

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
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8 April 1949
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AG 072 (8 Apr 49)CPC/FP
SCAPIN 1990

MEMORANDUM FOR: JAPANESE GOVERNMENT

SUBJECT: Procedures for Restoration of Patents, Utility Models, and
Designs to Allied Nationals

1. The Japanese Government is directed to provide the necessary procedures to implement the provisions of this memorandum relative to patents or patent applications previously owned or applied for by Allied nationals and to certain new applications for patents to be filed by Allied nationals in the future.

2. In this memorandum the following definitions and explanations are applicable:

a. "Allied national" means a person whose property was treated as enemy property by the Japanese Government, or whose property rights lapsed owing to the existence of hostilities between Japan and the country of that national.

b. "Effective date of loss" applicable to the patents or applications therefor of Allied nationals means the date of entry of the country of that national into war with Japan. When the date of entry into war is clearly inapplicable to the case of a particular Allied national, as defined above, the "effective date of loss" shall be interpreted to mean the actual date of sequestration of his patent or the date on which his patent rights lapsed.

c. In paragraph 5 hereof the phrase in which the term, "bona fide manufactured, used, sold, or leased," is used, is defined to mean:

- (1) Manufacture, use, sale, or lease of an invention which was made independently of the applicant for the patent or the person from whom he derived title, or,
- (2) Manufacture, use, or sale which commenced before the first filing of an application by the person to whom a patent is subsequently granted.

3. a. Patents existing in Japan on the effective date of loss or granted thereafter on applications filed before that date, which were owned, or had been applied for, by Allied nationals and which have since

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lapsed, or have been invalidated or sequestrated or otherwise taken away from such owners without their free consent, shall be revalidated and restored upon request therefor made by the Allied national owners. With respect to such requests the following provisions shall apply:

- (1) The owner of a patent so revalidated and restored shall be entitled to all the rights and privileges to which any national of any country is entitled under the Japanese patent law existing at the time of such restoration.
- (2) Payment of any special or regular fees that may have accrued to the Japanese Government with respect to such patents from the effective date of loss to date of such restoration shall not be required.

b. At the request of the Allied national owner, a period of duration of any Japanese patent owned by him on the effective date of loss or granted thereafter on application filed before that date, shall be extended beyond its normal expiration date for a period equal to that from the effective date of loss to the effective date of restoration or to the normal expiration date of the patent, whichever is the earlier. Such extension will only be granted, however, provided such owner waives all claims to royalties for use of the patent from the effective date of loss to the effective date of restoration and remits to the Japanese Government any funds received by him or credited to him in a blocked account as royalties for such use.

c. If an Allied national requests restoration of his patent under paragraph 3a above, he may elect to receive royalties for use of the patent during the period from the effective date of loss to the effective date of restoration or to the normal date of expiration, whichever is the earlier, in lieu of an extension of term as provided in paragraph 3b above.

d. Applications filed by Allied nationals for patents in Japan which were pending on the effective date of loss and on which patents were not issued shall, upon request of the Allied national applicant, be reinstated as pending applications in the Japanese Patent Office, and shall be processed in accordance with law. Any patents thereafter registered on such applications shall be treated in a manner which conforms generally with applicable provisions of 3a above.

4. Nationals of countries at war with Japan who had duly filed in any country the first application for patent not earlier than twelve (12) months before the effective date of loss shall be entitled to apply for corresponding rights in Japan with rights of priority based upon the previous first filing of the application.

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5. Third parties who had bona fide manufactured, used, sold, or leased the subject matter of any Japanese patent obtained under the provisions of paragraph 4 hereof shall not be liable for infringement on account of such use, but should be enabled to continue such use after the publication of the application under the terms of a non-exclusive license which the Allied owner shall be required to grant on terms providing for reasonable royalties. *31 Mar 50 - Per 4 per 7*

per/2
6. The Allied patent owner will be afforded a period of one (1) year, commencing ~~1 May 1949~~ *1 Feb 50*, within which to make his request for revalidation and restoration, and for acquiring such priority rights as defined in paragraph 4 above, and a reasonable time thereafter to perform all legally required acts in connection with restoration, revalidation, working, and/or maintenance of his rights which have not been performed since the effective date of loss.

7. The provisions set out above with respect to patents will be applied insofar as applicable to utility models and to designs.

8. The Japanese Government will take necessary steps effectively to implement the above instructions.

9. The Japanese Government is further directed as follows:

a. To provide adequately for the full disclosure of the invention which is the subject of a patent or patent application, without regard to intent of the patentee or applicant

b. To take positive steps for prohibiting the maintenance in secrecy of any invention which is the subject of a patent or patent application.

10. The Japanese Government is further directed to invalidate all provisions of the "Wartime Law of Industrial Property" and supplementary legislation pertaining thereto, which are now in force.

11. The Japanese Government will submit to General Headquarters, Supreme Commander for the Allied Powers for approval, not later than twenty-one (21) days from the date hereof, proposed legislation, Cabinet orders, and/or Ministerial orders setting out the laws, procedures, and practices intended to carry out the provisions of this memorandum.

FOR THE SUPREME COMMANDER:

R. M. Levy
R. M. LEVY,
Colonel, AGD,
Adjutant General.