

JPO's response to letter C.8787 regarding research exception

The JPO is pleased to comment below on research exception in Japan, although the information here has previously been submitted to the Secretariat and it does not contain new elements in general.

Article 69 (1) of the Patent Act of Japan stipulates exceptions to patent rights, stating that patent rights shall not be effective against the working of the invention for “experimental or research” purposes.

A court case on an herbicide in 1987 was the first case in which the scope of “experimental or research purposes” under Article 69 (1) was defined¹. The point in dispute was whether experiments, which were conducted on the effects of the herbicide for registering and selling it as an agricultural chemical, fell under the exceptions stipulated under Article 69(1). The court determined that such experiments did not fall under those exceptions because they were conducted exclusively for the purpose of selling the herbicide, and not for the purpose of advancing technologies on it.

However, few judicial precedents regarding the general interpretation of “experiments and research” under Article 69(1) have been set, so most of the interpretations are based largely on academic theories. One generally accepted theory is that “experiments or research” that are exceptions to the patent rights should be limited to experiments and research conducted for the purpose of “advancing the technology”, i.e. limited to activities such as patentability searches, function searches, and experiments for the purpose of achieving improvements and developments.

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¹ Tokyo District Court, July 10, 1987 (Case No. 7463(wa) of 1985)