

Procedural Rules for Advisory Opinion on Operability

Chapter I General Rules

(Purpose)

Article 1

- 1 These rules set forth the necessary matters concerning the procedures for Advisory Opinion on Operability (hereinafter the "AOO") provided by the Japan Intellectual Property Arbitration Center (hereinafter the "Center").
- 2 With regard to the products, components, or processes that the applicant currently or will in the future manufacture, sell, or use (hereinafter the "Subject Products"), the Center determines whether the applicant's business, when executed in countries specified by the applicant (hereinafter the "Subject Countries"), may potentially be affected by inventions or devices by others (limited to patent applications or applications for utility model registration; hereinafter the "Other Inventions"), thereby forming the AOO pertaining to the Subject Products.

(Definitions)

Article 1 – 2

The terms as used in these rules have the meanings ascribed to them as follows:

- (1) "Subject Products for Application" refers to the Subject Products, for which the applicant seeks AOO at the time of application, which are compared and examined against Other Inventions.
- (2) "Subject Business for Application" refers to the business that exploits Subject Products for Application.
- (3) "Description of Subject Business for Application" refers to a document submitted by the applicant at the time of application, which contains the business entity of Subject Business for Application, the configuration of Subject Products for Application, and the progress status of commercialization;
- (4) "Subject Products for AOO" refers to the Subject Products that are compared and examined against Other Inventions for the purpose of AOO, which are specified by agreement between the applicant and the examiners at the time of the consultative meeting provided for in Article 9;
- (5) "Subject Business for AOO" refers to the business that exploits Subject Products for AOO.
- (6) "Description of Subject Business for AOO" refers to a document submitted by the applicant to replace the Description of Subject Business for Application subsequent to the consultative meeting provided for in Article 9, which contains the business entity of Subject Business for AOO, the detailed configuration of Subject Products for AOO, and the progress status of commercialization;
- (7) "Subject Technical Field" refers to the characterizing portions of Subject Products for AOO for which the applicant is seeking AOO.

(Types of AOO)

Article 2

1 The Center shall provide the following types of AOO concerning the Subject Business for AOO based on the option selected by the applicant.

- (1) "AOO Phase 1" refers to an examination where an external patent searching authority (hereinafter the "Searching Authority") reviews the Subject Products for AOO and extracts and identifies certain inventions among Other Inventions in Japan, searched and extracted by the Searching Authority, that may potentially constitute a literal infringement if the Subject Business for AOO is executed.
- (2) "AOO Phase 2" refers to an examination of the potential that the execution of the Subject Business for AOO may constitute a literal infringement, accompanied by a brief reasoning thereof (excluding the determination of validity of Other Inventions), which is conducted on the Subject Products for AOO for each of the Other Inventions searched and extracted by the Searching Authority.

- (3) "AOO Phase 3" refers to an in-depth examination of the Subject Products for AOO for the existence of conflicts with respect to the Subject Business for AOO, conducted for each of the Other Inventions in Japan searched and extracted by the Searching Authority or for each of the Other Inventions reported by the applicant. It also refers to an in-depth examination (excluding the determination of validity of Other Inventions) as to whether there exists a non-exclusive license due to prior use when there is a conflict.
- (4) "AOO Phase 4" refers to an examination where the Searching Authority reviews the Subject Products for AOO and extracts and identifies certain inventions among Other Inventions in the Subject Countries other than Japan, searched and extracted by the Searching Authority, that may potentially constitute a literal infringement if the Subject Business for AOO is executed in the Subject Countries, providing that the examination must be based only on literature originally written in English or translated into English.

Chapter II Prior Consultation Program

(Prior Consultation Program)

Article 3

1. The procedure for prior consultation relating to AOO is as follows:
 - (1) To request prior consultation, the applicant must submit to the Center a written request for prior consultation in the format separately prescribed by the Center and pay the fee set forth in Article 14, Paragraph 1, Item (1);
 - (2) Based on the written request for prior consultation, the Center shall select, after reviewing any conflict of interest, neutrality, etc., one attorney-at-law or patent attorney as a consultant for the prior consultation from the list of potential examiners for AOO (hereinafter the "List of AOO Examiner Candidates") maintained by the Center at all times;
 - (3) Prior consultation shall be provided in the following manner:
 - a. explanation of the outline of the AOO, Subject Countries for AOO, types, cost, scope and criteria of the search;
 - b. specification of the type of AOO the applicant wishes to receive and the purpose thereof;
 - c. advice on how to prepare the documents required for application; and
 - d. confirmation of the intent to apply.

Chapter III Procedures for AOO

(Application)

Article 4

1. The applicant shall submit to the Center one original copy and two duplicate copies of the AOO Application Form containing the following (hereinafter the "Application Form"):
 - (1) name of applicant (or trade name; the same shall apply hereinafter), the address (or residence; the same shall apply hereinafter), the contact information (telephone number, fax number, and email address), and the name of the representative if the applicant is a corporation;
 - (2) name and address of an agent if one is designated; and
 - (3) statement to the effect that the AOO for the Subject Business for Application is requested with respect to the Subject Countries.
2. The applicant shall attach the following documents to the Application Form:
 - (1) a document bearing the seal of the representative or evidencing the qualification of the representative if the applicant is a corporation;
 - (2) a document evidencing the right of representation if an agent is designated;
 - (3) Description of Subject Business for Application (one original copy and two duplicate copies);

- (4) a document evidencing the rights and the nature thereof for the patents, if owned by the applicant, relating to the Subject Business for Application (one original copy and two duplicate copies); and
 - (5) documents necessary to determine the existence of a prior user's right if examining the existence thereof (hereinafter the "Opinions on Prior User's Right).
 - (6) a written oath and consent by the applicant. (Form 1)
3. An agent must be a person who is granted the right of representation by law or determined to be reasonable by the Center.

(Selection of Examiner)

Article 5

The Center shall select one attorney-at-law and one patent attorney as examiners from the List of AOO Examiner Candidates. The same shall apply in the event there is an open position for examiner due to death, resignation or any other reason, provided, however, any person designated under Article 6, Paragraph 1 shall not be selected as examiner.

(Conflict of Interest of Examiner)

Article 6

- 1 The applicant may designate third parties who are determined to have a conflict of interest by listing them in the Designation of Specific Interested Parties to be submitted with the Application Form. The Center shall not disclose the Designation of Specific Interested Parties to any persons other than the potential examiners.
- 2 Examiners shall, upon assumption of duty, submit to the applicant for AOO and the Center a declaration of impartiality, independence, and neutrality (Form 2), and when there is a factual matter that raises or potentially raises a question about their own impartiality, independence, or neutrality, they shall make a full disclosure of said fact without delay.

(Recusal of Examiner)

Article 7

- 1 The applicant may request the recusal of an examiner when there are reasonable grounds to question the impartiality, independence, and neutrality of the examiner.
- 2 If the Center determines that the request under the preceding paragraph is well grounded, it must make a determination that the recusal is reasonable.

Chapter IV Advisory Opinion on Operability

(Retention of Searching Authority)

Article 8

- 1 The examiners of AOO Phase 1, Phase 2, Phase 3 (excluding the Opinions on Prior User's Right), and Phase 4 may select a suitable Searching Authority for a technical field that is relevant to the Subject Products for Application and request said authority to perform a search of Other Inventions except in the case of Phase 3 where the applicant specifies Other Inventions for examination in advance.
- 2 A Searching Authority referred to in the preceding paragraph shall be selected from the Searching Authorities registered with the Center subject to consent from the applicant.
- 3 The Center shall require the Searching Authority selected under the provision of the preceding paragraph to submit a written consent regarding the patent search (Form 4) pertaining to the examination for the AOO for every case of AOO.
- 4 The fees for the search for the Searching Authority referred to in the preceding paragraph shall be paid directly by the applicant without going through the Center.

(Consultative Meeting)

Article 9

- 1 The examiners of AOO Phase 1, Phase 2, Phase 3 (excluding the Opinions on Prior User's Right in this Article), and Phase 4 shall have a consultative meeting with the applicant, attended also by the Searching Authority selected pursuant to the provision of Paragraph 2 of the preceding Article, to specify by agreement with the applicant 1) Subject Products for AOO based on the information contained in the Description of Subject Business for Application; 2) Subject Technical Fields and the number thereof; 3) Subject Countries; 4) the details of the search to be commissioned to the Searching Authority referred to in Paragraph 1 of the preceding Article; and 5) the conditions of Paragraphs 5 and 6 of this Article, thereby determining the cost for the AOO and the search.
- 2 The consultative meeting under the preceding paragraph may be held multiple times on different days to determine the cost, etc., of AOO and search. Subsequent to any previous consultative meeting, the examiners referred to in the preceding paragraph may modify, by agreement with the applicant, the previously specified details of the search, the Subject Technical Fields and the number thereof, and reconfirm the cost of the AOO and the search.
- 3 The examiners of AOO Phase 3 shall, at the time of the consultative meeting referred to in Paragraph 1, obtain approval from the applicant concerning the fact that the existence of a potential conflict will be determined on the basis of applicability of literal infringement, and explain to the applicant that the applicant may additionally request Opinions on Prior User's Right at the same time.
- 4 If the applicant requests opinions on the applicability of indirect infringement, the adequacy of meeting the equivalence requirements, or the prior user's right after the conclusion of the AOO case, the examiners of AOO Phase 3 shall explain to the applicant that a new application for AOO Phase 3 (separate cost) will be required with attachments that include a written submission of documents (Forms 7, 8, and 9) as well as documents necessary to determine the existence of indirect infringement, adequacy of meeting the equivalence requirements, or prior user's right in addition to the documents prescribed in Article 4, Paragraphs 1 and 2.
- 5 When the applicant for AOO Phase 3 applies for Opinions on Prior User's Right, the Center shall provide opportunities to hold prior consultation or a consultative meeting upon request by the applicant in order to provide pertinent advice concerning whether the documentation necessary for determining the existence of prior user's right is appropriate. Article 3 shall apply mutatis mutandis to prior consultation.
- 6 The Subject Products for AOO, the details of the search, and the cost of AOO and search (referred to as the "Conditions of Paragraph 5" in this Article) with regard to AOO Phases 1, 2, and 4 shall be determined for each Subject Technical Field. Furthermore, as the cost of AOO and search, the basic fees set forth in Article 14, Paragraph 1, Items (2) through (4) and a surcharge for every publication, if there are more than 100 Other Inventions, shall be charged for every Subject Technical Field.
- 7 The Subject Products for AOO, the details and cost of the search, if retaining a Searching Authority for search, and the cost of AOO (referred to as the "Conditions of Paragraph 6" in this Article) with regard to AOO Phase 3 shall be determined for each Subject Technical Field. Furthermore, as the cost of AOO, the basic fee set forth in Article 14, Paragraph 1, Item (5) and a surcharge for every publication, if there are more than three Other Inventions, shall be charged for every Subject Technical Field.
- 8 With regard to the Opinions on Prior User's Right, the cost and other matters referred to in the preceding paragraph shall be determined for each of the Other Inventions rather than each Subject Technical Field.
- 9 The examiners shall prepare a document stating that the applicant is in agreement with the Subject Products for AOO, the Subject Technical Fields and the number thereof, the scope and criteria of the search, and the timeline for receiving a search report and preparing a written opinion, specified by agreement with the applicant (hereinafter the "Explanation of Matters Specified Upon Consultation"; Form 5).

- 10 The applicant shall submit the written consent prescribed by the Center (Form 6) regarding the commencement of the AOO by the examiners based on the results of the search conducted by the Searching Authority pursuant to the content of the "Explanation of Matters Specified Upon Consultation," however, this shall not apply if the "Explanation of Matters Specified Upon Consultation" includes the content of a written consent.
- 11 The applicants shall prepare and submit to the Center the Description of Subject Business for AOO based on the matters contained in the "Explanation of Matters Specified Upon Consultation" to replace the Description of Subject Business for Application. If there are multiple Subject Technical Fields, an application and a Description of Subject Business for AOO shall be submitted for each Subject Technical Field to replace the original application.

(Written Opinion)

Article 10

- 1 The Center shall send a written opinion to notify the applicant of the conclusions of the AOO.
- 2 Disclosure of the written opinion to any third party shall be made strictly at the sole discretion of the applicant, and the Center shall not be responsible for any disclosure made by the applicant.
- 3 Japanese translation shall not be required for the part of the supporting documents written in a foreign language attached to the written opinion for the AOO Phase 4

(Nature of AOO)

Article 11

The AOO represents the opinions of the examiners selected by the Center, and it shall not be binding on any person whatsoever.

(Objection)

Article 12

No objection can be made against any AOO.

(Withdrawal)

Article 13

The applicant may withdraw the application at any time before a written opinion is sent by submitting a document specifying the case to the Center (arbitrary format may be used).

Chapter V Fees and Other Expenses

(Fees and Other Expenses)

Article 14

- 1 The applicant shall pay the fee set forth in Item (1) of this paragraph for prior consultation and/or the fees set forth in Items (2) through (5) of this paragraph for AOO. The fees set forth in this paragraph do not include consumption tax.
 - (1) Prior Consultation: 10,000 yen
 - (2) Cost of Search by External Searching Authority
 - 1) Search of Other Inventions in Japan
Basic fee of 100,000 yen/Subject Technical Field (no more than 100 publications)
Surcharge of 1,000 yen per additional publication/Subject Technical Field (to the extent exceeding 100 publications)
 - 2) Search of Other Inventions in Foreign Countries

Basic fee of 150,000 yen per Subject Country/Subject Technical Field (no more than 100 publications)

Surcharge of 1,500 yen per additional publication/Subject Technical Field (to the extent exceeding 100 publications)

(3) Cost of AOO Phase 1

Basic fee of 200,000 yen /Subject Technical Field (no more than 100 publications)

Surcharge of 2,000 yen per additional publication/Subject Technical Field (to the extent exceeding 100 publications)

(4) Cost of AOO Phase 2

Basic fee of 600,000 yen/Subject Technical Field (no more than 100 publications)

Surcharge of 6,000 yen per additional publication/Subject Technical Field (to the extent exceeding 100 publications)

(5) Cost of AOO Phase 3

1) a. AOO Phase 3 (excludes prior user's right in this Item)

Basic fee of 900,000 yen/Subject Technical Field (no more than 3 publications)

Surcharge of 300,000 yen per additional publication/Subject Technical Field (to the extent exceeding 3 publications)

b. Opinions on Prior User's Right

Basic fee of 300,000 yen/one Other Invention

Surcharge of 300,000 yen per additional Other Invention

2) AOO Phase 3 when the Other Inventions turn out to be the same as the Subject Products for AOO after conclusion of AOO Phase 1

Basic fee of 700,000 yen/Subject Technical Field (no more than 3 publications)

Surcharge of 300,000 yen per additional publication/Subject Technical Field (to the extent exceeding 3 publications)

3) AOO Phase 3 when the Other Inventions turn out to be the same as the Subject Products for AOO after conclusion of AOO Phase 2

Basic fee of 300,000 yen/Subject Technical Field (no more than 3 publications)

Surcharge of 300,000 yen per additional publication/Subject Technical Field (to the extent exceeding 3 publications)

(6) Cost of AOO Phase 4

Basic fee of 300,000 yen for each Subject Country/Subject Technical Field (no more than 100 publications)

Surcharge of 3,000 yen for each additional publication/Subject Technical Field (to the extent exceeding 100 publications)

2. The fee set forth in Paragraph 1, Item (1) must be paid in person by bringing the total amount including the consumption tax at the time of prior consultation.
3. The fees set forth in Paragraph 1, Items (3) through (6) must be paid by the due date specified by the Director-General of the Center by depositing the amount by wire transfer into the bank account specified by the Director-General of the Center.
4. In the event the fees are not paid or are not paid in full, the Center may require that the applicant pay the amount of any shortfall within one (1) week of the receipt of notice, and if the applicant fails to make said payment prior to the due date, the Center may deem the application to be withdrawn.
5. The fees received by the Center shall not be refundable including cases where the application is withdrawn.

(Case Management)

Article 15

- 1 The AOO cases shall be managed by the panel of case managers (hereinafter the "Case Managers Panel") appointed by the steering committees of the Center, the subdivisions or branch offices (hereinafter collectively the "Steering Committee"), and its affairs shall be administered by the Administrative Office of the Center.
- 2 The Case Managers Panel shall, upon request for AOO, promptly select one attorney-at-law and one patent attorney as examiner candidates from the List of AOO Examiner Candidates subject to approval by the Director-General of the Center. The same shall apply in the event there is an open position for examiner due to death, resignation or any other reason, provided, however, any person designated under Article 6, Paragraph 1 shall not be selected as potential examiner.
- 3 The Case Managers Panel shall, upon request for AOO, immediately select one or multiple case managers to manage the case. In the event there is an open position for case manager due to death, resignation, or any other reason, a new case manager shall be selected.
- 4 The Case Managers Panel shall conduct the activities relating to the promotion of growth for the service of AOO, the training of potential examiners, the selection of Searching Authorities, the establishment and improvement of the rules and bylaws pertaining to the operation of the service of AOO, and other necessary activities with necessary approval from the Steering Committee.
- 5 Case managers shall, upon assumption of duty, submit to the applicant and the Center a declaration of impartiality, independence, and neutrality (Form 3), and when there is a factual matter that raises or potentially raises a question about their own impartiality, independence, or neutrality, they shall make a full disclosure of said fact without delay.
- 6 The term of a case manager shall expire upon the approval of a report submitted in writing to the Case Managers Panel on whether the case was managed and progressed smoothly after the case assigned to the case manager is concluded.
- 7 During the term of appointment, the case managers shall have the basic duties to contact the examiners or applicants on their own volition or at the instructions of the Administrative Office of the Center to ensure the assigned cases will progress smoothly (including responding to unexpected circumstances), and perform the following as necessary. Furthermore, the case managers may attend the consultative meeting provided for in Article 9 and offer their opinions (excluding opinions on matters pertaining to AOO):
 - (1) check the format of application documents;
 - (2) check, classify, and store documents submitted by the applicant, examiners, and Searching Authorities (excluding Item (1) of this paragraph);
 - (3) confirm the matters agreed upon between the applicant and the examiners (and the Searching Authority as necessary);
 - (4) follow the procedure to appoint a new potential examiner after one resigns;
 - (5) send invoices relating to the application;
 - (6) examine the format of a written opinion;
 - (7) send a written opinion;
 - (8) pay compensation to the examiners; and
 - (9) make a report and recommendations for improvement on case management to the Case Managers Panel.

Chapter VII Confidentiality

(Confidentiality)

Article 16

The procedures for the AOO and the records thereof shall not be published, and the examiners, examiner

candidates, consultants who participate in the prior consultation, case managers, the Steering Committee, the directors of the Center and the staff members of the Administrative Office, as well as the parties and their agents shall not disclose or use the existence, specifics, and results of the examination for AOO, unless consent is obtained from the applicant. The same shall apply after the aforementioned persons resign from their positions. However, if it is necessary for the purpose of education and research in connection with dispute resolution relating to intellectual property, the Center may disclose the same without specifying the details such as the applicant's name, the patent or utility model registration being applied for.

Supplementary Rule

These rules shall take effect on April 1, 2011

Supplementary Rule

These rules shall take effect on April 1, 2014

Supplementary Rule

These rules shall take effect on December 1, 2015

Supplementary Rule

These rules shall take effect on January 5, 2016

Oath and Consent by Applicant for Advisory Opinion on Operability

I, the applicant for Advisory Opinion on Operability (hereinafter the "Applicant"), hereby swear and consent to the following matters and submit the Application Form to the Japan Intellectual Property Arbitration Center (hereinafter the "Center").

1. Applicant agrees to the Procedural Rules for Advisory Opinion on Operability.
2. Applicant agrees that the examiners may represent a third party against Applicant in the future except in disputes involving the patents or registered utility models owned by Applicant for which Advisory Opinion on Operability was provided by the examiners.
3. Applicant agrees that the examiners, examiner candidates, consultants for prior consultation, case managers, members of Steering Committee, directors of the Center and staff members of the Administrative Office (hereinafter the "Examiners, etc.") may disclose or use certain information, among the information concerning the existence, content, and conclusion of the Advisory Opinion on Operability, which was already known to them at the time of application or disclosed whether before or after the application.

If applying for AOO Phase 4:

4. In addition to the above, Applicant agrees that the AOO Phase 4 represents prima facie opinions based on the knowledge and experience of an attorney-at-law and a patent attorney licensed in Japan acting as examiners in the case, and that the AOO does not substitute for the opinions and determinations by qualified persons in the Subject Countries.

In witness whereof, Applicant has prepared one copy of the written oath and consent by the applicant for AOO, and submits the same to the Center along with the documents set forth in Article 3 of the Procedural Rules for Advisory Opinion on Operability at the time of application for AOO.

_____, 20_____

Applicant: _____

To: The Japan Intellectual Property Arbitration Center and Concerned Parties

Case Number: 20_____ (適) No. _____

Case Title: Application for AOO (Case No.)

Declaration of Impartiality, Independence, and Neutrality

I hereby make the following declaration concerning the duties that I perform as examiner in the above-referenced case of application for AOO (hereinafter the "Application")

1. I maintain a position of independence and neutrality in relation to the applicant or those designated by the applicant as third parties having conflicts of interest in the Designation of Specific Interested Parties (hereinafter the "Specific Interested Parties") with respect to the Application.
2. I shall faithfully perform my duties as an independent and neutral person.
3. If I become aware of any circumstances that raise or potentially raise a question as to my impartiality, independence, and neutrality (circumstances for impairment below), I shall immediately disclose said circumstances.
4. With the understanding that the circumstances described below are likely to impair my impartiality, independence, and neutrality, I

- confirm that none of them are applicable to me.
- make a disclosure that paragraph ____ is applicable to me as per the attachment.

(Note: Check one of the boxes above. If applicable, please fill out the attachment.)

_____, 20_____

Examiner: _____ [Seal]

Circumstances Likely to Impair Impartiality, Independence, and Neutrality

1. I am currently or have been in the last five years a director, advisor, employee, or agent of any one of the right holders of inventions or devices by others (hereinafter the "Other Inventions") that need to be examined for any potential to affect the applicant, Specific Interested Parties or Subject Business for AOO.
2. I was consulted by the applicant, Specific Interested Parties or right holders of Other Inventions for a fee or with the purpose of receiving a fee, and I am in fact acting or have acted as an agent in the last five years in negotiation, settlement, mediation, arbitration, lawsuit, and other proceedings.
3. I was consulted by the applicant, Specific Interested Parties or right holders of Other Inventions concerning intellectual property such as patents, for a fee or with the purpose of receiving a fee, and I am in fact acting or have acted as an agent in the last five years in appraisal, negotiation, or procedures and applications with the Patent Office.
4. I have been provided with unpublished information regarding the rights of the applicant or the Other Inventions relating to Subject Business for Application.
5. One of the preceding four paragraphs applies to an attorney-at-law or patent attorney in the office that I am associated with.
6. Either the applicant or one of the Specific Interested Parties or the right holders of the Other Inventions (or the representative if it is a corporation) is a relative by blood within the fourth degree of kinship, a relative by marriage within the third degree of kinship, or a relative living at the same residence.
7. Paragraph 1 is applicable to a relative by blood within the third degree of kinship, a relative by marriage within the second degree of kinship or a relative living at the same residence.

Case Number: 20_____ (適) No. _____

Case Title: Application for AOO (Case No.)

Disclosure of Circumstances Likely to Impair Impartiality, Independence, and
Neutrality

Paragraph ___ of the circumstances that are likely to impair impartiality, independence, and neutrality described in the Declaration of Impartiality, Independence, and Neutrality is applicable to me as it pertains to the above-referenced case. The circumstances are as follows:

Notwithstanding the above, I believe that I am capable of conducting the examination for AOO in an impartial, independent, and neutral manner as AOO examiner for the above-referenced case. I make the following representations as my reasoning.

Examiner: _____

To: The Japan Intellectual Property Arbitration Center and Concerned Parties

Case Number: 20_____ (適) No. _____

Case Title: Application for AOO (Case No.)

Declaration of Impartiality, Independence, and Neutrality

I hereby make the following declaration concerning the duties that I perform as case manager in the above-referenced case of application for AOO (hereinafter the "Application")

1. I maintain a position of independence and neutrality in relation to the applicant or those designated by the applicant as third parties having conflicts of interest in the Designation of Specific Interested Parties (hereinafter the "Specific Interested Parties") with respect to the Application.
2. I shall faithfully perform my duties as an independent and neutral person.
3. If I become aware of any circumstances that raise or potentially raise a question as to my impartiality, independence, and neutrality (circumstances for impairment below), I shall immediately disclose said circumstances.
4. With the understanding that the circumstances described below are likely to impair my impartiality, independence, and neutrality, I

- confirm that none of them are applicable to me.
- make a disclosure that paragraph ____ is applicable to me as per the attachment.

(Note: Check one of the boxes above. If applicable, please fill out the attachment.)

_____, 20_____

Case Manager: _____ [Seal]

Circumstances Likely to Impair Impartiality, Independence, and Neutrality

1. I am currently or have been in the last five years a director, advisor, employee, or agent of any one of the right holders of inventions or devices by others (hereinafter the "Other Inventions") that need to be examined for any potential to affect the applicant, Specific Interested Parties or Subject Business for AOO.
2. I was consulted by the applicant, Specific Interested Parties or right holders of Other Inventions for a fee or with the purpose of receiving a fee, and I am in fact acting or have acted as an agent in the last five years in negotiation, settlement, mediation, arbitration, lawsuit, and other proceedings.
3. I was consulted by the applicant, Specific Interested Parties or right holders of Other Inventions concerning intellectual property such as patents, for a fee or with the purpose of receiving a fee, and I am in fact acting or have acted as an agent in the last five years in appraisal, negotiation, or procedures and applications with the Patent Office.
4. I have been provided with unpublished information regarding the rights of the applicant or the Other Inventions relating to Subject Business for Application.
5. One of the preceding four paragraphs applies to an attorney-at-law or patent attorney in the office that I am associated with.
6. Either the applicant or one of the Specific Interested Parties or the right holders of the Other Inventions (or the representative if it is a corporation) is a relative by blood within the fourth degree of kinship, a relative by marriage within the third degree of kinship, or a relative living at the same residence.
7. Paragraph 1 is applicable to a relative by blood within the third degree of kinship, a relative by marriage within the second degree of kinship or a relative living at the same residence.

Case Number: 20_____ (適) No. _____

Case Title: Application for AOO (Case No.)

Disclosure of Circumstances Likely to Impair Impartiality, Independence, and
Neutrality

Paragraph ___ of the circumstances that are likely to impair impartiality, independence, and neutrality described in the Declaration of Impartiality, Independence, and Neutrality is applicable to me as it pertains to the above-referenced case. The circumstances are as follows:

Notwithstanding the above, I believe that I am capable of conducting the examination for AOO in an impartial, independent, and neutral manner as case manager for the above-referenced case. I make the following representations as my reasoning.

Case Manager: _____

Consent to Patent Search (for use by Searching Authority)

Patent Searching Authority (hereinafter "Authority") hereby agrees to the following with regard to a patent search the Authority is to perform pursuant to the request by the examiners for Advisory Opinion on Operability of the Japan Intellectual Property Arbitration Center (hereinafter the "Center").

1. Authority agrees to submit, as the results of the patent search, the abstracts containing the outline of the content of publication, the PDF data of all publications, the Excel data containing each publication number (corresponding PDF data and link), the name of the invention or device, applicant, and the right holder, and the patent map (in print and electronic data storage medium) containing the matters specified by and between the examiners and the applicant by the due date agreed to by the examiners.
2. Authority agrees to directly bill the applicant for the search fees (exclusive of consumption tax) as follows:
100,000 yen if the number of publications extracted for each Subject Technical Field is less than 100.
1,000 yen for each additional publication if there are more than 100 publications.
3. Authority agrees to be bound by the obligation of confidentiality under any and all circumstances with regard to the content of the Advisory Opinion on Operability and the results of patent search relating thereto except when consent is obtained from the applicant and the examiners.

In Witness Whereof, Authority has prepared one copy of this Consent to be submitted to the Center with the results of the patent search.

_____, 20____

Authority:

_____ [Seal]

Sample (what is known from the Description of Subject Business at the time of application should be included in advance so that additions and revisions can be made during the consultative meeting; sample that does not include a consent to commencement of AOO)

[Explanation of Specified Matters Upon Consultation]

Case Title: 2014 (適 2), Case Number ____

1. External Patent Searching Authority

The following external patent searching authority will be commissioned to perform a patent search (including a search on devices; the same shall apply hereinafter).

Address:

2. Subject Products for AOO (products, components, and processes to be commercialized):

(1) Related Technical Fields

Artificial small-size sensors installed in vehicles, flight vehicles, robots, toys, etc.

(2) Configuration (1 set per Subject Technical Field)

A1: artificial sensors installed in mobile objects, including

A2: gyro unit, equivalent to "semicircular canals," to detect the posture of a mobile object;

A3: artificial retina IC, equivalent to an "eye," to detect the amount of movement of the mobile object and peripheral objects;

A4: sound sensor, equivalent to an "ear," to detect the direction of a sound source in the vicinity; and

A5: controller, equivalent to a "brain," to control the movement of the mobile object.

A6: controller records all measurements from the sensors and accurately pinpoints the relative position and relative movement of the mobile object and peripheral objects by using the most optimal measurements according to the environment at the time when the measurements are taken to complement the other measurements, and reflect them in the parameters for the next movement of the mobile object.

(3) Known points of superiority as compared to other products, etc.

"Semicircular canals" alone would result in the loss of information about the lean or the direction as the posture of the mobile object changes several times (drift accumulation).

An "Eye" alone could not respond to a relative or quick movement, nor could it detect anything in darkness.

An "Ear" alone could not respond to diffused reflection of peripheral objects.

A "Brain" does not function without information (knowledge). Thus, the optimized information in the current environment where the mobile object is situated is obtained by complementing the information of the direction and the lean with the "eye" and the "ear"; the information of the amount of movement with the "semicircular canals" and the "ear"; and by complementing the "ear" and the "eye" with the "semicircular canals" in the "brain." The "Brain" not only uses the current perceived information, but also incorporates the past information to understand the existing circumstances of the surroundings and orchestrates the optimal movements for the mobile object. It requires a combination of small components of 1- to 2-inch square, which will not present any interference when installed on the mobile object.

(4) Embodiment (products, components, manufacture, use, sales, etc.)

- i) To be manufactured and sold as aftermarket add-ons for the mobile object.
- ii) Controller, gyro unit (3D gyro or accelerometer), a pair of artificial retina ICs, a pair of sound sensors (directional microphone), D-GPS, amplifier, and power source will be mounted in a portable casing.
- iii) Artificial retina ICs, sound sensors, D-GPS, and controllers will be externally purchased. The program will be created internally.
- iv)

(5) Scope of Application

<Autonomous Walking Robot> posture sensor + servomotor control
<Un-manned Transport Vehicle> sensors used for transporting goods or cleaning services performed in harsh environments or during unreasonable hours
<Flight Body> sensors to detect the altitude and posture, etc., of a remote-control helicopter
<Vehicles> recognition of obstacles on the road; avoidance of danger such as children abruptly running out in front of a car; or measuring the distance between cars

(6) Out of Scope for Search or AOO (if any)

Scope of application (products sold as a set) is excluded. The sensing technology will be the only subject of Search and AOO.

3. Subject Technical Field

Constituent features or embodiment of the products, components, or processes the applicant will manufacture, sell, or use, which are described in Paragraph 2 above.

4. Number of Subject Technical Fields: 1

5. Content of Search

(1) Search Method

Search will be conducted, in principle, by a combination of mechanical search and manual search. Mechanical search will be performed according to the search criteria described in Item (2) below, and if additional search criteria or criteria that should be modified are found after the fact, another search will be performed including said criteria subject to approval by the applicant and the examiners.

In a manual search, those patent applications among the patent publications extracted by mechanical search, which are even remotely related to the Subject Products for AOO, will be selected.

(2) Search Criteria

Create a patent population by specifying G01C, G01B, and G01S as major classifications of IPC/FI; F-term [2B054EA11]; and competitor company XX as "Applicant" with OR conditions and cross-reference to "perception" + "vision" + "auditory sense" + "posture" + "movement," and then to "sensor" + "sensing" + "detection" + "detect" + "measurement" + "measure" for all inventions and devices for which a patent is applied for after March 10, 1994, which have been published in Japanese by the Japan Patent Office excluding those that have been withdrawn, obliterated, invalidated, and conclusively rejected.

It is noted that due to being a search with a limited scope, it will not necessarily extract all related patents.

6. Summary of Search Results

As of the time of the consultative meeting: 185 publications

Mix ratio of clearly unrelated publications: 30%

Date the number of publications was determined: March 5

7. Due date of report on search: March 10, 2014

8. Scheduled date to send written opinion: March 31, 2014

We, the undersigned, hereby agree to the foregoing in its entirety.

March 1, 2014

Attorney-at-law/Examiner [Seal]

Patent Attorney/Examiner [Seal]

Person in Charge for Applicant [Seal]

Consent to Commencement of Advisory Opinion on Operability

Applicant hereby agrees to the following matters upon submission of the application for AOO.

1. Commencement of the AOO pertaining to the application based on the written search results dated _____, 20____ and the content of the Subject business for AOO resubmitted by the applicant on _____, 20____.
2. Receipt of a written opinion by _____, 20____.

_____, 20____

To: The Japan Intellectual Property Arbitration Center

Applicant:

Person in Charge: _____ [Seal]

**Submission of Explanation and Relevant Documents for
Determination of Applicability of Indirect Infringement**

(Please enter "N/A" or "No Documents"
below each paragraph as appropriate.)

1. Other Inventions for which a determination is sought as to whether the Subject Products for AOO constitute 1) the things that are only used for the production or the processes of things relating to Other Inventions or 2) the things that are used for the production or the processes of things relating to Other Inventions, which are essential for resolving the issues of the Other Inventions.

(1) Patent Number _____

(2) Unexamined Publication Number _____

. . .

2. Explanation and documents concerning the extent and the specifics of the understanding of the applicant with respect to the use of said Subject Products for AOO if the applicant is aware that the Subject Products for AOO are used in the implementation of the above-described Other Inventions.

3. Explanation or documents concerning whether there exists any use (including possible use) of the Subject Products for AOO other than those that are used for the production or the processes of things relating to the above-described Other Inventions.

4. Explanation and documents concerning the current status of distribution of the Subject Products for AOO and the equivalent products thereof in Japan.

(1) Purchasers (customer segment)

(2) Sales territory

(3) Length of sale

(4) Sales volume

(5) Others including the degree of recognition by the general public of the Subject Products for AOO or the equivalent products thereof.

**Submission of Explanation and Relevant Documents for
Determination of Adequacy to Meet Equivalency Requirements**

(Please enter "N/A" or "No Documents"
below each paragraph as appropriate.)

Applicant:

[Seal]

1. Other Inventions for which a determination is sought as to whether the Subject Products for AOO meet the requirements of equivalency.
 - (1) Patent Number_____
 - (2) Unexamined Publication Number_____
 - . . .

2. Part of the configuration of the above-described Other Inventions that is different from the configuration of the Subject Products for AOO. (Required)

3. Explanation and documents concerning whether the part that is different as stated above constitutes an essential part of the above described Other Inventions.

4. Explanation and documents concerning whether the part that is different as stated above, if replaced with what is in the Subject Products, still accomplishes the purpose of the Other Inventions and provides the same operation and effect.

5. Known art to determine whether it would have been easy to replace the configuration of the Subject Products for AOO with the part that is different as stated above at the time of manufacture of the Subject Products for AOO.
 - (1) Patent literature
Unexamined Publication Number_____
 - (2) Non-Patent Literature
 - (3) Other products or processes that are publicly known or officially used, which are similar to the Subject Products for AOO.

6. Known art to determine whether the Subject Products were the same as the known art in existence at the time of application for the above described Other Inventions, or the Subject Products could have been easily inferred from the known art.
 - (1) Patent literature
Unexamined Publication Number _____
 - (2) Non-Patent Literature
 - (3) Products or processes to which the above-described Other Inventions are applicable.

7. Explanation and documents (such as records of examination or trial of Other Inventions) concerning the existence of special circumstances including the fact that the Subject Products for AOO were intentionally excluded from the scope of claim for patent or utility model registration during the application procedures for the above described Other Inventions.