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Use of Interview Examinations for Acquiring Better Patent Rights

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In Japan, patent rights, design rights, and trademark rights can only be acquired by filing an application with the Japan Patent Office in the prescribed form and the application being examined and approved by the examiner. Thus, a good or bad response at the examination stage is a crossroads as to whether or not a right can be acquired, which is extremely important.

In order to facilitate communication with applicants and to conduct examinations efficiently, the Japan Patent Office has been communicating with applicants by telephone and facsimile etc., but currently a further step is being taken to employ interview examinations in which applicants meet directly with examiners. There are three types of interview examinations: (1) an interview examination at the Japan Patent Office, (2) a business trip interview conducted by visiting the local area of the applicant, and (3) a teleconference meeting. In the past, there was only method (1), but method (2) has been established for the convenience of applicants in other regions, and method (3) has been established with the development of ICT (information and communications technology) in recent years. With regard to method (2) in particular, every year for the past few years, under the banner of "Chizaino-Mikata (Traveling Japan Patent Office)," on-site interviews have been intensively conducted in multiple cities throughout the country, including metropolitan areas such as the Osaka and Nagoya areas, together with seminars on intellectual property. When such seminars are held in metropolitan areas, more than 100 interview examinations are often held.

We believe that interview examinations have the following advantages over the examinations conducted only by exchanging documents with examiners.

(A) The examiner's argument can be accurately grasped, and accurate counterpoints can be found. Thus, patent rights that are as broad as possible can be acquired at an early stage without unnecessary restrictions.

(B) If you find it difficult to formulate counterarguments, you may be suggested a direction for acquiring a right through exchanging views with the examiner, whereby there is a high possibility that a right will be acquired.

In the examination, the examiner often gives a notice of reasons for refusal to the effect

that a right is not to be granted for the content of the application, and in reality, it is unlikely that a right will be granted without incident. When a notice of reasons for refusal is given, it is necessary to present a counterargument in a skillful manner to convince the examiner, and if this counterargument is not made properly, a right cannot be acquired, or only a narrow right can be acquired due to unnecessary restrictions. In order to prevent this, the above advantage (A) is effective. There are also frequent cases in which it is difficult to present a counterargument for a variety of reasons, and it is particularly difficult to present a counterargument when dealing with important cases or when the acquisition of a right is not guaranteed. In such cases, the above advantage (B) is effective from the viewpoint of seeking clues to a counterargument for the acquisition of a right while taking into consideration the examiner's views.

However, examiners have a large number of cases at all times, and in order to ensure fairness, in principle, they seem to conduct one interview for each case. Accordingly, it is desirable to effectively utilize the interview opportunity at an appropriate timing.

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