

如何运用日本的 实用新型专利登记

How to Use Japanese
Utility Model Registrations

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with Free Vision

2021年10月13日

October 13, 2021

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实用新型很快就能得到登记

Utility Models Are Registered Quickly

- 通常而言，自申请起三个月内

- Typically, within three months from the filing

- 无需实质性审查

- No substantial examination

cf. 发明专利：自请求审查起14个月

cf. Patents: 14 months from requesting the examination

申请手续的费用更低

Prosecution Fees Are Lower

(日元 JPY)

	实用新型 Utility Models	cf. 发明专利 cf. Patents
申请 翻译除外 Filing excluding translation	140,000	160,000
请求审查 Request for the examination	---	150,000~200,000
通知和答复 Office actions	---	30,000~250,000 x 1~3
登记 Registration	30,000	服务费+官方费用 Service Fees + Office Fees

然而，权利的行使受到限制

However, Enforcement is Restricted

专利权人**不得**行使权利，除非：

The registrant may NOT enforce the right, unless:

- 获得一份日本专利局出具的技术评价报告；并且
- 通过出示报告给予警告(29条之2)

- obtaining a technical report from the JPO; and
- giving warning by presenting the report. (Art. 29bis)

实用新型的权利人需承担 损害赔偿 responsibility

Utility Model Owner Owes Responsibility for Damages

在行使权利或警告后，如果实用新型专利被宣告无效，专利权人通常需要承担损害赔偿 responsibility (29条之3)

A registrant is generally responsible for damages if the utility model registration is invalidated after the enforcement or warnings.(Art. 29ter.1)

* 然而，符合下列情况时**无需**承担责任：

- 已获得了正面的技术评价报告；或者
- 行使权利或警告时具备了“适当注意”

(29条之3但书)

* However, NOT responsible if:

- a positive technical report was obtained; or
- it was enforced or warned with “due care”

(Art. 29ter.1 proviso)

证明“适当注意”较为困难

It is Difficult to Prove “Due Care”

同时获得了

1. 现有技术检索; 以及
2. 关于有效性的专业意见

的情况下, 或许能满足适当注意的要求

Combination of

1. Prior art searches; and
2. Professional opinion on validity.

may satisfy Due Care.

意见必须包括:

新颖性、创造性、没有新内容

Opinion should include:

novelty, inventive steps, no new matters

专业意见的费用较为昂贵

Professional opinion fees are high.

实用新型权利的运用 在日本相当少见

Utility Model Rights Are Rarely Used
in Japan

1. 申请数量少
2. 诉讼案件少

1.Small number of applications

2.Small number of court cases

我们推荐申请实用新型专利：

-并非为了行使权利，而是

-为了在商品或广告上标注“已登记的实用新型专利”

We recommend filing a utility model application :

- not for enforcing the rights, but
- for indicating “registered utility model”
on the products or advertisement.

转换为发明专利申请 以获得更多修改机会

Converting to Patent Application for more amendments

实用新型的修改机会：

- 仅限申请后的一个月内，或者
- 仅限登记后的一次机会

Amendment opportunities of utility model:

- only within one month from filing, or
- only once after registration

即使已取得实用新型专利登记，也可以在实用新型的申请日起3年之内进行转换

Can be converted from utility model registration as well within 3 years from the utility model filing date

原始的申请/登记将被撤回。

The original application/registration is withdrawn

在同一天就同一发明创造 申请实用新型和发明专利

Filing utility model and patent applications
for the same inventions on the same date

发明专利将被拒绝，
因为实用新型专利会率先获得登记。

Patent is rejected,

because the utility model is registered earlier.

如果对发明专利申请的权利要求稍加限制：

发明专利将获得授权（不要求其创造性高于实用新型）

If claims of the patent application are slightly limited:

Patent is allowed (inventive step is not required over the utility model registration.)

就同一发明创造 先申请发明专利，再申请实用新型

Filing a patent, then a utility model
for the same inventions

两个申请都将获得授权，因为
实用新型不会受到实质性审查。
若要实现上述效果，只有发明专利能主张优先权。

Both applications are allowed, because
the utility model is not substantially examined.

This is achieved, if only patent claims priority.

在发明专利得到授权后，实用新型专利可能会被宣告
无效(但这并不会成为问题)。

Utility model registration can be invalidated, after the patent issues (no problem).