities and public research institutes are hereinafter collectively referred to as "universities, etc."

2. Survey Results

(1) Recognition of the Employee Invention System

Those who responded that they know of the alterations to the employee invention system through the 2015 amendment of the Act accounted for 88.8% of all respondents, while those who responded that they know of the guidelines set forth in Article 35, paragraph (6) of the Patent Act accounted for 75.4%.

(2) Rules concerning Vesting of Rights to Obtain Patents for Employee Inventions

Of the employers, etc. that responded that they have rules concerning the vesting of rights to obtain patents for employee inventions, 46.2% adopt the idea that rights are to be originally vested in employers, etc. and 49.9% adopt the idea that rights are to be originally vested in employees, etc.

By attribution, 55.4% of large companies and 52.1% of SMEs adopt the idea that rights are to be originally vested in employers, etc., outnumbering those adopting the idea that rights are to be originally vested in employees, etc. (40.9% of large companies and 42.3% of SMEs). Among universities, etc., those adopting the idea that rights are to be originally vested in employees, etc. (83.2%) vastly outnumbered those adopting the idea that rights are to be originally vested in employers, etc. (14.5%), which suggests that there is a strong need to maintain the employee-oriented concept at universities, etc.

(3) Reasonable Benefits

Of the employers, etc. that responded that they have standards for determining reasonable benefits, an overwhelming majority (98.4%) responded that the relevant standards provide for the payment of money as reasonable benefits.

Targeting the employers, etc. that only chose the payment of money as reasonable benefits, a hearing was conducted as to whether they have considered choosing any economic benefits other than money and their reasons for choosing only the payment of money. In response to our questions, some responded that the adoption of economic benefits other than money requires consultations with other departments and cannot be decided only by the IP department or that the payment of money is the optimal way to reward the inventors.

Among the employees, etc., the largest percentage, 84.5%, was for those responding that the payment of money is the most preferable as reasonable benefits for the purpose of strengthening

incentives for inventions.

(4) Consultations and Other Procedures

77.6% of the employers, etc. responded that they disclose standards concerning the contents of reasonable benefits.

On the other hand, 48.6% of the employers, etc. as a whole responded that they consulted with employees, etc. on draft standards (by attribution, 62.9% of large companies, 36.3% of SMEs, and 34.1% of universities, etc.), while 42.6% of them responded that they heard opinions of employees, etc. (by attribution, 62.1% of large companies, 27.0% of SMEs, and 19.7% of universities, etc.).

Among the employees, etc. who have participated in consultations on draft standards, those responding that they were satisfied with such consultations accounted for 84.1%. 62.9% of the employees, etc. responded that they are satisfied with the disclosure of the standards, and 72.2% of the employees, etc. having been requested to present opinions responded that they were satisfied with said procedures.

III. Summary

The survey of the employers, etc. revealed that a high percentage of them recognize the details of the employee invention system and the 2015 amendment of the Act, irrespective of company size. Therefore, PR activities concerning the new employee invention system seem to have been effective.

It also became clear that predominantly companies are increasingly apt to adopt the idea that rights are to be originally vested in employers, etc., while many of the universities, etc. maintain the idea that rights are to be originally vested in employees, etc., thus the significance of the 2015 amendment that purposefully maintained the system of vesting rights originally in employees, etc. is confirmed.

An overwhelming majority of the employers, etc. chose the payment of money as reasonable benefits, with a few choosing any economic benefits other than money. For that reason, the employers, etc. cited the problem that the adoption of economic benefits other than money requires consultations with other departments and many of the respondents from both the employers and employees, etc. consider the payment of money to be preferable for strengthening incentives for inventions. Such barriers within the organization and needs of employees, etc. should be understood as problems to be solved by each company's all-out efforts for designing incentives for employees, etc. within the organization, not only as problems inherent in the industrial property

right system.

As procedures for preparing draft standards concerning the contents of reasonable benefits, including consultations, many employers, etc. disclose the standards, but the percentage of those having consultations with and hearing opinions of employees, etc. in the process of preparing draft standards is low especially among SMEs and universities, etc.

On the other hand, the questionnaire targeting employees, etc. revealed that a high percentage of those employed by organizations where consultations on draft standards are held, the standards are disclosed and employees' opinions are heard are satisfied with those procedures.

Given these, SMEs and universities, etc. preferably should also hold consultations with and hear opinions of employees, etc. when preparing draft standards, but it is highly likely that a smaller number of personnel in their IP departments compared with large companies would make it more difficult for them to carry out such procedures.

Therefore, one option is to introduce past efforts actually made for consultations and opinion hearings as reference materials for other SMEs and universities, etc.