Comparative Study on the Patent Laws and Examination Guidelines
(Novelty) (SIPO Lead)

1. Introduction

During 2010 and 2011, JPO, KIPO and SIPO had carried out comparative studies of inventive step by the comparison of examination rules and examination results.

At the 11th JPO-KIPO-SIPO Policy Dialogue Meeting, it is agreed to start a comparative study of novelty on patent laws, examination guidelines and hypothetical or real cases. The scope of the comparative study is focused on the examination of invention patent. This study will be helpful to enhance mutual understanding of each office's examination standards and improve the work sharing among three offices.

In Japan, "novelty" assessment applies, when a prior art falls under Art. 29(1), namely only when a prior art is already publicly available, while "identicalness" assessment applies when a prior art falls under Art. 29-2 and 39. JPO has filled items "I Determining novelty" and "II Special consideration applicable to chemical practice" based on "novelty" guidelines, while "III conflicting applications" was filled based on "identicalness" guidelines.

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[1] A document (the primary document) refers explicitly to another document as providing more detailed information to prove the enabling disclosure of the primary document or others

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I. Determining novelty			
A. Judicial, legislative or administrative criteria or guidelines for determining novelty.			
1. Legislation (law and regulations)	Article 22 (1) Any invention or utility model for which patent right may be granted must possess novelty, inventiveness and practical applicability. (2) Novelty means that, the invention or utility model does not form part of the prior art; nor has any entity or individual filed previously before the date of filing with the patent	Article 29(Conditions for Patentability) (1) An inventor of an invention that is industrially applicable may be entitled to obtain a patent for the said invention, except for the following cases: (i) inventions that were publicly known in Japan or a foreign country, prior to the filing of the patent application;	Article 29(Requirements for Patent Registration) (1) Inventions that have industrial applicability are patentable unless they fall under either of the following subparagraphs: (i) inventions publicly known or worked in the Republic of Korea or a foreign country before the filing of the patent application; or (ii) inventions described in a publication distributed in the

	administration department under the State Council an application relating to the identical invention or utility model disclosed in patent application documents published or patent documents announced after the said date of filing. (5) The prior art referred to in this Law means any technology known to the public before the date of filing in China or abroad.	(ii) inventions that were publicly worked in Japan or a foreign country, prior to the filing of the patent application; or (iii) inventions that were described in a distributed publication, or inventions that were made publicly available through an electric telecommunication line in Japan or a foreign country, prior to the filing of the patent application.	Republic of Korea or a foreign country, or inventions publicly available through telecommunication lines as prescribed by Presidential Decree, before the filing of the patent application.
2. Guidelines	Guidelines for Patent Examination ● Part II Chapter 2 “Description and Claims” ● Part II Chapter 3 “Novelty” ● Part II Chapter 9 “Some Provisions on Examination of Invention Applications Relating to Computer Programs” Part II Chapter 10 “Some Provisions on Examination of Invention Applications in the Field of Chemistry”	Examination Guidelines Part II. Chapter 2 "Novelty and Inventive step" Section 1. "Novelty"	Examination Guidelines Part III. Chapter 2 "Novelty”
3. Background and		The Patent System is provided to	The purport of the Patent System is

purpose of the provision relating to novelty		grant an exclusive right to the inventor in exchange for disclosing the invention; therefore, the invention which deserves the patent should be novel. Patent Act Article 29(1)(i) to (iii) defines the scope of inventions lacking novelty by providing types of such inventions. (Examination Guidelines Part II. Chapter 2. Section 1.1)	to grant an exclusive right in reward for the disclosure of an invention. Therefore, an exclusive right shall not be given to an invention already disclosed to the public. Under the Patent Act Article 29 paragraph (1), prior to the filing of the patent application, (i) inventions publicly known, (ii) inventions publicly worked (iii) inventions described in a publication, or (iv) inventions published through electric telecommunication lines as prescribed by Presidential Decree are not patentable due to lack of novelty.
B. Determining the scope of the claimed invention			
1. Basic principles of interpretation of claims	According to Article 59.1, the extent of protection of the patent right for invention or utility model shall be determined by the terms of the claims, and the description and the appended drawings may be used to interpret the content of the claims.	Claimed inventions are identified based on the descriptions of the claims. The descriptions of the specifications and drawings and the common general knowledge as of the filing are taken into consideration for the analysis of meaning of words.	(1) When the claim statements are clear, specifying the claimed invention should be made as stated in the claim. (Examination Guidelines Part III. Chapter 2. Section 4.1.1)

	[Guidelines for Patent Examination Part II Chapter 2 Section 1] The contents of the abstract do not form a part of the initial disclosure of the invention or utility model. Therefore, they shall not serve as a basis for subsequent amendments to the description or claims, nor shall they be used to interpret the extent of protection of the patent right. [Guidelines for Patent Examination Part II Chapter 2 Section 2.4] According to their nature, claims are divided into two basic kinds, namely, claims to a physical entity and claims to an activity, which are simply referred to as product claims and process claims respectively. The first basic kind of claim includes any physical entity (product, apparatus) that is produced by a person's technical skill. The	(Examination Guidelines Part II. Chapter 2. Section 1.5.1)	

	second basic kind of claim includes any activity with element of time or process (process, use).Claims to a physical entity include claims to articles, substances, materials, tools, apparatus, and equipment etc. Claims to an activity include claims to manufacturing processes, methods of use, communication methods, processing methods, and methods of applying a product for a specific purpose, etc. The purpose of identifying the kind of a claim is to help determine the extent of patent protection thereof. In the determination of the extent of patent protection of a claim, generally all the features in the claim shall be taken into account; however, the actual definitive effect of each feature shall finally be reflected on the subject matter of the claim. For example, where one or more technical features of a product claim cannot be clearly defined		

	by either features of structure or features of parameter, it is allowed to define the technical features by virtue of features of process. However, the subject matter of the product claim defined by the features of process is still the product, and the actual definitive effect of the features of process depends on what impact they may impose on the claimed product per se. [Guidelines for Patent Examination Part II Chapter 2 Section 3.1.1]		
a. Wording of the claims	The claims shall be supported by the description and shall define the extent of patent protection sought for in a clear and concise manner. The claims shall describe the technical features of the invention or utility model, and the technical features may be either component elements that constitute the technical solution of the invention or utility model, or the interrelations between the elements. [Guidelines for Patent	Clear descriptions of the claims are interpreted as they are to identify the claimed inventions. Words of the claims are interpreted as the meanings in the normal sense. (Examination Guidelines Part II. Chapter 2. Section 1.5.1(1))	(2) In the case where the description of claims is clearly understood, an examiner should avoid limited interpretation just by referencing detailed description of the invention or drawings in finding technical features of invention. (3) In the case where an applicant specifically defines a term in the detailed description to the extent that it is clearly understood that the term is different from any general meaning in order to specify the term as having a specific meaning other

	Examination Part II Chapter 2 Section 3] The clarity of the claims is of the utmost importance for the determination of the extent for which protection is sought by an invention or utility model. The requirement that the claims shall be clear means, on the one hand, individual claims shall be clear, and on the other hand, the claims as a whole shall be clear as well. Generally, the words used in a claim shall be understood as having the meaning that they normally have in the relevant art. In particular cases, where the description explicitly gives a certain word a special meaning and, by virtue of the definition to the word in the description, the extent of protection of the claim using the word is defined sufficiently clearly, such a case is also allowed. [Guidelines for Patent Examination Part II		than general meaning in the technical field to which an invention pertains, the term is interpreted as a term with the specific meaning defined in the detailed description. (Examination Guidelines Part III. Chapter 2. Section 4.1.1)

	Chapter 2 Section 3.2.2]		
b. Consideration of the description and drawings	According to Article 59.1, the extent of protection of the patent right for invention or utility model shall be determined by the terms of the claims, and the description and the appended drawings may be used to interpret the content of the claims. [Guidelines for Patent Examination Part II Chapter 2 Section 1] The preferred mode for carrying out the invention or utility model is an important part of the description, which is extremely important for sufficiently disclosing, understanding, and carrying out the invention or utility model, as well as for supporting and interpreting the claims. [Guidelines for Patent Examination Part II Chapter 2 Section 2.2.6]	When the invention is clearly described in the claims and meanings of the words in the claims, or matters used to specify the inventions, are defined or explained in the specification and drawings, the specifications and drawings are taken into consideration to interpret the words. In addition, examples of more specific concepts developed under the concepts of the words in the claims, which are merely provided in the detailed description of the inventions or drawings, are not included in the words defined or explained. Also, when the description in the claims is not clear enough to be understood and the description could be specified by interpreting the words in the claims based on the specifications, drawings and technical knowledge as of the filing, they are taken into consideration to identify the invention.	(4) In the case where a term disclosed in the claims is obscure and unclear, an examiner should examine whether the subject matter of invention can be comprehended in view of the detailed description, drawings, and common general knowledge as of the time of filing. The examiner can notify the applicant a ground for rejection on the ground of lack of clarity in describing specification and novelty at the same time, when the claimed invention can be readily comprehended in view of the detailed description or drawings, and common general knowledge as of the time of filing. (5) If a claimed invention is not clear, even in view of the detailed description in the specification, the drawings and the common general knowledge as of the time of filing, examination of novelty is not conducted and the ground for

	The description (and the drawings) shall set forth the invention in a manner sufficiently clear and complete so as to enable a person skilled in the art to carry it out. In the meanwhile, it, as the basis of the claims, shall be used to interpret the contents of claims when the extent of the protection of the patent right is determined. [Guidelines for Patent Examination Part II Chapter 8 Section 4.7.2] Generally, the words used in a claim shall be understood as having the meaning that they normally have in the relevant art. In particular cases, where the description explicitly gives a certain word a special meaning and, by virtue of the definition to the word in the description, the extent of protection of the claim using the word is defined sufficiently clearly, such a case is also allowed. However, in this	(Examination Guidelines Part II. Chapter 2. Section 1.5.1(2)) Claimed inventions are not identified when the inventions are not specific, even when taking the description in the specifications or drawings and the technical common knowledge as of the filing into consideration. (Examination Guidelines Part II. Chapter 2. Section 1.5.1(3)) Even when an invention identified by the claims does not correspond to the invention described in the specification or drawings, the claimed invention is not identified by the specification or drawings alone without analyzing the claims. When technical matters or terms are described in the specifications or drawings but not described in the claims, the claimed invention is identified without analyzing the technical matters or terms. On the other hand, when they are described in the claims, they are always analyzed and the invention should	rejection due to lack of clarity in describing specification is notified. (Examination Guidelines Part III. Chapter 2. Section 4.1.1)

	case the examiner should also invite the applicant to amend as far as possible the claim whereby the meaning is clear from the wording of the claim alone. [Guidelines for Patent Examination Part II Chapter 2 Section 3.2.2]	not be identified without analyzing them. (Examination Guidelines Part II. Chapter 2. Section 1.5.1(4))	
2. Inventions claimed in specific forms of definition			
a. Products defined by their function, properties, characteristics or mode of operation	Usually, for product claims, features of function or effect shall be avoided as far as possible to be used in defining the invention. It is only when a certain technical feature cannot be defined by a structural feature, or it is more appropriate to be defined by a feature of function or effect than by a structural feature, and the function or effect can be directly and affirmatively verified by experiments or operations as stated in the description or by customary means in the art, that definition by features of function or effect in a product claim can	Descriptions in claims in which products are defined by functions or characteristics are interpreted, in principle, as representing all products that have the functions or characteristics unless otherwise noted according to I.B.1.b. above [Note]. For example, "wall materials with layers insulating heat" are interpreted to be wall materials with "products" that are "layers with heat insulation as their working or functions." Note: For example, the term "heat insulation alloys" from the expression "heat insulation alloys	When describing claims, it is possible to state the structure, method, functions, materials or a combination of these factors for the purpose of clarifying which matters are subject to protection. When function, characteristic, etc. are disclosed in the claims to limit the subject matters of the claimed invention, an examiner should not exclude the function, characteristic, etc. from the features of the invention when interpreting the claims. When a claim includes an expression specifying a product by its function, characteristic, etc., such

	be permissible. Technical feature defined by function in a claim shall be construed as embracing all the means that are capable of performing the function. Furthermore, if the description merely states in vague terms that other alternative means may be adopted, but the person skilled in the art cannot understand what they might be or how they might be used, then definition by function in the claims is not permitted. In addition, claim of pure functional definition cannot be supported by the description, and therefore is not permitted. [Guidelines for Patent Examination Part II Chapter 2 Section 3.2.1]	with compositions of … " in claims is interpreted to be "alloys applied to use (of products) requiring heat insulation" after the claimed invention has been identified based on the descriptions in the specifications and drawings and the common general knowledge as of the filing. In this case, the invention is dealt according to approach I.B.2.b below for the descriptions in which products are defined by use. (Examination Guidelines Part II. Chapter 2. Section 1.5.2(1)I) However, descriptions of the functions or characteristics inherent in the products do not help to define the products, and they are interpreted to represent the products per se. (Examination Guidelines Part II. Chapter 2. Section 1.5.2(1)II) Some expressions specifying products by the functions or characteristics should not be interpreted as specific products among all the products that have	an expression should, in principle, be construed as every product that has such function, characteristic, etc., except when it should be construed otherwise because the expression is specifically defined in the detailed description. However, it is noted that there are also cases where a product described by its function, characteristic, etc. should not be construed as a specific product among all products that have such function, characteristic etc. when taking into account the possible to state the structure, method, functions, materials or a combination of these factors for the purpose of clarifying which matters are subject to protection. When function, characteristic, etc. are disclosed in the claims to limit the subject matters of the claimed invention, an examiner should not exclude the function, characteristic, etc. from the features of the invention when interpreting the claims. When a claim includes an

		such functions or characteristics based on the common general knowledge as of the filing. For example, the expression “means for fixing“ from the expression of a claimed art "means for fixing the first wooden member to the second plastic member" does not represent fixation means used for metals, such as for welding, among all fixation means. (Examination Guidelines Part II. Chapter 2. Section 1.5.2(1)III)	expression specifying a product by its function, characteristic, etc., such an expression should, in principle, be construed as every product that has such function, characteristic, etc., except when it should be construed otherwise because the expression is specifically defined in the detailed description. However, it is noted that there are also cases where a product described by its function, characteristic, etc. should not be construed as a specific product among all products that have such function, characteristic etc. when taking into account the common general technical knowledge at the time of the filing. (Examination Guidelines Part III. Chapter 2. Section 4.1.2(1))
b. Products defined by their performance (effect) or parameter	Usually, for product claims, features of function or effect shall be avoided as far as possible to be used in defining the invention. It is only when a certain technical feature cannot be defined by a structural feature, or it is more appropriate to be defined by a	See I. B.2. a. above.	A parameter invention is an invention in which an applicant arbitrary creates a certain parameter which is not standard or commonly used in physics or chemistry, parameterizes it arithmetically by using the correlation between plural parameters, and employs it as a part

	feature of function or effect than by a structural feature, and the function or effect can be directly and affirmatively verified by experiments or operations as stated in the description or by customary means in the art, that definition by features of function or effect in a product claim can be permissible. [Guidelines for Patent Examination Part II Chapter 2 Section 3.2.1] A product claim is suitable for an invention or utility model of product, and shall usually be defined in terms of the structural features of the product. In particular cases, where one or more technical features in a product claim cannot be clearly expressed in terms of structural features, it is permissible to express them with the aid of physical or chemical parameters. Where the features cannot be clearly expressed in terms of either structural features or		of essential element of the invention. Since the technical features may not be precisely defined by the claims itself in the parameter invention, the assessment of novelty for the parameter invention shall be performed only after figuring out them based on the detailed description and drawings, and common knowledge. (Examination Guidelines Part III. Chapter 2. Section 4.3.2)

	parameter features, it is permissible to express them with the aid of process features. When parameters are used for the expression, the parameters used must be those which can be clearly and reliably determined by a person skilled in the art according to the teachings of the description or by customary means of the relevant art. [Guidelines for Patent Examination Part II Chapter 2 Section 3.2.2] For product claims including feature of performance or parameters, the examiner shall consider whether the feature of performance or parameters in a claim implies that the claimed product has a certain particular structure and/or composition. If the performance or parameters implies that the claimed product has a structure and/or composition distinct from that of the product disclosed in the		

	reference document, the claim has novelty. On the other hand, if the person skilled in the art from the performance or parameters cannot distinguish the claimed product from that disclosed in the reference document, it can be presumed that the claimed product is identical with the product in the reference document and accordingly the claim does not have novelty, unless the applicant can, based on the application or the prior art, prove that the claimed product having the feature of performance or parameters is distinct from the product in the reference document in structure and/or composition. For example, an application claims a compound A in a crystalline state defined by a variety of parameters including X-diffraction data, and the reference document also disclosed a compound A in a crystalline state. If the crystalline		

	state of the both cannot be distinguished from each other based on the disclosure of the reference document, it can be presumed that the claimed product is identical with the product in the reference document and accordingly the claim does not have novelty as compared with the reference document, unless the applicant can, based on the application or the prior art, prove that the claimed product is actually distinct in crystalline state from the product disclosed in the reference document. [Guidelines for Patent Examination Part II Chapter 3 Section 3.2.5] As for a claim of a chemical product which cannot be clearly characterized merely by features of structure and/or composition, it is permitted to further use physical /chemical parameter(s) and/or the manufacturing process to characterize the claim.		

	Circumstances where it is permitted to use physical/chemical parameter (s)to characterize the claim of a chemical product are: the chemical product has unclear structure and cannot be precisely characterized merely by using its chemical name, structural formula or composition. The said parameter (s)shall be clear enough. [Guidelines for Patent Examination Part II Chapter 10 Section 4.3] For the claim of a chemical product characterized by physical/chemical parameter(s), if it is impossible to compare the product characterized by said parameter(s)with that disclosed in a reference document based on the parameter(s)described and to determine the difference between them, it is deduced the product claim characterized by said parameter(s)does not possess novelty as required in Article		

	22.2. [Guidelines for Patent Examination Part II Chapter 10 Section 5.3]		
c. Products or processes defined by their use (e.g. "for use as…" , "apparatus for…" , "method for…")	For a product claim the subject matter title of which contains definition by use, the definition by use shall be taken into account in determining the extent of patent protection of the product claim. However, the actual definitive effect of the use definition shall depend on the impact it imposes on the claimed product per se. For example, a claim the subject matter title of which is a "mould for molten steel", wherein the use definition "for molten steel" has definitive effect on the subject matter "mould". Therefore "a plastic ice cube tray" with a melting point much lower than that of "mould for molten steel" would not come within the claim, because it is impossible to be used as a mould for molten steel. However, if the definition such as	Descriptions in claims in which products are defined by the use (limitation of use) Descriptions in claims in which products are defined by the use (limitation of use) in a word like "for use as …" are analyzed to understand how the limitation of use works to define the claimed invention, in consideration of the descriptions in the specifications and drawings and the common general knowledge as of the filing. (It should be noted that descriptions too incomprehensible to define the claimed inventions could violate Article 36(6)(ii).) However, chemical compounds limited by the use described in a phrase like "for use as ...," such as "a chemical compound Z for use as Y," which represents limitation of use, generally indicate mere usefulness	Where a claim includes an expression specifying a product by its use (i.e. limitation of use), the examiner should interpret the claimed invention only as a product specially suitable for the use disclosed in the claim, by taking into account the detailed descriptions in the specification and drawings, and the common general technical knowledge at the time of the filing. Even if a product includes all technical characteristics described in the claims, an examiner should not regard the product as the product described in the claim when the product is not appropriate for the relevant use or when the product needs conversion to be used. For example, "crane hook with a shape of ~" merely indicates a hook including technical features with size and strength suitable for a crane. So it is appropriate that the

	"used for …" has no impact on the claimed product or device per se and is only a description of the use or manner of use of the product or device, then it has no influence in determining for example whether the product or device has novelty or involves an inventive step. Another example is a "compound X for use in …". If the phrase "for use in …" has no influence on the compound X per se, then the use definition "for use in …" has no definitive effect in the determination of whether or not the compound X has novelty or involves an inventive step. [Guidelines for Patent Examination Part II Chapter 2 Section 3.1.1] For product claims including feature of use, the examiner shall consider whether the feature of use in a claim implies that the claimed product has a certain particular structure and/or	of the compounds, and they are interpreted as simple chemical compounds without limitation of use, such as the compound Z, which is apparent without applying the approaches I and II below to this case. (Reference: Decision by the Tokyo High Court, July 8, 1997 [Heisei 7 (Gyo Ke) 27]) This approach should be applied not only to chemical compounds but also to microorganisms. (Examination Guidelines Part II. Chapter 2. Section 1.5.2(2)) I. General approach for analyzing the invention with limitation of use It is understood that a product with limitation of use, which is specially adapted for the use, is the product that provides the shapes, structures, or compositions (hereinafter called "structures etc.") defined by the limitation of use when the limitation of use would represent the structures etc. specially adapted for the use even after the descriptions of the specification and drawings and the	crane hook should be construed as a different product from "fishing hooks" with regard to the structure. If a product with a limitation of use is regarded as not being specifically suitable for such use by taking into account the specification and drawings, and the common general technical knowledge at the time of the filing, it is construed that a limitation of use has no impact in specifying an invention, thereby the limitation of use does not have influence in the assessment of novelty. (Examination Guidelines Part III. Chapter 2. Section 4.1.2(1))

	composition. If the use is fully determined by the inherent property of the product and does not imply any change in the structure and/or composition of the product, the product claim defined by this use feature does not have novelty as compared with the product in the reference document. For example, comparing an invention of antiviral compound X with compound X as a catalyst disclosed in a reference document, although the use of compound X has been changed, the chemical formula which determines its inherent property has no change, therefore the invention of antiviral compound X does not have novelty. However, if the use implies that the claimed product has a certain particular structure and/or composition, that is, the use indicates that the structure and/or composition of the product has changed, then the use as a	common general knowledge as of the filing are analyzed. Therefore, when matters used to specify the claimed invention do not differ from the matters used to specify the cited invention in any aspects except the limitation of use, these inventions are different inventions as far as these inventions provide different structures etc. defined by the limitation of use. On the other hand, the product with the limitation of use is not considered to represent a definition of the product when the product is not understood to be a product specially adapted for the use, even based on the descriptions of the specification and drawings and the common general knowledge as of the filing, unless the limitation of use is included in II. below for considering the product to be a product with limitation of use. Consequently, matters used to specify the claimed invention and the matters used to specify the cited invention are not understood to be	

	definitive feature of the structure and/or composition of the product must be considered. For example, “a hook for crane” means a hook having the structure specifically suitable for a crane in size and strength. It is distinct in structure from “a hook for angling” which has the same shape but is used for fishing. Therefore they shall be considered as different products. [Guidelines for Patent Examination Part II Chapter3 Section 3.2.5]	different from each other when these matters do not differ in any aspects except the limitation of use. (Examination Guidelines Part II. Chapter 2. Section 1.5.2(2)I) II. Approach when an invention of products with limitation of use has to be interpreted as a use invention Generally, a use invention is interpreted to be an invention based on the discovery of an unknown attribute of a product and finding of the product’s adaptability of novel use. Court decisions for reference: Decisions by the Tokyo High Court, April 25, 2001 [Heisei 10 (Gyo Ke) 401]; Tokyo District Court, October 23, 1992 [Heisei 2 (Wa) 12094]; Tokyo High Court, July 13, 2000 [Heisei 10 (Gyo Ke) 308]; Tokyo High Court, February 10, 2000 [Heisei 10 (Gyo Ke) 364] When the claimed invention provides a limitation of use in the claims and is considered to be an invention based on the discovery of	

		an unknown attribute of a product and finding of the product's adaptability for novel use derived from the attribute, it is appropriate to analyze the invention from the additional aspect of the limitation of use since the limitation of use may define the claimed invention. Accordingly, the invention could be novel as a use invention even if the product per se is already known. However, the novelty of the claimed invention is denied when a novel use of the product is not considered to be provided, based on the common general knowledge in the area as of the filing, even with a discovered unknown attribute. In addition, when the claimed invention and the cited invention, which are inventions of products different in the expressive aspect of the limitation of use, cannot be distinguished from each other by use based on the analysis of the common general knowledge in the area as of the filing, the novelty of the claimed invention is denied. Note 1: Generally, when an	

		invention is found to be creative because of the discovery of its unknown attribute in respect to its purpose of use which is not previously known, it is considered to be novel as a use invention. Also, the concept of the use invention is generally applied to the technical fields in which it is relatively difficult to understand how to use the product from the structure or name of the product, such as the technical field in which compositions containing chemical substances are used. On the other hand, the concept of a use invention is not applied to machines, instruments, articles, and apparatuses because these products are usually used in fixed manners. Note 2: The inventive step of the claimed invention is denied when persons skilled in the art could easily arrive at the use of the product of the invention based on any known attribute or structures etc. of the product, regardless of the novel use provided based on the attribute.	

		(Decision by the Tokyo High Court, August 27, 2003 [Heisei 14 (Gyo Ke) 376].) Note 3: In light of the expressions, some use inventions are described in the style of the limitation of use as well as the dosage form and methods of use. Handling of the above could also be applied to use inventions described in styles other than those of use limitations, but limited to inventions whose claims provide certain words for use, such as "catalysts comprising...," "ornamental materials composed of alloy…," and "methods of killing insects using ..." according to B.1.b. (Examination Guidelines Part II. Chapter 2. Section 1.5.2(2)II)	
d. Use claims	A use claim belongs to the category of process claim. However, the examiner shall pay attention to distinguishing a use claim from a product claim from the wording thereof. For example, a claim in such a form as "using compound X as an insecticide" or	"Use" is interpreted as a term meaning a method for using things which is categorized into "a process." (E.g. "Use of substance X as an insecticide" is interpreted as "method for using substance X as an insecticide." Also, "Use of substance X for the manufacture of a medicament for therapeutic	See I.B.2.c.above.

	"the use of compound X as an insecticide" is a use claim, and belongs to process claim, while a claim in such a form as "an insecticide made of compound X" or "an insecticide containing compound X" is not a use claim but a product claim. [Guidelines for Patent Examination Part II Chapter 2 Section 3.2.2] (1) Types of Use Claim The invention relating to the use of a chemical product is made on the basis of discovery of a new property of the product and the use of such property. Regardless of a new or known product, its property is inherent in the product per se. The essence of the use invention does not lie in the product per se, but in the application of its property. Hence, a use invention is an invention of process, and its claim is a process claim. If product B is invented by making use of product A, the	application Y" is interpreted as "method for using substance X for the manufacture of a medicament for therapeutic application Y.") (Examination Guidelines Part I. Chapter 1. Section 2.2.2.3.(3))	

	application shall be based on product B per se, and its claim is a product claim rather than a use claim. The examiner shall take notice of the wording to distinguish a use claim from a product claim. For example, “using compound X as an insecticide” or “the use of compound X as an insecticide” is a wording used in use claim, which is of type of process claim, while the wording “an insecticide made of compound X" or “the insecticide containing compound X" is not a use claim, but a product claim. It shall also be clarified that “the use of compound X as an insecticide” shall not be construed as equivalent to “the compound X for an insecticide”. As the latter is a product claim defining the use, it is not a use claim. (2) Claim of Medical Use of Substance An application relating to the		

	medical use of a substance shall not be granted if its claim is drafted in the wording “use of substance X for the treatment of diseases”, “use of substance X for diagnosis of diseases" or “use of substance X as a medicament", because such claim is one for “method for the diagnosis or for the treatment of diseases” as referred to in Article 25.1 (3). However, since a medicament and a method for the manufacture thereof are patentable according to the Patent Law, it shall not be contrary to Article 25.1(3)if an application for the medical use of a substance adopts pharmaceutical claim or use claim in the form of method for preparing a pharmaceutical, such as “use of substance X for the manufacturing of a medicament”, “use of substance X for the manufacturing of a medicament for the treatment of a disease” and so on. The above-mentioned use		

	claim in the form of method for manufacturing a medicament may be drafted as "use of compound X for manufacturing a medicament for the treatment of disease Y" or the like. [Guidelines for Patent Examination Part II Chapter 10 Section 4.5]		
e. Products defined by the manufacturing methods or process	For product claims including feature of manufacturing process, the examiner shall consider whether the feature of manufacturing process results in a certain particular structure and/or composition of the product. If the person skilled in the art can conclude that the process will necessarily result in a product having a particular structure and/or composition different from that of the product in the reference document, the claim has novelty. On the other hand, if the claimed product, as compared with the product in the reference document, has the same structure and composition despite	Claims defining products by the manufacturing processes (product-by-process claims) It is understood that claims defining products by the manufacturing processes means definitions that represent products per se gained as final products, unless otherwise interpreted according to I.B.1.b above [Note]. Accordingly, the novelty of the claimed invention is denied when other manufacturing processes are able to produce an identical product to that of the claimed manufacturing process and the product is publicly known. Note: This is because some structures of products cannot represent the products of the	A product invention should be (except for certain particular cases where it is impossible to specify the product without using a manufacturing process thereof) described in such a way that the technical constitutions are directly stated in the claim, even if the manufacturing process of the product is disclosed in the product claim. Thus, an examiner should compare the claimed product itself specified by the description of the claim with a prior art published prior to the time of filing when assessing novelty and inventive step, unless there is a special reason in the description of the claim. The special reason aforementioned should only

	the different manufacturing process, the claim does not have novelty, unless the applicant can, based on the application or the prior art, prove that the process results in a product having a different structure and/or composition, or having a different performance thereby indicating that its structure and/or composition has changed. For example, an application claims a glass cup made by process X, and a reference document disclosed a glass cup made by process Y. If the glass cups made by the both processes respectively have the same structure, shape, and constituent material, the claim does not have novelty. On the other hand, if the process X comprises a step of annealing at a particular temperature not disclosed in the reference document, which considerably increases the breaking resistance of the glass cup so made as compared with that in the	inventions, these products are described only by the methods of manufacturing processes (such as inventions relating to isolated protein), and it is inappropriate to make a distinction between an invention defined by its structure and an invention defined by its manufacturing process. Accordingly, products are interpreted according to the (3) even though applicants clearly intend to limit the products only to those manufactured by specific processes, such as "Z obtained solely by process A." (Examination Guidelines Part II. Chapter 2. Section 1.5.2(3))	be accepted by the examiner in extremely exceptional cases such as when it is greatly difficult to specify the product in the ordinary way in the relevant technical field. Where a claim includes a statement specifying a product by its manufacturing process, such a statement is construed as meaning a product per se unless it should be construed as a different meaning according to the definition in the detailed description. If an identical product can be obtained by a different process from the one stated in the claim, the claimed invention is not novel where the product is publicly known prior to the time of filing. Thus, even if applicant‟s intention is to limit the claimed invention to only the product which is obtained by the particular process, such as a claim reading as “Z which is obtained solely by process A”, the claimed invention should be treated in the same way aforementioned. (Examination Guidelines Part III. Chapter 2. Section 4.1.2(3))

	reference document, then it indicates the claimed glass cup has a different microstructure due to the different manufacturing process, and has an internal structure different from that in the reference document, therefore the claim has novelty. [Guidelines for Patent Examination Part II Chapter 3 Section 3.2.5] As for a claim of a chemical product which cannot be clearly characterized merely by features of structure and/or composition, it is permitted to further use physical /chemical parameter(s)and/or the manufacturing process to characterize the claim. Circumstances where it is permitted to use the manufacturing process to characterize the claim of a chemical product are: the chemical product cannot be		

	sufficiently characterized by the features other than the manufacturing process. [Guidelines for Patent Examination Part II Chapter 10 Section 4.3] For the claim of a chemical product characterized by manufacturing process, the novelty shall be determined on the product per se, rather than merely comparing the manufacturing process therein with the process disclosed in a reference document to find whether or not the two processes are identical. A different manufacturing process does not always result in the change of a product per se. If, compared with a product disclosed in a reference document, the difference of said claimed product lies only in the manufacturing process, having neither parameters disclosed in the application, which may be		

	used to prove its difference, nor indications of any change in its function and/or nature resulting from the difference of the process, then it is deduced that the product claim characterized by the process does not possess novelty as required in Article 22.2. [Guidelines for Patent Examination Part II Chapter 10 Section 5.3]		
f. References to the description or drawings	The technical terms used in the claims shall be consistent with those used in the description. Unless absolutely necessary, the claims shall not contain such expressions as "as described in … of the description", or "as shown in figure …" or the like. The situation "absolutely necessary" refers to the situation where a specific shape involved in an invention or utility model cannot be defined with words but only by drawings, in which case	The statement of a claim is made by a reference to the detailed explanation of the invention or drawings, and as a result, the scope of the invention is unclear. Example 1: A claim which includes such statement made by a reference as "an automatic drill machine as shown in Figure 1." (It is inadequate to refer to drawings because drawings generally have ambiguous meanings and could be interpreted in many ways.) Example 2: A claim includes statements made by a reference but the portion to be referred to is not clear	Claims are not considered to be written clearly, where the subject matter of the invention is not written and is substituted with the detailed description of the invention or the description of drawing(s). However, where the subject matter of the invention cannot be properly indicated without substituting with the detailed description of the invention or the description of drawing(s), such substitution shall be allowed. (Examination Guidelines Part II. Chapter 4. Section 4(3))

	the phrase “as shown in figure…” or the like can be used in the claims. Technical features in a claim may cite corresponding reference signs in the drawings to facilitate the understanding of the solution as in the claim. Such reference signs shall be placed in parentheses and after the corresponding technical features. Reference signs shall not be construed as limiting the extent of protection of the claim. [Guidelines for Patent Examination Part II Chapter 2 Section 3.3] Where the base sequence of the gene or the amino acid sequence of the polypeptide or protein encoded by said gene is set forth in the “Sequence Listing” or drawing of the description, reference may be made to the sequence by use of the sequence identifier in the	Note that, even by referring to the detailed explanation of the invention or drawings, an invention can be stated clearly in a claim as in the following case. Example: In an invention related to an alloy, there is a specific relation among components of the alloy and the relation can be defined by reference to the drawings as clearly as by a numerical or other literal expression. “Heat-resisting Fe・Cr・Al alloy for electric-heating composed of Fe, Cr, Al within the scope circumscribed by points A( ), B( ), C( ), and D( ) shown in the Figure 1 and impurities less than X%.” (Examination Guidelines Part I. Chapter 1. Section 2.2.2.3(5)VI)	

	"Sequence Listing" or the number of the drawing. Example: a DNA molecule whose base sequence is represented by SEQ ID NO:1(or Fig.1). [Guidelines for Patent Examination Part II Chapter 2 Section 9.3.1.1] Where the amino acid sequence of the polypeptide or protein is set forth in the "Sequence Listing" or drawing of the description, reference may be made to the sequence by use of the sequence identifier in the "Sequence Listing" or the number of the drawing. Example: a protein whose amino acid sequence is represented by SEQ ID NO:2 (or Fig.2). [Guidelines for Patent Examination Part II Chapter 2 9.3.1.5]		
C. Identification of the relevant state of the art			
1. Definition of the state of the art	According to Article 22.5, the prior art means any technology known to the public before the date of filing in China or abroad.	Article 29(1) of the Patent Act sets forth what constitutes prior art as follows: (i) inventions that were publicly	(i) inventions publicly known or worked in the Republic of Korea or a foreign country before the filing of the patent application; or

	The prior art includes any technology which has been disclosed in publications in China or abroad, or has been publicly used or made known to the public by any other means in China or abroad, before the date of filing (or the priority date where priority is claimed). (Examination Guidelines 2010 Part II Chapter 3 Section 2.1)	known in Japan or a foreign country, prior to the filing of the patent application; (ii) inventions that were publicly worked in Japan or a foreign country, prior to the filing of the patent application; or (iii) inventions that were described in a distributed publication, or inventions that were made publicly available through an electric telecommunication line in Japan or a foreign country, prior to the filing of the patent application. o The expression "prior to the filing of the patent application" represents a definite time, even hours and minutes, of the filing, which is different from the expression "prior to the date of filing of a patent application." (Examination Guidelines Part II. Chapter 2. Section 1.2.1) When a filing date and a publication date are the same date, a distributed point of time is not deemed to be prior to the filing unless the filing is obviously after the publication.	(ii) inventions described in a publication distributed in the Republic of Korea or a foreign country, or inventions publicly available through electric telecommunication lines as prescribed by Presidential Decree, before the filing of the patent application. (Examination Guidelines Part III. Chapter 2. Section 1)

		(Examination Guidelines Part II. Chapter 2. Section 1.2.4(2)III)	
2. Public availability of the state of the art	The prior art shall be the technical contents that are available to the public before the date of filing. In other words, the prior art shall be in such a state that it is available to the public before the date of filing and shall contain such contents from which the public can obtain substantial technical knowledge. It should be noted that technical contents in the state of secrecy are not part of the prior art. The state of secrecy includes not only the situation where the obligation to keep secret arises from regulations or agreements regarding confidences but also the situation where the obligation to keep secret arises from social customs or commercial practices, that is, from implicit agreements or understandings. However, if a person having the obligation to keep secret breaches the regulation, agreement, or	The expression "inventions that were publicly known" represents an invention whose content becomes known to unspecific persons as an art without an obligation of secrecy. When persons who have confidentiality disclose an invention to other persons who are not aware of its secrecy, that invention is included in "inventions that were publicly known" irrespective of the inventor's or applicant's intent to keep it secret. For example, an invention published in an article, such as in an academic journal, is not included in inventions that were publicly known even after it has been submitted to the journal, until the article is publicly disclosed, since such article is hardly disclosed to unspecified persons when submitted. (Examination Guidelines Part II. Chapter 2. Section 1.2.2) The expression "inventions that were publicly worked" represents an	"A publicly known invention" means an invention which is known or to be known to the public if there has been no deliberate attempt to keep it secret in the Republic of Korea or a foreign country prior to the filing of the application. In interpreting of "prior to the filing of the application", the time of filing refers to the exact point of time of filing, even to the hour and minute of the filing, not to the date of filing (if the invention is publicly known in a foreign country, the time is converted into Korean time). Also, "the public" means general people having no secrecy obligations with respect to the invention. (Examination Guidelines Part III. Chapter 2. Section 3.1) "A publicly worked invention" means an invention which has been worked under the conditions where the contents of the invention are to be publicly known or can potentially

	implicit understanding, rendering the technical contents disclosed and making the technologies available to the public, these technologies shall form part of the prior art. (Examination Guidelines 2010 Part II Chapter 3 Section 2.1) As regards an invention or utility model application, the temporal demarcation of prior art is its filing date or the priority date where applicable. Broadly speaking, all of the technical contents disclosed before the filing date are within the scope of prior art; however, those disclosed on the filing date are not. (Examination Guidelines 2010 Part II Chapter 3 Section 2.1.1) The means of disclosure of prior art includes disclosure by publications, disclosure by use, and disclosure by other means, without limitation on territory. (Examination Guidelines 2010 Part II Chapter 3 Section 2.1.2)	invention which has been worked [Note 3] in a situation where the content of the invention is or could be publicly known [Notes 1 & 2]. Note 1: The expression "a situation where the content of the invention is publicly known" means, for example, a situation where persons skilled in the art may easily understand the content of the invention by observing the manufacturing process of the invention at a plant opened to unspecified persons. Note 2: The expression "a situation where the content of the invention could be publicly known" means, for example, a situation where unspecified persons could understand the invention by receiving information of the invention when a person visiting a plant to see a manufacturing operation cannot understand one part of the manufacturing process from the appearance of the apparatus and the part of the process is necessary	be publicly known in the Republic of Korea or a foreign country (Definition of "working" refers to the Patent Act Article 2 subparagraph (iii)). Thus, "being public" means a situation where it is no longer kept in secret as a whole. Therefore, even when a small fraction of inner part of an invention is kept in secret with regard to working of the invention, it shall not be considered as a publicly worked invention. (Examination Guidelines Part III. Chapter 2. Section 3.2) A distributed publication is "a document, a drawing or other similar medium for the communication of information, duplicated by printing, mechanical or chemical methods, etc. for the purpose of disclosing the contents to the public through distribution". A "Distribution" in the context of the wording "disclosing the contents to the public through distribution" means placing

	(1)Disclosure by Publications Publications in the context of the Patent Law mean the independently existing disseminating carriers of technical or designing contents, which shall indicate or have other evidence to prove the date of public issue or publication. Publications of the above definition can be various printed or typed paper documents, such as patent documents, scientific and technological magazines and books, academic thesis, specialized documents, textbooks, technical manuals, officially published proceedings or technical reports, newspapers, sample books, product catalogues, and advertisement brochures etc. They can also be audio or video materials made by electric, optic, magnetic, or photographic means, such as microfiches, films, negative films, videotapes, tapes, gramophone records, CD-ROMs,	to know the invention as a whole, the person is in a situation where he is able to see the inside of the apparatus or to receive an explanation of the inside from plant workers who would not refuse explanation. Note 3: An invention that is publicly known by working of the invention is included in "inventions that were publicly known " under Patent Act Article 29(1)(i). Therefore, even when it is not acknowledged as an invention that has been publicly known, the invention is considered to be in a situation where the invention is publicly worked under Patent Act Article 29(1)(ii). (Examination Guidelines Part II. Chapter 2. Section 1.2.3) The term "publications" includes documents, drawings or other similar media for the communication of information, which are duplicated to disclose the content to the public through the distribution of the publications.	a publication as defined above in the condition where unspecified persons can read or see it. It does not necessitate the fact of a certain person’s actual access to such a publication. Patent gazettes such as microfilm or CD-ROM should be considered as a distributed publication, since the public could refer to the contents of the film by using a display screen and obtain a copy of it. In addition, non-patent literatures which are stored in floppy discs, slides, presentations or OHP materials as well as microfilms or CD-ROMs should be regarded as distributed publication, as far as they are produced to make available to the public. (Examination Guidelines Part III. Chapter 2. Section 3.3)

	etc. Furthermore, they can be materials in other forms, such as those on the Internet or in other online databases. The determination of whether a document is a publication shall not be affected by the place or language of issue, the manner of acquisition, or its age. The amount of distribution, whether it has been read, or whether the applicant is aware of it is of no relevance either. As for the publications with the words “Internal Materials" or “Restricted Publication" or other similar wording, if they were really distributed in a restricted scope and required to be kept confidential, they are not regarded as publications in the context of the Patent Law. (Examination Guidelines 2010 Part II Chapter 3 Section 2.1.2.1) (2) Disclosure by Use Disclosure by use means that by use the technical solution is	The term "distribution" means a situation where unspecified persons could read such publications regardless of whether or not someone actually does read the publications. (Examination Guidelines Part II. Chapter 2. Section 1.2.4)	

	disclosed or placed in the state of being available to the public. Means of disclosure by use include making, using, selling, importing, exchanging, presenting, demonstrating, exhibiting and the like that can make the technical content available to the public. So long as by the above means the relevant technical content is placed in such a state that the public can know it if they wish, disclosure by use can be established, and it is of no relevance whether the public had actually known it. However, if at an exhibition or demonstration of a product no explanation of the technical contents thereof is provided so that the structure and function or composition of the product is not known to a person skilled in the art, the exhibition or demonstration does not constitute a disclosure by use. Where disclosure by use is concerned with a product, it can		

	be established even if the product or device used needs to be destroyed to get its structure and function known. Moreover, disclosure by use also includes disclosure on an exhibition stand or in a shop window of informative materials that are readable by the public or directly visible materials, such as posters, drawings, photographs, specimens, and samples. (Examination Guidelines 2010 Part II Chapter 3 Section 2.1.2.2) (3) Disclosure by Other Means Disclosure by other means mainly refers to oral disclosure etc. Examples include talking, reporting, speaking at symposium, broadcasting, televising, and cinematographing that make the technical contents known to the public. (Examination Guidelines 2010 Part II Chapter 3 Section 2.1.2.3)		
3. Drawings as prior art	Where a reference document has drawings, the drawings may also be cited. when citing the	There is no special rule about the drawings as prior art (see I.C.5. below).	A distributed publication is "a document, a drawing or other similar medium for the communication of

	that only those technical features that can be derived directly and unambiguously from the drawings belong to the contents of disclosure. The contents inferred from the drawings, and the dimensions with their relations measured from the drawings without any written description cannot be taken as the contents of disclosure. (Examination Guidelines 2010 Part II Chapter 3 Section 2.3)		information, duplicated by printing, mechanical or chemical methods, etc. for the purpose of disclosing the contents to the public through distribution". (Examination Guidelines Part III. Chapter 2. Section 3.3.1)
4. Admissions as prior art	There is no special rule about the admissions as prior art	With regard to the novelty, there is no rule about admissions as prior art. Instead, the rule about applicant's admission is described in the "inventive step" section of the Examination Guidelines as follows: The Prior arts before the filing of the applications described in the specifications of the claimed inventions could be a basis of determining the inventive step of the claimed inventions. This can be accomplished by citing the prior arts as components of the state of the arts as of the filing when the applications	4.2. Finding of a cited invention Finding an invention which is cited during in assessing novelty under the Patent Act Article 29 paragraph (1) subparagraph (i) and (ii) (hereinafter referred to as "cited invention") is as follows. 4.2.1 Publicly known invention A "publicly known invention" means an invention the contents of which have been known to an unspecified person without obligation of secrecy in the Republic of Korea and a foreign country before the filing of an application.

		admit that the prior arts are publicly known. (Examination Guidelines Part II. Chapter 2. Section 2.8(3))	Finding a cited invention is basically carried out based on the matters publicly known. Taking into consideration the common general knowledge as of the filing, if a person skilled in the art can easily arrive at the matters described in the invention, the matters are considered as being publicly known. 4.2.2 Publicly worked invention A "publicly worked invention" means an invention which has been worked under the conditions where the contents of the invention are to be publicly known. Therefore, it is enough to decide whether the invention is "publicly worked" without assessing whether the invention is "publicly known". "A publicly worked invention" means an invention which has been worked under the conditions where the invention is or can potentially be publicly known to an unspecific person through the medium of machinery or systems, etc. Therefore, the finding an invention can be carried out on the basis of the

			subject matters embodied in machinery or systems, etc. The matters directly derivable from the facts in view of the common general knowledge as of the working can also be a basis for the finding of a publicly worked invention. 4.2.3 Invention described in a distributed publication “Invention described in a distributed publication” means an invention which is explicitly or implicitly described in a publication. “Being implicitly described in a publication” means that a person skilled in the art can easily recognize the invention. Such an invention can be considered as an invention described in a distributed publication. 4.2.4 Notes for finding of cited inventions (1) A manuscript for a journal of an academic society is usually kept secret against a third party, even after the receipt of the manuscript by the academic society. Therefore, the invention described in that

			manuscript is not considered a publicly known invention until its contents are released. (2) A company produces a catalogue to promote the company or to introduce and promote its products. Therefore, if the catalogue is produced, the catalogue is considered as a distributed publication except for special circumstances where the catalogue was not actually distributed. (3) In the case where the filing date of a patent application is the same as the date of the publication, the claimed invention does not lose novelty under the Article 29 paragraph (1) subparagraph (ii) of the Patent Act, except when the filing time of application is clearly after the time of publication. (4) The time of publication for a thesis is being when the thesis is distributed to an unspecific person in public or enters into university libraries after the final thesis examination, except when the contents of the thesis are announced

			in an open space before the final thesis examination. (Examination Guidelines Part III. Chapter 3. Section 4.2)
5. Enabling disclosure of a prior art document	For a compound claimed in an application, if it has been referred to in a reference document, it is deduced that the compound does not possess novelty, unless the applicant can provide evidence to verify that the compound is not available before the date of filing. The word “refer to" mentioned above means to define clearly or explain the compound by the chemical name, the molecular formula (or structural formula),the physical/chemical parameter(s)or the manufacturing process(including the raw materials to be used). (Examination Guidelines 2010 Part II Chapter 10 Section 5.1)	When an invention of a product or process is not clearly described enough that a person skilled in the art is able to manufacture the product or use the process based on the descriptions of the publications and the common general knowledge as of the filing, the invention is not included in "cited inventions." For example, when a chemical substance is described merely by its name or its chemical formula in a publication and the description does not show the manufacturing process clearly enough that a person skilled in the art is able to manufacture the substance on the basis of the common general knowledge as of the filing, the chemical substance is not included in "cited inventions." (Note that this does not mean that the claim violates the enablement requirement under Article 36(4)(i)	Even though the prior art constitutes an incomplete expression or there is a defect in some of the prior art, it can be cited in assessing the novelty and the inventive step, when the person skilled in the art can readily understand the technical features of the claimed invention based on common technical knowledge or empirical rules. (Examination Guidelines Part III. Chapter 2. Section 3.3.4)

		where the publication is a patent application claiming the chemical substance as one of the alternatives described in the Markush form.) (Examination Guidelines Part II. Chapter 2. Section 1.5.3(3)II)	
6. Establishing the relevant date of the prior art document	The printing date of a publication is regarded as the date of disclosure, except where the date of disclosure can be evidenced otherwise. Where only a specific month or year is indicated as the printing date, the last day of the month or year shall be regarded as the date of disclosure. If the examiner doubts the date of disclosure of a publication, he may invite the person who submitted the publication to furnish evidence. (Examination Guidelines 2010 Part II Chapter 3 Section 2.1.2.1) The date on which the product or process is available to the public shall be regarded as the date of disclosure by use. (Examination Guidelines 2010	A distributed point of time is estimated as follows when a publication date has been indicated: (i) The last day of the year when only a publication year has been indicated; (ii) The last day of the month of the year when publication month and year have been indicated; and (iii) The day, month and year when publication day, month and year have been indicated. (Examination Guidelines Part II. Chapter 2. Section 1.2.4(2)I) A distributed point of time is estimated as follows when a publication date has not been indicated: (i) For foreign publications with an exact date when they were brought from abroad to Japan, the date	When the time of publication is indicated in a publication, it is presumed as follows: □ In the case where the time of publication is indicated in a publication (a) In the case where only the year of publication is indicated, the last day of that year; (b) In the case where the month and year of publication is indicated, the last day of the month of the year; and (c) In the case where the day, month and year of publication is indicated, that date. □ In the case where the time of publication is not indicated in a publication (a) The distribution date of a foreign publication is presumed in light of

	Part II Chapter 3 Section 2.1.2.2) For contents of talking, reporting, or speaking at symposium, the date of action shall be regarded as the date of disclosure. For contents of broadcasting, televising, or cinematographing that can be received by the public, the date of broadcast or showing shall be regarded as the date of disclosure. (Examination Guidelines 2010 Part II Chapter 3 Section 2.1.2.3)	retrospectively estimated from the date when the publications were brought from abroad to Japan, considering the period normally taken for shipping the publications from abroad to Japan; (ii) For publications compiled with other materials, such as book reviews, excerpts or catalogs, the publication date of the publication estimated from the publication dates of these materials; (iii) For reprinted publications, the initial print date if any; and (iv) For other publications, the date estimated or acknowledged from other possible information source if any. (Examination Guidelines Part II. Chapter 2. Section 1.2.4(2)II) A distributed point of time is determined as follows when a filing date and a publication date are the same date: When a filing date and a publication date are the same date, a distributed point of time is not deemed to be prior to the filing	the period normally required to reach Korea from the country of the publication, as far as the date of its receipt in Korea is clear. (b)In the case where there is a derivative publication such as a book review, an extraction or a catalog, the date of distribution of the publication in question is presumed based on the publication date of the derivative publication. (c)In the case where there is a second edition or a second print of the publication, the date of distribution is presumed to be the publication date of the first edition indicated therein, provided that the cited contents in the second edition or second print of the publication accords with the contents of the first edition. (d) In the case where other appropriate information is available, the date of distribution is presumed or confirmed therefrom. (Examination Guidelines Part III. Chapter 2. Section 3.3.3)

		unless the filing is obviously after the publication. (Examination Guidelines Part II. Chapter 2. Section 1.5.4(2)III)	
7. Implicit/inherent features	Reference documents are objectively existing technical materials. When a reference document is cited to judge novelty and inventive step of an invention or utility model, the technical contents disclosed in the reference document shall be based upon. Said technical contents include not only those technical contents expressly described in the reference document but also those implied technical contents that can be derived directly and unambiguously from the disclosure by a person skilled in the art. However, it is not allowable to broaden or narrow the contents of the reference document at will. (Examination Guidelines 2010 Part II Chapter 3 Section 2.3) Invention or Utility Model with	The expression "inventions described in publications" means inventions recognized from the descriptions in the publications or equivalents to such descriptions in the publications. The expression "equivalents to such descriptions" means those that persons can derive from the descriptions based on their common general knowledge [Note] as of the filing. Note: The term "common general knowledge" means obvious knowledge derived from the general knowledge or experience of a person skilled in the art, including well-known arts or commonly used arts. Also, the term "well-known arts" means the arts generally known in the technical field, such as those published in a significant number of documents and known in the field	Finding a cited invention is basically carried out based on the matters publicly known. Taking into consideration the common general knowledge as of the filing, if a person skilled in the art can easily arrive at the matters described in the invention, the matters are considered as being publicly known. (Examination Guidelines Part III. Chapter 2. Section 4.2.1) “A publicly worked invention” means an invention which has been worked under the conditions where the invention is or can potentially be publicly known to an unspecific person through the medium of machinery or systems, etc. Therefore, the finding an invention can be carried out on the basis of the subject matters embodied in machinery or systems, etc. The matters directly derivable from the

	Identical Contents: Where the claimed invention or utility model is completely identical with the technical contents disclosed in a reference document, or there are only simple changes in wording between them, the invention or utility model does not possess novelty. Furthermore, the meaning of “identical contents" shall be construed as including the technical content directly and unambiguously derivable from the reference document. For example, a claim of an invention application is “a core of a motor rotor made of Nd-Fe-B permanent magnet alloy having a tetragonal crystal structure and a main phase of Nd2Fe14B intermetallic compound". If a reference document discloses “a core of a motor rotor made of Nd-Fe-B magnet", the claim will lose novelty, since it is well known to a person skilled in the art that the so-called “Nd-Fe-B	widely enough that it is not necessary to submit any examples of the arts. The term "commonly used arts" means the arts well -known and commonly used. (Examination Guidelines Part II. Chapter 2. Section 1.2.4(3)) "Inventions described in publications" are identified based on "the descriptions in the publications." The descriptions are able to be interpreted based on the common general knowledge, and any facts that persons skilled in the art could derive from the description in the publications based on the common general knowledge as of the filing date, or equivalents to such descriptions in the publications, could also be a basis for identifying the inventions described in publications. In other words, "inventions described in publications" means inventions that a person skilled in the art is able to understand based on the descriptions in publications or equivalents to such descriptions.	facts in view of the common general knowledge as of the working can also be a basis for the finding of a publicly worked invention. (Examination Guidelines Part III. Chapter 2. Section 4.2.2) “Invention described in a distributed publication” means an invention which is explicitly or implicitly described in a publication. “Being implicitly described in a publication” means that a person skilled in the art can easily recognize the invention. Such an invention can be considered as an invention described in a distributed publication. (Examination Guidelines Part III. Chapter 2. Section 4.2.3)

	magnet" means the Nd-Fe-B permanent magnet alloy having a main phase of Nd2Fe14B intermetallic compound and a tetragonal crystal structure. (Examination Guidelines 2010 Part II Chapter 3 Section 3.2.1)	Accordingly, inventions that a person skilled in the is are not able to understand based on the descriptions in the publications or equivalents to such descriptions are not included in either "inventions described in publications" or "cited inventions." For example, when one "description in a publication" is part of the alternatives in the claims described in the Markush form, it is necessary to check if a person skilled in the art is able to understand an invention that provides either one of the alternatives as a requisite to define the invention. (Examination Guidelines Part II. Chapter 2. Section 1.5.3(3)I)	
8. Well-known equivalents	Direct Substitution of Customary Means: If the difference between the claimed invention or utility model and a reference document is merely a direct substitution of customary means employed in the art,the invention or utility	Determining the novelty of the claimed inventions When the difference between the matters used to specify the invention in the claimed inventions themselves and those used to specify the cited inventions is not found after the comparison, the claimed inventions	The common general knowledge means technologies generally known to a person skilled in the art (e.g., well known art or commonly used art). “Well-known art” means technologies generally known in the relevant technical field, e.g., those appeared in many prior art

	model does not possess novelty. For example, if a reference document disclosed a device using screw fastening, and the claimed invention or utility model only replaces the screw fastening with bolt fastening, the invention or utility model does not possess novelty. (Examination Guidelines 2010 Part II Chapter 3 Section 3.2.3)	are not novel. Any difference between these two matters involves the novelty of the claimed inventions. (Examination Guidelines Part II. Chapter 2. Section 1.5.5(1)) See I.C.7. above as reference.	documents, those widely known throughout the industry, or those well-known to the extent needless to present examples. “Commonly used art” means well-known art which is used widely. The case where inventions are substantially the same refers to where the inventions disclosed in a cited invention and the claims do not affect the technical ideas of the invention such as differences in terms, perceptions of effects, purposes, compositions, uses or existence of limited uses, but simply affect non-essential items. (Examination Guidelines Part III. Chapter 2. Section 4.2.1)
9. Prior art expressed in specific or generic terms(Generic disclosure and specific examples)	If, when the claimed invention or utility model is compared with a reference document, the difference between them lies merely in the fact that a technical feature of the same nature is defined in a generic (upper level)term in the former and in a specific (lower level)term in the	Inventions providing generic concepts [Note 1] are identified when the cited inventions provide more specific concepts, which are considered to already show the inventions applying "ideas belonging to the same family or types or having a common nature" to identify the inventions.	If the inventions described in the claims and a cited invention are expressed in a generic concept or a specific concept, the following items should be considered in assessing novelty: (a) If a claimed invention is expressed in a generic concept and a cited invention is expressed in a

	latter, then the disclosure in the specific (lower level)term takes away the novelty of the invention or utility model defined in the generic (upper level)term. For example, a product “made of copper" disclosed in a reference document takes away the novelty of an invention or utility model for the same product “made of metal". However, the disclosure of the product made of copper does not take away the novelty of an invention or utility model for the same product made of other specific metal. On the other hand, the disclosure in generic (upper level) term does not take away the novelty of an invention or utility model defined in specific (lower level) term. For example, a product “made of metal" disclosed in a reference document does not take away the novelty of an invention or utility model for the same product “made of copper". For another	In addition, even when the cited inventions provide more specific concepts, which is a description for finding the novelty, the novelty of the claimed invention providing the generic concepts could be determined by comparing both inventions or determining their similarity, without identifying the claimed inventions providing the generic concepts. (Examination Guidelines Part II. Chapter 2. Section 1.5.3(4)I) The inventions providing more specific concepts are not identified when the cited inventions provide generic concepts, since the inventions are not considered to be those providing more specific concepts. (However, the inventions are identified when they are derived from the common general knowledge [Note 2].) Note 1: The term "general concept" means a comprehensive concept consisting of ideas belonging to the same family or type, or a	specific concept, the invention in the claims is not novel. “Generic concepts” is defined as concepts integrating matters in the same family or the same genus, or those integrating a plurality of matters with the common characteristic. (Example 1) If a claimed invention is described as a metal and a cited invention is described as a copper (Cu), the claimed invention is not novel. (b) If a claimed invention is expressed in a specific concept and a cited invention is expressed in a generic concept, in general, the claimed invention has novelty. However, when an invention expressed in a specific concept can be directly derived from such a generic concept in consideration of the common general knowledge, the novelty for the claimed invention is denied by specifying an invention expressed in specific concept as a cited invention. An invention expressed in a specific concept

	example, if the difference between the claimed invention or utility model and a reference document lies merely in that “chlorine" is used in the invention or utility model to replace “halogen" or another specific halogen “fluorine" in the reference document, the disclosure of “halogen" or “fluorine" in the reference document does not take away the novelty of the invention or utility model which is defined by “chlorine". (Examination Guidelines 2010 Part II Chapter 3 Section 3.2.2)	comprehensive concept integrating a plurality of ideas sharing a common nature. Note 2: General knowledge is not considered to be those from (or in) which inventions described in more specific concepts are derived (or described) when more specific concepts are merely included in the generic concepts or more specific concepts could be picked up from the generic concepts. (Examination Guidelines Part II. Chapter 2. Section 1.5.3(4)II)	cannot be derived from the inventions expressed in a generic concept, even if the invention expressed in a specific concept simply belongs to a generic concept or the elements of the specific concept can be presumable in the terms in generic concept. (Example 1) Silver is described in the claim as a superconducting cable material for electric power transmission and a cited documentation discloses a superconducting metal cable. If using silver as a cable material to activate super conductivity in the field of electric power transmission belongs to commonly known art, novelty of the claimed invention can be denied, as a person skilled in the art can conceive superconducting silver cable without undue difficulty. (Examination Guidelines Part III. Chapter 2. Section 4.4)
10. Prior art expressed by numerical value or numerical range	If the claimed invention or utility model has a technical feature defined by numerical values or a continuous numerical range, such	Regarding prior art expressed by numerical value or numerical range, JPO has no specific guidelines. See I.D.1.a. below as reference.	An invention with a numerical limitation means that some parts of subject matters of an invention described in the claims are defined

	as the dimensions of a component, temperature, pressure, and the content of components in a composition, while all other technical features are identical with those in the reference document, then the determination of novelty shall be conducted according to the following rules. (1)Where the values or numerical range disclosed in the reference document fall entirely within the range of the above-defined technical feature, the reference document deprives the claimed invention or utility model of novelty. Example 1: the application claims a copper-based shape memory alloy, comprising 10-35%(weight) zinc,2-8%(weight) aluminum, and copper as the remainder. If the reference document discloses a copper-based shape memory alloy comprising 20%(weight)		by specific numerical values. In the case where an invention in the claims includes a numerical limitation, a claimed invention is regarded as being novel when the claimed invention is not identical to the cited invention even when the numerical limitation is not considered. When a claimed invention is identical to the cited invention except for numerical limitation, the assessment of novelty comes under the following criteria. (1) In a case where no numerical limitation is found in the cited invention while new numerical limitation is included in a claimed invention, the invention is regarded as novel. However, if the numerical limitation can be arbitrary chosen by a person skilled in the art or it can be hinted in a cited invention in view of the common technical knowledge at the time of filing, novelty of the invention is denied in general. (2) In a case where the numerical range of the invention described in

	zinc and 5%(weight) aluminum, it takes away the novelty of said claim. Example 2: the application claims a trolley oven for heat treatment, wherein its arch liner has a thickness of 100-400 mm. If the reference document disclosed a trolley oven for heat treatment in which the arch liner has a thickness of 180-250 mm, it takes away the novelty of said claim. (2)Where the numerical range disclosed in the reference document and the numerical range of the above-defined technical feature partially overlap with each other or have at least a common end point, the reference document deprives the claimed invention or utility model of novelty. Example 1: the application claims a process for making silicon nitride ceramics, wherein the calcination time is 1-10 hours. If the		the claims is included in the numerical range disclosed in a cited invention, the novelty is assessed by the critical significance of the numerical limitation. For the critical significance of the numerical limitation to be acknowledged, a remarkable change in the effect of the invention is required across the boundary of the numerical limitation and the following conditions should be satisfied: 1) The technical meaning of the numerical limitation should be described in the description, 2) the embodiments in the detailed description or supplemental materials should prove that the upper and lower limits of the numerical limitation is critical. Generally, it should be objectively confirmed that the range is critical with experimental results which cover inside and outside the range of the numerical limitation. (3) In a case where the numerical range of invention described in the claims includes the numerical range of the cited inventions, novelty can

	reference document disclosed a process for making silicon nitride ceramics wherein the calcination time is 4-12 hours, since the two ranges overlap each other in the calcination time of 4-10 hours, the reference document takes away the novelty of said claim. Example 2: the application claims a process for plasmasprayed coating, wherein the power of the spray gun is 20-50 kW during coating. If the reference document disclosed a plasmasprayed coating process wherein the power of the spray gun is 50-80 kW during coating, since the two ranges have a common end point 50 kW, the reference document takes away the novelty of said claim. (3)The two end points of the numerical range disclosed in the reference document take away the novelty of the invention or utility model in which the above-defined technical feature		be denied at once. (4) In a case where the numerical range of the claimed invention is different from that of cited invention, novelty is regarded novel in general. (Examination Guidelines Part III. Chapter 2. Section 4.3.1)

	has discrete numerical values including one of said two end points, but does not take away the novelty of the invention or utility model in which the above-defined technical feature is a numerical value at any point between said two end points. Example: the application claims a process for making titanium dioxide photocatalyst, wherein the drying temperature is 40□,58□,75□,or 100□.If the reference document disclosed a process for making titanium dioxide photocatalyst wherein the drying temperature is 40-100□,it takes away the novelty of said claim in the case that the drying temperature is 40□ or 100□, but does not take away the no-velty of said claim in the case that the drying temperature is 58□ or 75□. (4)Where the numerical values or numerical range of the above-defined technical feature fall within the range disclosed in		

	the reference document and do not have any common end point with it, the reference document dose not take away the novelty of the claimed invention or utility model. Example 1: the application claims a piston ring for internal combustion engine, wherein the diameter of the piston ring is 95mm. If the reference document disclosed a piston ring of 70-105mm in diameter used in internal combustion engine, it does not take away the novelty of said claim. Example 2: the application claims an ethylene-propylene copolymer, wherein the polymerization degree is 100-200. If the reference document disclosed an ethylene-propylene copolymer in which the polymerization degree is 50-400,it does not take away the novelty of said claim. (Examination Guidelines 2010		

	Part II Chapter 3 Section 3.2.4)		
11. Non-prejudicial disclosures	Article 24 provides that an invention- creation for which a patent is applied for does not lose its novelty if, within six months before the date of filing (or the priority date where priority is claimed),one of the following events occurred: (1)where it was first exhibited at an international exhibition sponsored or recognized by the Chinese Government; (2)where it was first made public at a prescribed academic or technological meeting; or (3)where it was disclosed by another person without the consent of the applicant. 1. First Exhibited at an International Exhibition Sponsored or Recognized by the Chinese Government: The international exhibitions sponsored by the Chinese Government include those sponsored by the State Council or its departments, or by other	Article 30 (1) In the case of an invention which has fallen under any of the items of Article 29 (1) against the will of the person having the right to obtain a patent, such invention shall be deemed not to have fallen under any of the items of Article 29 (1) for the purpose of Article 29 (1) and (2) for the invention claimed in a patent application which has been filed by the said person within six months from the date on which the invention first fell under any of said items. (2) In the case of an invention which has fallen under any of the items of Article 29 (1) as a result of an act of the person having the right to obtain a patent (excluding those which have fallen under any of the items of said paragraph through the publication in the bulletin pertaining to inventions, utility models, designs or trademarks), the preceding paragraph shall also apply for the purpose of applications of Article 29	(1) In the case public disclosure of an invention made by a person who has a right to obtain a patent falls under any of the following subparagraphs and the person files a patent application within six month from the date of disclosure, the invention is not considered to correspond to any of the inventions under the subparagraphs of Article 29(1) upon assessing if the invention complies with Article 29(1) or (2). (i) When a person with the right to obtain a patent causes the invention to fall under either subparagraph of Article 29(1); nonetheless, this provision does not apply where a patent application or a patent registration is published in the Republic of Korea or a foreign country in accordance with a treaty or law (ii) When, against the intention of a person with the right to obtain a patent, the invention falls under either subparagraph of Article 29(1) (2) A person who intends to take

	institutions or local governments approved by the State Council. The international exhibitions recognized by the Chinese Government refer to the international exhibitions that are registered with or recognized by the International Exhibitions Bureau as stipulated by the International Exhibitions Convention. The international exhibitions refer to those at which exhibits shall be from foreign countries as well as from the organizing country. Where an invention-creation for which a patent is applied for was first exhibited at an international exhibition sponsored or recognized by the Chinese Government within six months before the date of filing, if the applicant requests the grace period concerning novelty, the applicant shall make a declaration in the request while filing the application, and submit certifying materials within two months from the filing date.	(1) and (2) for the invention claimed in a patent application which has been filed by said person within six months from the date on which the invention first fell under any of said items.	advantage of Article 30 paragraph (1) subparagraph (i) shall state purport of such intention to the Commissioner of the Korean Intellectual Property Office when filing a patent application; the person shall also submit a document proving the relevant facts to the Commissioner of the Korean Intellectual Property Office, within thirty days from the filing date of the patent application.

	The certifying materials of the international exhibition shall be provided by the organizer of the exhibition. In the certifying materials shall be indicated the date, venue, and name of the exhibition, and the exhibition date, form and contents of the invention-creation with the official seal of the organizer affixed. 2. First Made Public ata Prescribed Academic or technological Meeting: Prescribed academic or technological meetings refer to those organized or held by the competent authorities under the State Council or national academic organizations, excluding those held below the provincial level or with the entrustment or in the name of the departments under the State Council or national academic organizations. Disclosure at a meeting of the latter nature is prejudicial to the novelty of the content, unless there is an agreement on confidentiality being		

	concluded on such a meeting. Where an invention-creation for which a patent is applied for was first made public at a prescribed academic or technological meeting within six months before the date of filing, if the applicant requests the grace period concerning novelty, the applicant shall make a declaration in the request while filing the application, and submit certifying materials within two months from the filing date. The certifying materials of the academic or technological meetings shall be provided by the competent authority under the State Council or national academic organizations organizing the meeting. In the certifying materials shall be indicated the date, venue and name of the meeting, and the publication date, form, and contents of the invention-creation with the official seal of the organizer affixed. 3. Disclosed by Another Person Without the Consent of the		

	Applicant： The disclosure made by any other person without the consent of the applicant includes the disclosure of the contents of an invention-creation by another person for his failure to comply with the explicit or implicit confidentiality agreement, and disclosure caused after another person gets to know the contents of an invention-creation from the inventor or applicant by means of coercion, fraud or espionage. Where an invention-creation for which a patent is applied for is disclosed by another person without the consent of the applican within six months before the date of filing, if the applicant knows about it before the date of filing, the applicant shall make a declaration in the request while filing the application, and submit certifying materials within two months from the filing date. If the applicant knows about the matter after the date of filing, he shall		

	submit a declaration to request for the grace period concerning novelty with certifying materials within two months after he knows about it. The examiner may, when necessary, require the applicant to submit the relevant certifying materials within the specified time limit. In the certifying materials submitted by the applicant on the disclosure of the application contents by another person shall be indicated the date, manner and contents of the disclosure, which shall be signed or sealed by an attester. Where the request for the grace period concerning novelty by the applicant is not in conformity with the above provisions, the examiner shall issue the Notification that Grace Period Concerning Novelty Deemed Not to Have Been Claimed. (Examination Guidelines 2010 Part I Chapter 1 Section 6.3) An invention-creation for which		

	a patent application is applied does not lose its novelty where, within six months before the date of filing, any of the events prescribed in Article 24 occurred. In other words, even if any of these events occurred, the relevant inventioncreation does not form part of the prior art to said application. That period of six months is called the “grace period". The effect of grace period is different from the effect of priority. The graceperiod means that some kinds of disclosure are merely regarded as non-prejudicial to the novelty and inventive step of the application, including some disclosure by the applicant (including inventor)and some disclosure by a third person who got knowledge of the invention-creation from the applicant or inventor by legal or illegal means. Actually, an invention-		

	creation will form part of the prior art once it was disclosed, but the above kinds of disclosure in a certain period are regarded as non-prejudicial to the application, that is, not forming part of the prior art that may affect the novelty and inventive step of the application. Nevertheless, it does not mean the date of disclosure of the invention-creation is regarded as the filing date of the application. Therefore, if any third person makes an identical invention-creation independently during the period from the date of disclosure to the date of filing and files a patent application earlier than the application by the applicant, then, according to the principle of first-to-file, the applicant cannot get the patent right. On the other hand, the application by the third person does not have novelty and cannot be granted patent right, due to the disclosure of the invention-creation by the		

	applicant (including inventor)which makes the invention-creation form part of the prior art to the application by the third person. If, within six months from the date on which any of the events described in Article 24 occurred and before the applicant files the application, the invention-creation was disclosed once again, provided that the disclosure does not belong to any of the prescribed events, the later disclosure will take away the novelty of the application. If the later disclosure also falls into any of the three prescribed events, the application does not lose novelty because of this later disclosure, but the grace period shall be calculated from the date of the first disclosure. Where a patent application falls into the circumstance as prescribed in Article 24(3),the Patent Office may, when it deems necessary, require the applicant		

	to submit relevant certifying documents to prove the date on which the event occurs and the substantial contents of the disclosure. Where the applicant fails to make a declaration and submit certifying documents as required in Rule 30.3 (see also Chapter 1,Section 6.3 of Part □),or fails to submit certifying documents within the specified time limit as required in Rule 30.4,the application cannot enjoy the grace period of novelty as provided for in Article 24. When a dispute arises as to the application of Article 24,the party claiming for its applicability shall bear the burden of proof or make a convincing explanation. (Examination Guidelines 2010 Part II Chapter 3 Section 5) Rule 30: The international exhibition recognized by the Chinese Government refered to in Article 24, subparagraph (1) of the		

	Patent Law means the international exhibition that is registered with or recognized by the International Exhibitions Bureau as stipulated by the International Exhibitions Convention. The academic or technological meeting referred to in Article 24,subparagraph (2) of the Patent Law means any academic or technological meeting organized by a competent department concerned of the State Council or by a national academic or technological association. Where any invention-creation for which a patent is applied falls under the provisions of Article 24, subparagraph (l) or (2) of the Patent Law, the applicant shall, when filing the application, make a declaration and, within a time limit of two months from the date of filing, submit certifying documents issued by the entity which organized the international		

	exhibition or academic or technological meeting, stating the fact that the invention-creation was exhibited or published and with the date of its exhibition or publication. Where any invention-creation for which a patent is applied falls under the provisions of Article 24,subparagraph (3) of the Patent Law, the patent administration department under the State Council may, when it deems necessary, require the applicant to submit the relevant certifying documents within the specified time limit. Where the applicant fails to make a declaration and submit certifying documents as required in paragraph three of this Rule, or fails to submit certifying documents within the specified time limit as required in paragraph four of this Rule, the provisions of Article 24 of the Patent Law shall not apply to the application.		

D. Assessment of novelty			
1. Assessment approach of novelty	The determination of whether an invention or utility model application has novelty needs to be made only after its practical applicability has been confirmed. (Examination Guidelines Part II. Chapter 3. Section 3) Article 22.2 shall serve as the criterion for judging whether an invention or utility model possesses novelty. (Examination Guidelines Part II. Chapter 3. Section 3.2) When a reference document is cited to judge novelty and inventive step of an invention or utility model, the technical contents disclosed in the reference document shall be based upon. Said technical contents include not only those technical contents expressly described in the reference document but also those implied	Inventions subject to analysis of novelty are "claimed inventions." (Examination Guidelines Part II. Chapter 2. Section 1.3) The presence of novelty is determined based on whether or not the claimed inventions are included in the inventions provided in Article 29(1)(i) to (iii). When there are two or more claims in the scope of claims, each claim is analyzed. (Examination Guidelines Part II. Chapter 2. Section 1.4)	(1) The examiner shall assess whether or not a claimed invention is novel by judging whether the claimed invention falls within the scope of the inventions set forth in the provision of Article 29 paragraph (1) subparagraph (i) to (ii). (2) The claims must describe the subject matter for which protection is sought. (Article 42 paragraph (4)) Thus, the assessment of novelty on an invention is based on the subject matters described in the claims. (3) When there are two or more claims in an application, assessment over novelty should be made for each claim. (Examination Guidelines Part III. Chapter 2. Section 4)

	technical contents that can be derived directly and unambiguously from the disclosure by a person skilled in the art. However, it is not allowable to broaden or narrow the contents of the reference document at will. Where a reference document has drawings, the drawings may also be cited. However, when citing the drawings, the examiner shall note that only those technical features that can be derived directly and unambiguously from the drawings belong to the contents of disclosure. The contents inferred from the drawings, and the dimensions with their relations measured from the drawings without any written description cannot be taken as the contents of disclosure. (Examination Guidelines Part II. Chapter 3. Section 2.3) If the independent claim is		

	believed to lack novelty or inventive step upon examination, further examination shall be carried out to determine whether the dependent claims possess novelty and involve inventive step. (Examination Guidelines Part II. Chapter 8. Section 4.7.1)		
a. Comparison of a claimed invention with a prior art document	Comparing the application being examined with the relevant contents of the prior art or of the applications for invention or utility model filed previously by any entity or individual with the Patent Office and published or announced on or after the filing date of the application being examined (hereafter “previously filed and later published or announced" application), if their technical fields, technical problems to be solved, technical solutions, and their expected effects are substantially the same, they shall be regarded as identical inventions or utility models. It	(1) The claimed inventions and cited inventions are compared by identifying corresponding and differing points between matters used to specify the claimed invention and matters required to express the cited inventions by words (hereinafter called "matters used to specify the cited inventions"). (Examination Guidelines Part II. Chapter 2. Section 1.5.4(1)) (2)In addition to the comparison in said (1), the claimed inventions are identified by comparing the more specific concepts of the claimed inventions to the cited invention to find the corresponding and differing	Novelty of a claimed invention is assessed by comparing the matters specifying the claimed invention and the matters disclosed in the cited invention, and extracting the difference between them. Where there is no difference between the matters specifying a claimed invention and the matters disclosed in the cited invention, the claimed invention is not novel. Where there is a difference, the claimed invention is novel. In addition, the claimed invention is not novel when it is substantially or exactly identical to the cited invention. “The substantially identical invention compared with prior arts”

	should be noted that, in determining the novelty of an application, the examiner shall first of all determine whether the technical solution of the application being examined is substantially the same as that of the reference document. When an application is compared with the contents disclosed in a reference document, if the technical solution defined in a claim therein and the technical solution disclosed in the reference document are substantially the same, and the person skilled in the art from the solutions can conclude that both of them can be applied to the same technical field, solve the same technical problem, and have the same expected effects, then they can be regarded as identical inventions or utility models. (Examination Guidelines Part II. Chapter 3. Section 3.1)	points between them. Some more specific concepts of the claimed inventions include the detailed descriptions of the invention and the descriptions in drawings as modes carrying out the claimed inventions, but the claimed inventions and cited inventions are also compared based on other modes as far as these other modes are included in the more specific concepts of the claimed inventions. This comparison is efficient for determining the novelty of the claimed inventions, such as those containing descriptions that define products by the functions or characteristics or that provide numerical ranges. (Examination Guidelines Part II. Chapter 2. Section 1.5.4(2)) (3) Instead of the approaches in said (1) and 1.5.3(3), matters in cited publications and matters used to specify the inventions in the claimed inventions are compared to define the corresponding and differing points by interpreting these matters	means that there is no newly produced effect, since the difference in the concrete means for solving problems is caused by mere addition, conversion or deletion of well-known or commonly used arts and the difference between the claimed invention and the cited invention does not practically affect the technical idea of the claimed invention (Case No. 2001Hu1624 (Supreme Court, 26 Feb. 2003)). (Examination Guidelines Part III. Chapter 2. Section 4.3)

		based on the common general knowledge as of the filing. However, the results after this comparison should not differ from those from the approaches in said (1) and 1.5.3(3). (Examination Guidelines Part II. Chapter 2. Section 1.5.4(3))	
b. Use of multiple prior art documents to show lack of novelty[2]	When determining novelty, the examiner shall compare each claim of the application separately with the relevant technical contents disclosed in each item of the prior art or each previously filed and later published or announced invention or utility model, rather than with a combination of the contents disclosed in several items of the prior art or several previously filed and later published or announced applications or with a combination of several technical solutions disclosed in one reference document. That is, the	Combinations of two or more independent cited inventions should not be compared to the claimed inventions. (Examination Guidelines Part II. Chapter 2. Section 1.5.4(4))	In assessing novelty, the comparison shall not be conducted between a claimed invention and a combination of two or more cited inventions. Assessing patentability by a combination of two or more cited inventions is not related to novelty, but to inventive step. Except when a cited invention cites a distinct publication (e.g., publication which provides detailed information of a technical feature), the distinct publication is regarded as a cited invention and able to be cited as assessing novelty. When a dictionary and a reference are needed to interpret a term described in the cited reference, the dictionary

[2] A document (the primary document) refers explicitly to another document as providing more detailed information to prove the enabling disclosure of the primary document or others

	principle of separate comparison shall be applied in the determination of novelty of an invention or utility model application, which is different from the approach to the determination of inventive step of an invention or utility model application. (Examination Guidelines Part II. Chapter 3. Section 3.1)		and the reference are regarded as a cited reference and can be cited. (Examination Guidelines Part III. Chapter 2. Section 4.4)
c. Showing of lack of novelty based on “public use” or “on sale”	Since in the substantive examination stage the examiner normally does not know the technologies disclosed by use or made known to the public by other means in China or abroad, the reference documents cited in this stage are mainly publications. (Examination Guidelines Part II. Chapter 3. Section 2.3)	o About the invention of “public use”, see "publicly worked invention" mentioned in I.C.2. o About the invention of “on sale”, there is no special rule in Japan.	A “publicly worked invention” means an invention which has been worked under the conditions where the contents of the invention are to be publicly known. Therefore, it is enough to decide whether the invention is “publicly worked” without assessing whether the invention is “publicly known”. “A publicly worked invention” means an invention which has been worked under the conditions where the invention is or can potentially be publicly known to an unspecific person through the medium of machinery or systems, etc.

			Therefore, the finding an invention can be carried out on the basis of the subject matters embodied in machinery or systems, etc. The matters directly derivable from the facts in view of the common general knowledge as of the working can also be a basis for the finding of a publicly worked invention.
d. Determining whether a claimed invention is novel	Article 22.2 shall serve as the criterion for judging whether an invention or utility model possesses novelty. (Examination Guidelines Part II. Chapter 3. Section 3.2) Where the claimed invention or utility model is completely identical with the technical contents disclosed in a reference document, or there are only simple changes in wording between them, the invention or utility model does not possess novelty. Furthermore, the meaning of “identical contents" shall be construed as including the technical content directly and	When the difference between the matters used to specify the invention in the claimed inventions themselves and those used to specify the cited inventions is not found after the comparison, the claimed inventions are not novel. Any difference between these two matters involves the novelty of the claimed inventions. (Examination Guidelines Part II. Chapter 2. Section 1.5.5(1))	Novelty of a claimed invention is assessed by comparing the matters specifying the claimed invention and the matters disclosed in the cited invention, and extracting the difference between them. Where there is no difference between the matters specifying a claimed invention and the matters disclosed in the cited invention, the claimed invention is not novel. Where there is a difference, the claimed invention is novel. In addition, the claimed invention is not novel when it is substantially or exactly identical to the cited invention. “The substantially identical invention compared with prior arts” means that there is no newly

	unambiguously derivable from the reference document. For example, a claim of an invention application is “a core of a motor rotor made of Nd-Fe-B permanent magnet alloy having a tetragonal crystal structure and a main phase of Nd2Fe14B intermetallic compound". If a reference document discloses “a core of a motor rotor made of Nd-Fe-B magnet", the claim will lose novelty, since it is well known to a person skilled in the art that the so-called “Nd-Fe-B magnet" means the Nd-Fe-B permanent magnet alloy having a main phase of Nd2Fe14B intermetallic compound and a tetragonal crystal structure (Examination Guidelines Part II. Chapter 3. Section 3.2.1)		produced effect, since the difference in the concrete means for solving problems is caused by mere addition, conversion or deletion of well-known or commonly used arts and the difference between the claimed invention and the cited invention does not practically affect the technical idea of the claimed invention (Case No. 2001Hu1624 (Supreme Court, 26 Feb. 2003)). (Examination Guidelines Part III. Chapter 2. Section 4.3)
2. Assessment of the novelty of inventions claimed in specific forms of definition			
a. Selection inventions (generic	If, when the claimed invention or utility model is compared with a	Selection inventions are inventions belonging to the technical fields in	Where the subject matter is described as a generic concept in a

description/disclosure doesn't anticipate the novelty of specific examples)	reference document, the difference between them lies merely in the fact that a technical feature of the same nature is defined in a generic (upper level)term in the former and in a specific (lower level)term in the latter, then the disclosure in the specific (lower level)term takes away the novelty of the invention or utility model defined in the generic (upper level)term. On the other hand, the disclosure in generic (upper level) term does not take away the novelty of an invention or utility model defined in specific (lower level)term. (Examination Guidelines Part II. Chapter 3. Section 3.2.2) If the difference between the claimed invention or utility model and a reference document is merely a direct substitution of customary means employed in the art, the invention or utility model does not possess novelty. For example, if a reference	which it is difficult to expect the effects of the inventions based on the structures of the products, and out of the cited inventions providing generic concepts disclosed in publications or providing substantial or formal options, the inventions providing more specific concepts subdivided under the generic concepts or inventions in which some of the options are presumed to specify the claimed inventions, whose novelty is not denied by the cited inventions, are selected. Therefore, inventions that are not regarded to be disclosed in publications mentioned in I.C.8. are potential selection inventions. (Examination Guidelines Part II. Chapter 2. Section 2.5(3)III) The term "formal alternatives" means descriptions in a style that makes it apparent that the claims are alternatives, such as claims described in the Markush form or multiple dependent form claims citing other claims alternatively. The term "substantial alternatives"	prior art or disclosed invention and the prior art does not specifically disclose the specific concepts which the patented invention comprises, even though a person skilled in the art can easily derive the patented invention from the disclosed invention, since it is hard to recognize that a patented invention consisting only of specific concepts including the above-mentioned generic concept contains unexpected effects of the invention, the invention shall be considered to involve novelty since the patented invention cannot be deemed to be the same with the disclosed invention before filing the application. (Case No. 2001Hu2375 (Supreme Court, 26 Dec. 2002)). Selection inventions are also described in the "inventive step" section of the Examination Guidelines as follows: "A selection invention" is an

	document disclosed a device using screw fastening, and the claimed invention or utility model only replaces the screw fastening with bolt fastening, the invention or utility model does not possess novelty. (Examination Guidelines Part II. Chapter 3. Section 3.2.3) If the claimed invention or utility model has a technical feature defined by numerical values or a continuous numerical range, such as the dimensions of a component, temperature, pressure, and the content of components in a composition, while all other technical features are identical with those in the reference document, then the determination of novelty shall be conducted according to the following rules. (1)Where the values or numerical range disclosed in the reference document fall entirely within the range of the above-defined	means descriptions provided to substantially include more specific aspects of a limited number of arts using comprehensive expressions. The "substantial alternatives" are determined by the claims as well as specifications, drawings, and the common general knowledge as of the filing, such as claims providing the description "alkyl groups with C1 – C10 (the number of carbons)," which is a comprehensive description including methyl groups, ethyl groups, and other groups. On the other hand, the term "thermoplastic resin," for example, is not a comprehensive expression that covers specific concepts of the "thermoplastic resin" unless it should be interpreted exactly based on the specifications, drawings, and common general knowledge as of the filing, such as definitions described in the detailed description of the invention, and it should be noted that this term is not included in the substantial alternatives. Accordingly, the concept	invention which comprises indispensible elements with a more specific concept selected from a generic concept disclosed in a cited invention, wherein the specific concept is not directly disclosed in the cited invention. In the case of selecting optimized conditions by experiments from publicly known technology, the inventive step of the claimed invention cannot be acknowledged because selecting the best or suitable concept from publicly known technology comes within the scope of an exercise of ordinary creativity of a person skilled in the art. However, if a selection invention generates an advantageous effect in comparison with a cited invention, the inventive step of the selection invention can be acknowledged. In this case, all specific concepts included in the selection invention should have advantageous effects, which are qualitatively different or qualitatively the same but quantitatively prominent. The

	technical feature, the reference document deprives the claimed invention or utility model of novelty. (2)Where the numerical range disclosed in the reference document and the numerical range of the above-defined technical feature partially overlap with each other or have at least a common end point, the reference document deprives the claimed invention or utility model of novelty. (3)The two end points of the numerical range disclosed in the reference document take away the novelty of the invention or utility model in which the above-defined technical feature has discrete numerical values including one of said two end points, but does not take away the novelty of the invention or utility model in which the above-defined technical feature is a numerical	"thermoplastic resin" includes an unspecific number of specific concepts, such as polyethylene or polypropylene, and it is understood to be a generic concept specified by the characteristic shared by the specific concepts, such as "thermoplasticity" for the "thermoplastic resin." (Examination Guidelines Part II. Chapter 2. Section 1.5.5(2))	detailed description of the selection invention should precisely explain that the invention generates an advantageous effect in comparison with the cited invention, and needs not to provide experimental materials to confirm the prominence of the effect. If reasons of refusal are notified due to the effect, the applicant can assert the effect concretely by submitting materials relating to experimental comparisons. For example, both a claimed invention and a cited invention relate to a chemical compound for protecting a nerve, which is used for curing a regressive disease of the central nervous system. If the claimed invention relates to a chemical compound with a more specific concept which is not directly disclosed in the cited invention, and the oral activity of the claimed invention generates ten times more advantageous effects than the cited invention, the inventive step of the claimed

	value at any point between said two end points. (4)Where the numerical values or numerical range of the above-defined technical feature fall within the range disclosed in the reference document and do not have any common end point with it, the reference document dose not take away the novelty of the claimed invention or utility model. (Examination Guidelines Part II. Chapter 3. Section 3.2.4)		invention can be acknowledged. (Examination Guidelines Part III. Chapter 3. Section 6.4.1)
b. The claim includes an expression specifying a product by its function, properties, characteristics or mode of operation	(1) Product claims including feature of performance or parameters For this kind of claims, the examiner shall consider whether the feature of performance or parameters in a claim implies that the claimed product has a certain particular structure and/or composition. If the performance or parameters implies that the claimed product has a structure and/or composition distinct from	Claims providing descriptions for defining products by functions or characteristics, which are included in the following (i) or (ii), may be difficult to compare to the cited inventions. For these claims, the examiners shall send a notice of the reasons for refusal for the lack of novelty when they have a reasonable doubt that the products in the claimed inventions and cited inventions are prima facie identical, without comparison of the products	When a claim includes an expression specifying a product by its function, characteristic, etc., such an expression should, in principle, be construed as every product that has such function, characteristic, etc., except when it should be construed otherwise because the expression is specifically defined in the detailed description. However, it is noted that there are also cases where a product described by its function, characteristic, etc.

	that of the product disclosed in the reference document, the claim has novelty. On the other hand, if the person skilled in the art from the performance or parameters cannot distinguish the claimed product from that disclosed in the reference document, it can be presumed that the claimed product is identical with the product in the reference document and accordingly the claim does not have novelty, unless the applicant can, based on the application or the prior art, prove that the claimed product having the feature of performance or parameters is distinct from the product in the reference document in structure and/or composition. (Examination Guidelines Part II. Chapter 3. Section 3.2.5)	between the claimed inventions and the cited inventions for finding the exact corresponding and differing points, unless differences are found in other sections. The reason for refusal is cancelled when the applicants argue against the notice of reasons for refusal or when they clarify their refused applications by submitting written opinions or certificates of experimental results sufficiently enough to deny the conviction of the examiners to the extent that truth or falsity becomes unclear. The novelty of the claimed invention is determined to be refused when the applicants' arguments or clarifications are abstract or general or the examiners do not change their convictions. However, this approach should not be applied to the inventions, whose matters used to specify the cited invention are included in the following (i) or (ii), as cited inventions: (i) Inventions not included in any	should not be construed as a specific product among all products that have such function, characteristic etc. when taking into account the common general technical knowledge at the time of the filing. When describing claims, it is possible to state the structure, method, functions, materials or a combination of these factors for the purpose of clarifying which matters are subject to protection. When function, characteristic, etc. are disclosed in the claims to limit the subject matters of the claimed invention, an examiner should not exclude the function, characteristic, etc. from the features of the invention when interpreting the claims. When a claim includes an expression specifying a product by its function, characteristic, etc., such an expression should, in principle, be construed as every product that has such function, characteristic, etc., except when it should be construed otherwise because the

		inventions whose functions or characteristics are common, used among a person skilled in the art commonly, or relation to the arts commonly used is understood by a person skilled in the art, even though they are not commonly used; or (ii) Inventions included in either of the inventions whose functions or characteristics are common, used among a person skilled in the art commonly, or relation to the arts commonly used is understood by a person skilled in the art, even though they are not commonly used, but those inventions whose functions or characteristics are combined and included in the inventions defined by said (i) as a whole. Note: Common functions or characteristics are defined by JIS (Japanese Industrial Standards), IOS-standards (International Organization for Standardization-standards) or IEC-standards (International Electro-technical Commission-standards), or	expression is specifically defined in the detailed description. However, it is noted that there are also cases where a product described by its function, characteristic, etc. should not be construed as a specific product among all products that have such function, characteristic etc. when taking into account the common general technical knowledge at the time of the filing. For example, in a case where "means to selectively join plastic materials" is disclosed, it is appropriate that "the means to selectively join" mentioned here should not apply to materials such as a magnet which is difficult to join with plastic material. (Examination Guidelines Part III. Chapter 2. Section 4.1.2(1))

		determined quantitatively by testing or measuring methods provided in those standards. Functions or characteristics commonly used among a person skilled in the art is those commonly used by a person skilled in the art with the definitions or testing or measuring methods understood by the persons skilled in the art. (Examination Guidelines Part II. Chapter 2. Section 1.5.5(3)I) The following are examples in which the examiners should have a reasonable doubt that the cited inventions are prima facie identical: The functions or characteristics of the claimed inventions are found to be convertible to other functions or characteristics specified by other definitions or by testing or measuring processes, and it is found that the products of the cited inventions are considered to be identical to those of the claimed inventions from the results of the conversion; The claimed inventions and cited	

		inventions, which are defined by identical or similar functions or characteristics and have different measurement conditions or evaluation processes with a constant relationship, where the functions or characteristics of the cited inventions are highly likely to be included in those of the claimed inventions when the functions or characteristics of the cited inventions are measured or evaluated by the conditions of measurement or processes of evaluation of the claimed inventions; -After the filing of the claimed inventions for products, structures of the products that are identical to those of the claimed inventions are found and the products have been publicly known before the filing; -The cited inventions are found to be identical or similar to the arts described in the working examples in the specifications or drawings of the claimed inventions, such as cited inventions providing an identical manufacturing process and a similar	

		starting material to those described in the working examples, or cited inventions providing a similar manufacturing process and an identical starting material to those described in the working examples; and -The cited inventions and claimed inventions have common matters used to specify the claimed inventions other than sections describing the functions or characteristics and the cited inventions provide problems to be solved or advantageous effects of the inventions similar or identical to those in the matters used to specify the inventions describing the functions or characteristics, where the functions or characteristics of the cited inventions are highly likely to be included in those of the claimed inventions. In addition, the novelty of the claimed inventions shall be determined through regular approaches rather than this special approach when possible.	

		(Examination Guidelines Part II. Chapter 2. Section 1.5.5(3)II)	
c. The claim includes an expression specifying a product by its parameter	See D.2.b. above.	See I.B.2.a. above.	Novelty regarding a parameter invention is assessed by interpreting the parameter itself as part of the claims. It is important to note that novelty for the invention should not be assessed by only novelty of the parameter itself. Novelty regarding a parameter invention described in the claims is denied in general if limiting the invention with the parameter only experimentally identifies properties or characteristics of a publicly known product or there is a change only in expression by using a parameter. In a parameter invention, if there is a "reasonable doubt" that the claimed invention and the cited invention are identical, an examiner can await written arguments or a certificate of experimental results after notifying the ground for rejection on novelty without comparing strictly the claimed invention with cited references since it is generally hard

			to compare the claimed invention with a cited invention regarding assessing novelty on parameter invention. If the ground for rejection is no longer kept by the applicant's arguments the ground for rejection is dissolved. However, an examiner should decide to reject the patent application with regard to novelty, if the reasonable doubt is not dissolved. An examiner might have an aforementioned reasonable doubt in the following cases: (a) In a case when the parameter described in claims is converted with a different definition and a test/measurement method, and then the claimed invention is found to be identical with the cited invention, (b) In a case when an examiner evaluates the parameter of a cited invention according to a measurement/evaluation method in the description and obtains the same subject matter as that of claimed invention, (c) In a case when an

			embodiment in the detailed description of the claimed invention is identical to that of the cited invention. (5) In a case when an examiner notifies the ground for rejection of a parameter invention, the examiner has to concretely describe the ground of reasonable doubt, and if necessary, the examiner can propose a way to dissolve the reasonable doubt. (6) The examination criteria described in (1)-(5) are not applied to a claimed invention when the parameter of the claimed invention is standard, commonly used or proved to be easily understandable by a person skilled in the art. (Examination Guidelines Part III. Chapter 2. Section 4.3.2)
d. The claim includes an expression specifying a product by its use	For this kind of claims, the examiner shall consider whether the feature of use in a claim implies that the claimed product has a certain particular structure and/or composition. If the use is fully determined by the inherent	See I.B.2.c.	Where a claim includes an expression specifying a product by its use (i.e. limitation of use), the examiner should interpret the claimed invention only as a product specially suitable for the use disclosed in the claim, by taking into

	property of the product and does not imply any change in the structure and/or composition of the product, the product claim defined by this use feature does not have novelty as compared with the product in the reference document. For example, comparing an invention of antiviral compound X with compound X as a catalyst disclosed in a reference document, although the use of compound X has been changed, the chemical formula which determines its inherent property has no change, therefore the invention of antiviral compound X does not have novelty. However, if the use implies that the claimed product has a certain particular structure and/or composition, that is, the use indicates that the structure and/or composition of the product has changed, then the use as a definitive feature of the structure and/or composition of		account the detailed descriptions in the specification and drawings, and the common general technical knowledge at the time of the filing. Even if a product includes all technical characteristics described in the claims, an examiner should not regard the product as the product described in the claim when the product is not appropriate for the relevant use or when the product needs conversion to be used. For example, “crane hook with a shape of ~” merely indicates a hook including technical features with size and strength suitable for a crane. So it is appropriate that the crane hook should be construed as a different product from “fishing hooks” with regard to the structure. If a product with a limitation of use is regarded as not being specifically suitable for such use by taking into account the specification and drawings, and the common general technical knowledge at the time of the filing, it is construed that a limitation of use has no impact in

	the product must be considered. For example, “a hook for crane" means a hook having the structure specifically suitable for a crane in size and strength. It is distinct in structure from “a hook for angling" which has the same shape but is used for fishing. Therefore they shall be considered as different products. (Examination Guidelines Part II. Chapter 3. Section 3.2.5)		specifying an invention, thereby the limitation of use does not have influence in the assessment of novelty. (Example 1) In the case where an embossing non woven fabric “used in agriculture” with limitations of weight and thickness is described in the claim and an embossing non woven fabric with the same numerical limitations is disclosed in a catalogue published prior to the time of filing, if it is considered that the claimed invention is not particularly suited to be used in agriculture, a limitation of use does not have influence in specifying the claimed invention, and thus novelty is denied based on the cited inventions in the catalogue. (Examination Guidelines Part III. Chapter 2. Section 4.1.2(2))
e. The claim defines a product by its manufacturing process (product-by-process claim)	For this kind of claims, the examiner shall consider whether the feature of manufacturing process results in a certain particular structure and/or composition of the product. If the	Where a claim includes a statement defining a product by its manufacturing process, such a statement is construed as meaning a product itself unless it should be construed as different meaning in	A product invention should be (except for certain particular cases where it is impossible to specify the product without using a manufacturing process thereof) described in such a way that the

	person skilled in the art can conclude that the process will necessarily result in a product having a particular structure and/or composition different from that of the product in the reference document, the claim has novelty. On the other hand, if the claimed product, as compared with the product in the reference document, has the same structure and composition despite the different manufacturing process, the claim does not have novelty, unless the applicant can, based on the application or the prior art, prove that the process results in a product having a different structure and/or composition, or having a different performance thereby indicating that its structure and/or composition has changed. For example, an application claims a glass cup made by process X, and a reference document disclosed a glass cup made by process Y.I f the glass cups made by the both	compliance with I.B.1.b. o If an identical product can be obtained by a different process from the one stated in the claim, thus, the claimed invention is not novel where the product is publicly known prior to the filing(see I.B.2.e. above). It is sometimes extremely difficult to determine the structures of products per se provided in the claims defining the products by manufacturing processes. For these claims, as mentioned in the I.D.2.e., the examiners shall send a notice of the reasons for refusal for the lack of novelty when they have a reasonable doubt that products in the claimed inventions and cited inventions are identical, without comparing products of the claimed inventions to those of the cited inventions to find exact corresponding and differing points, unless differences are found in other sections. However, this approach should not be applied to the inventions, whose matters used to specify the cited invention define the products by the	technical constitutions are directly stated in the claim, even if the manufacturing process of the product is disclosed in the product claim. Thus, an examiner should compare the claimed product itself specified by the description of the claim with a prior art published prior to the time of filing when assessing novelty and inventive step, unless there is a special reason in the description of the claim. The special reason aforementioned should only be accepted by the examiner in extremely exceptional cases such as when it is greatly difficult to specify the product in the ordinary way in the relevant technical field. Where a claim includes a statement specifying a product by its manufacturing process, such a statement is construed as meaning a product per se unless it should be construed as a different meaning according to the definition in the detailed description. If an identical product can be obtained by a different process from the one stated

	processes respectively have the same structure, shape, and constituent material, the claim does not have novelty. On the other hand, if the process X comprises a step of annealing at a particular temperature not disclosed in the reference document, which considerably increases the breaking resistance of the glass cup so made as compared with that in the reference document, then it indicates the claimed glass cup has a different microstructure due to the different manufacturing process, and has an internal structure different from that in the reference document, therefore the claim has novelty. (Examination Guidelines Part II. Chapter 3. Section 3.2.5)	manufacturing processes, as cited inventions: (Examination Guidelines Part II. Chapter 2. Section 1.5.5.(4)I) The following are examples in which the examiners should have a reasonable doubt: -The cited inventions are found to provide products with similar starting materials to and manufactured by the same manufacturing process as those of the claimed inventions; -The cited inventions are found to provide products that have the same starting material as and manufactured by the similar manufacturing process to those of the claimed inventions; -After the filing of the claimed inventions for products, structures of the products that are identical to those of the claimed inventions and the products have been publicly known before the filing; and -The cited inventions are found to be identical or similar to the arts described in the working examples	in the claim, the claimed invention is not novel where the product is publicly known prior to the time of filing. Thus, even if applicant's intention is to limit the claimed invention to only the product which is obtained by the particular process, such as a claim reading as "Z which is obtained solely by process A", the claimed invention should be treated in the same way aforementioned. (Example 1) In a case where "panel formed by cutting process using wave shaped blade of a knife" is described in the claims and the panel is the subject matter to be protected, it is construed that there is no difficulty in directly specifying the structure of the panel in the technical field. It is appropriate to make a distinction between the panel defined by its manufacturing process and the claimed invention without taking into account of the manufacturing process. When comparing the claimed invention and the cited invention, both inventions show the

		in the specifications or the drawings of the claimed inventions. (Examination Guidelines Part II. Chapter 2. Section 1.5.5.(4)II)	same wave or cloud shape on the striped surface in the natural form. Therefore, the claimed invention is regarded as the same invention with the cited invention. (Examination Guidelines Part III. Chapter 2. Section 4.1.2(3))
E. Examiner's holding of lack of novelty (e.g. rejection) and the applicant's reply to overcome the holding of lack of novelty			
1. Examiner's holding of lack of novelty	Where it is impossible to grant the patent right to an application because of the lack of novelty or inventive step, the examiner shall provide his objection on novelty and inventive step to each claim in the text of the Office Action, first to the independent claim, and then to the dependent claims one by one. However, if there are too many claims or the reason of objection is the same, the dependent claims can be evaluated in group. It shall be	A notice of reasons for refusal is sent to applicants when the examiners have concluded that claimed inventions are unpatentable under Article 29(1). (Examination Guidelines Part II. Chapter 2. Section 1.6) Reasons for refusal should concretely be described in a notice of reasons for refusal so that an applicant can understand clearly its purport. For citation of prior art documents, the following matters should be	When a patent application fails to satisfy the prescribed requirements in the Patent Act, the examiner shall notify the grounds for rejection to the applicant and provide him/her with an opportunity to submit a written statement of argument in response. When the submitted written statement of argument or amendment thereafter still fails to resolve the notified grounds for rejection, the examiner shall reject the patent application.

	pointed out in the end that there is no substantive content to be granted the patent right even in the description. (Examination Guidelines Part II. Chapter 8. Section 4.10.2.2) Where the examiner provides the observations of examination in accordance with certain parts of the reference documents cited in the Office Action, the relevant specific paragraphs, or the numbers of the relevant figures and the reference signs of the components or parts in the figures shall be indicated. (Examination Guidelines Part II. Chapter 8. Section 4.10.2.2) For how to make the observations of examination and state the reasons thereof on the contents of the claims and the description according to the provisions of Article 22 on novelty and inventive step, see the relevant contents in Chapter 3 and Chapter 4 of this Part.	noted; (1) Cited documents should be specified and the cited parts required for comparison with the claimed invention and judgment should be specified. (2) The technical contents found in the cited documents etc. should be clarified. (3) Necessary and sufficient documents for constituting the reasons for refusal should be cited and too many documents should not be cited unnecessarily. (Examination Guidelines Part IX. Section 2, 4.2) (2) In principle, all of the reasons for refusal which have been found should be notified on the occasion of notifying the notice of reasons for refusal for the first time. However, where it is clear that other reasons for refusal will be resolved if one reason for refusal is resolved, multiple reasons for refusal should not be always notified redundantly. (3) In drafting the first notice of reasons for refusal, the examiner	(Examination Guidelines Part V. Chapter 3. Section 1) Instructions for notice of ground for rejection are as follows: (1) Except for special cases, all the grounds for rejection having been discovered during an examination stage shall be notified collectively. Also, in order to protect a procedural interest of an applicant in his/her amendment and to expedite an examination process, an examiner shall notify grounds of rejection altogether which might be conflicting. (2) Where an examiner notifies the ground for rejection, he/she shall stipulate the relevant provisions of the Act or laws. Also, for two or more claims included, the grounds for rejections should be indicated on a claim by claim basis. Details shall be referred to「5.4 Examination Method by Each Claim」. (3) The grounds for rejection shall be stated with definite, concise, normal sentences to help an applicant's better

	(Examination Guidelines Part II. Chapter 8. Section 4.10.2.2)	should make an effort to notify the reasons for refusal required for the applicant to amend for obtaining the patent, without sticking to trivial matters. (Examination Guidelines Part IX. Chapter 2. Section 4.3.1)	understanding. (4) If considered necessary for the convenience of an applicant (in his/her responding to the notice of grounds for rejection) as well as for expeditious and accurate examination, an examiner may suggest a division or conversion of an application in the notice of rejection grounds. (5) Where the written notice of rejection grounds having been issued contains errors in writing, an examiner shall issue a correct notice of grounds for rejection again, regardless of whether an applicant submits a written statement of argument. (6) Where the description contains a self-evident error in writing, an examiner shall notify the error as 「Considerations」 if there is other grounds for rejection, If there is no other grounds for rejection, an examiner shall communicate this with an applicant by telephone (or others) and may advise an applicant to self-amend or amend ex officio

			(refer to「Chapter 5. Amendment Ex Officio」). (Examination Guidelines Part V. Chapter 3. Section 5.1)
2. Applicant's reply (the reply can be the one overcome the holding of lack of novelty or the one not)	After the response of the first Office Action has been submitted by the applicant, the examiner shall continue the examination of that application and consider the observations and/or amendments made by the applicant. The same standard of examination shall be applied by the examiner at the various stages of the examination. (Examination Guidelines Part II. Chapter 8. Section 4.11) where the applicant has made amendments according to the observations of the examiner, eliminated the defect which may lead to rejection of the application so that the patent right may be granted to the revised application, if there are still some defects in the application, the examiner shall	The applicants have opportunities to argue against the notice of reasons for refusal or clarify their refused applications by submitting written opinions or certificates of experimental results. The reason for refusal is cancelled when the applicants deny the convictions of the examiners that the claimed inventions are unpatentable according to Article 29(1) to the extent that truth or falsity becomes unclear, by submitting written opinions or certificates of experimental results. The claimed invention is refused due to lack of novelty when the convictions of the examiners do not change. (Examination Guidelines Part II. Chapter 2. Section 1.6)	An applicant may submit arguments in response to an examiner's notice of grounds for a rejection and may file amendments to the specification (including detailed description and claims) or drawing(s) within the period designated in Article 47. Taking account of any amendments proposed, or arguments made, by the applicant in reply to the notice of grounds for rejection, the examiner should examine the application again. Where an examiner finds no grounds to reject a patent application, he decides that a Korean patent be granted. When an examiner examines the application again with taking account of any amendments or arguments in reply to the notice of grounds for rejection and considers that the applicant has not overcome his objections, the examiner may decide

	invite the applicant again to eliminate these defects. (Examination Guidelines Part II. Chapter 8. Section 4.11.1) if, after the applicant has made the observations or amendments, the examiner finds that there still exist the defects falling into situations specified in Rule 53 which have been indicated in the original Office Action, he may make the decision of rejecting the application if the principle of hearing has been met. (Examination Guidelines Part II. Chapter 8. Section 4.11.1) where, after the applicant has made the amendment or observations, the application meets the requirements of the Patent Law and its Implementing Regulations, the examiner shall issue Notification to Grant Patent Right. (Examination Guidelines Part II.		to refuse the application. (Examination Guidelines Part V. Chapter 1. Section 1.2)

	Chapter 8. Section 4.11.1)		
II. Special consideration applicable to chemical practice			
1. Novelty of compound	(1)For a compound claimed in an application, if it has been referred to in a reference document , it is deduced that the compound does not possess novelty, unless the applicant can provide evidence to verify that the compound is not available before the date of filing. The word “refer to” mentioned above means to define clearly or explain the compound by the chemical name, the molecular formula (or structural formula),the physical/chemical parameter(s) or the manufacturing process(including the raw materials to be used). For example, if the name and the molecular formula(or structure formula)of a compound disclosed in a reference document are difficult to be identified or unclear, but the document discloses the same	Novelty of the chemical inventions shall be judged based on the same guidelines with other technical fields (See I.).	The general guidelines for determining novelty shall be followed.

	physical/chemical parameter(s) or any other parameters used to identify the compound as those of the claimed compound of an application, it is deduced that the claimed compound of an application, it is deduced that the claimed compound does not possess novelty, unless the applicant can provide evidence to verify that the compound is not available before the date of filing. If the name, molecular formula (or structure formula) and physical/chemical parameter(s) of a compound disclosed I a reference document are unclear, but the document discloses the same method of preparation as that of the claimed compound of an application, it is deduced that the claimed compound does not possess novelty. (2) A general formula cannot destroy the novelty of a specific compound included in the general formula. However, the disclosure of a specific		

	compound destroys the novelty of a claim for said general formula containing said specific compound, but it does not affect the novelty of a compound other than the specific compounds contained in said general formula. A series of specific compounds may destroy the novelty of the corresponding compounds in the series. The compounds in a range (such as C_{1-4}) destroy the novelty of the specific compounds at the two ends of that range (C_1 and C_4). However, if the compound C_4 has several isomers, the compounds C_{1-4} can not destroy the novelty of each single isomer. (3) The existence of a natural substance per se does not destroy the novelty of the invented substance. A natural substance destroys the novelty of the said invented substance only when it is disclosed in a reference document and is identical with or directly equivalent to the		

	invented substance in structure and morphology.		
2. Novelty of composition	(1) Judgment of novelty on a composition merely defined by its components Composition X consisting of components (A+B+C) is disclosed in a reference document, (i) if the subject matter of an invention application relates to composition Y (components: A+B), and the claim for composition Y is presented in the close-ended mode, for example, it is described as "consisting of A+B", the claim possesses novelty even if the technical problem solved by the invention is the same as that of composition X; (ii) if the claim for composition Y is presented in the open-ended mode as "containing A+B", and the technical problem solved by the invention is the same as that of composition X, then the claim does not possess novelty;	Novelty of the chemical inventions shall be judged based on the same guidelines with other technical fields (See I.).	The general guidelines for determining novelty shall be followed.

	(iii) if the exclusive method is used to present the claim of composition Y, i.e., when it is indicated that "C" is not contained in it, the claim possesses novelty. (2) Judgment of novelty on a composition defined by its components and contents For the judgment of novelty on a composition defined by its components and contents, the provisions of Chapter 3 Section 3.2.4 of this Part shall apply.		
3. Novelty of chemical product characterized by physical/ chemical parameter(s) or manufacturing process	(1) For the claim of a chemical product characterized by physical/ chemical parameter (s), if it is impossible to compare the product characterized by said parameter (s) with that disclosed in a reference document based on the parameter (s) described and to determine the difference between them, it is deduced the product claim characterized by the said parameter (s) does not possess novelty as required in Article	Novelty of the chemical inventions shall be judged based on the same guidelines with other technical fields (See I.).	Novelty on manufacturing process inventions containing different expressions at the end of claims Even though inventions of manufacturing processes for drugs contain different expressions at the end of claims(for example, expressions for purposes of inventions), where their manufacturing processes are the same and the inventions are made based on the identical pharmaceutical efficacy, the inventions shall be considered to be

	22.2. (2) For the claim of a chemical product characterized by manufacturing process, the novelty shall be determined on the product per se, rather than merely comparing the manufacturing process therein with the process disclosed in a reference document to find whether or not the two processes are identical. A different manufacturing process does not always result in the change of a product per se. If, compared with a product disclosed in a reference document, the difference of said claimed product lies only in the manufacturing process, having neither parameters disclosed in the application, which may be used to prove its difference, nor indications of any change in its function and/or nature resulting from the difference of the process, then it is deduced that the product claim characterized		the same and lack novelty. (Examination Guidelines Part V. Chapter 3. Section 3.3)

	by the process does not possess novelty as required in Article 22.2.		
4. Novelty of use invention of chemical product	Since a chemical product is novel, the use invention of the novel product will naturally possess novelty. A known product is not rendered novel merely because a new application thereof has been put forward. For example, if product X is known as a detergent, then the product X used as a plasticizer does not possess novelty. However, a known product does not destroy the novelty of its new use if the new use per se is an invention. This is because such use invention is an invention of method of application, and the substance of the invention lies in how to apply the product rather than the product per se. For example, the said product X is originally used as a detergent. Then, someone discovers from research that it can be used as a	Novelty of the chemical inventions shall be judged based on the same guidelines with other technical fields (See I.). However, medical inventions shall be judged based on the following guidelines. Regarding the medicinal use based on a specific attribute (1) Application to a specific disease Even if the compounds etc. of the claimed medicinal invention do not differ from the compounds etc. of the cited invention, the novelty of the claimed medicinal invention is not denied when the claimed medicinal invention and the cited invention differ in medicinal use of applying to a specific disease based on the attribute of such compounds etc. For example, when a claimed invention is “a medicine for disease Z comprising an active ingredient	o Novelty on pharmaceutical inventions regarding the same matter Where use inventions of pharmaceuticals regarding the same matter have different uses, the inventions shall not be considered to be identical. However, where a cited invention and a patented application fall under any of the followings, the patented invention shall be considered to be identical with the cited invention and, therefore, to lack novelty. (1)Where inventions are recognized to be based on the same or similar pharmaceutical efficacy even though they contain different expressions for use of the inventions (2)Where the subject, method and time for applicability of pharmaceuticals cannot be distinguished o Novelty on inventions described differently, but technically identical

	plasticizer after adding to it certain additives. Then its preparation, the kind of additives selected and the proportion etc., are the technical features of the method of application. Under such circumstances, the examiner shall assess whether the method per se possesses novelty and shall not consider that the method of application does not possess novelty on the grounds that product X is known. As for a medical-use invention relating to a chemical product, the following aspects shall be taken into consideration when the examination of novelty is carried out. (1) Whether or not the new use is different in substance from the known use. The use invention does not possess novelty when the difference between the new use and the known use lies merely in the form of expression, but the substance of them is the same.	A," and a cited invention is "a medicine for disease X comprising an active ingredient A," the novelty of the claimed medicinal invention is not denied, in the case that it is clear that the disease X and the disease Z are different diseases in the light of the common general technical knowledge as of the filing. The lines of thoughts regarding the differences in medicinal use are as follows. (a) Even if the medicinal use of the claimed medicinal invention and the medicinal use of the cited invention are different in expression, the novelty of the claimed medicinal invention is denied when the medicinal uses are judged to come under (i) or (ii) described hereunder taking into consideration the common general technical knowledge as of the filing. (i) In the case that the medicinal use is conceived from a working mechanism thereof, (ii) In the case that the medicinal use inevitably results from closely	Where inventions disclosed in claims are written differently, but are considered to contain substantially the same purposes and effects, the inventions shall be deemed to be identical. (1) Inventions of manufacturing device for pharmaceuticals and inventions of manufacturing process for pharmaceuticals considered to be a method of using such manufacturing process (for example, where the end of the claims of the inventions each contains the manufacturing device for tablets and the manufacturing method for tablets and the rest are the same) shall be deemed to be identical. (2) Inventions of pharmaceuticals and inventions of using such pharmaceuticals shall be deemed to be identical. (3) Inventions of chemical compounds and inventions of manufacturing process of such chemical compounds shall be deemed to be identical.

	(2) Whether or not the new use is revealed directly by the mechanism of action or pharmacological action of the known use. The use does not possess novelty if it is directly equivalent to the mechanism of action or pharmacological action of the known use. (3) Whether or not the new use belongs to generic (upper level) term of the known use. The known use defined by specific (lower level) term may destroy the novelty of the use defined by generic (upper level) term. (4) Whether or not the features relating to use, such as the object, mode, route, usage amount, interval of administration can define the procedure of manufacture of a pharmaceutical. The distinguishing features merely present in the course of administration do not enable the use to possess novelty.	related pharmacological effect. [Example of (i) above] (Cited invention) Bronchodilator →(Claimed medicinal invention) Therapeutic agent for Asthma (Cited invention) Vasodilator →(Claimed medicinal invention) Hypotensive agent (Cited invention) Coronary vessel dilator →(Claimed medicinal invention) Therapeutic agent for Angina (Cited invention) Histamine release inhibitor →(Claimed medicinal invention) Anti-allergy drug (Cited invention) Histamine H-2 receptor inhibitor →(Claimed medicinal invention) Therapeutic agent for Gastric ulcer [Example of (ii) above] (Cited invention) Cardiotonic agent → (Claimed medicinal invention) Diuretic agent (Cited invention) Anti-inflammatory agent →(Claimed medicinal invention) Painkiller	

		(Note) It is known in the field of medical treatment that there are certain compounds etc. having two or more medicinal uses inevitably. However, in the examples listed under (ii) above, it is also well known that all the compounds etc. having a first medicinal use coming under (ii) above do not have necessarily a second medicinal use. Accordingly, when the novelty of the claimed medicinal invention in such a case is considered, it is necessary to consider the common general technical knowledge as of the filing regarding the structure-activity correlation or the like of the compounds etc. (b) When the medicinal use of the cited invention is expressed in a more specific concept of the medicinal use of the claimed medicinal invention, the novelty of the claimed medicinal invention is denied. [Example] (Cited invention) Antipsychotic agent	

		→(Claimed medicinal invention) Agent acting on central nervous system (Cited invention) Therapeutic agent for Lung cancer →(Claimed medicinal invention) Anticancer agent (c) When the medicinal use of the cited invention is expressed as a generic concept of the medicinal use of the claimed medicinal invention and the medicinal use of the claimed medicinal invention is expressed as a more specific concept which can be conceived from the medicinal use of the cited invention based on the common general technical knowledge as of the filing, the novelty of the claimed medicinal invention is denied. (Note) It should be noted that a medicinal use expressed as a more specific concept can not be conceived only because the medicinal use expressed as a more specific concept is conceptually included in the medicinal use expressed in a generic concept or the	

		medicinal use expressed in a more specific concept can be listed from the medicinal use expressed in a generic concept. (d) When the medicinal use of the claimed medicinal invention is only expressed as a newly found working mechanism in place of the medicinal use of the cited invention and both uses cannot be substantially distinguished from each other, the novelty of the claimed medicinal invention is denied. [Example] (Cited invention) Antibacterial agent →(Claimed medicinal invention) Bacterial cell membrane formation inhibitor (e) When there is no difference in the component compositions and the medicinal uses of the claimed medicinal invention and the cited invention, and the component contained in the claimed medicinal invention is merely expressed in a manner that the working mechanism of a part of the component of the cited invention is defined as if it is a	

		use, the novelty of the claimed medicinal invention is denied. [Example] (Cited invention) Skin anti-inflammatory agent containing indomethacin and capsicum extract →(Claimed medicinal invention) Skin anti-inflammatory agent containing indomethacin and long-term stability improving agent for indomethacin composed of capsicum extract (Note) As the component constitutions of the composition are the same, it is obvious that the components contained in the skin anti-inflammatory agent of both inventions perform the same working effect despite the subjective object for adding. Accordingly, even if the capsicum extract is defined as a stabilizer for improving long-term stability of the indomethacin, this cannot make the invention different from the invention described in the publication. (Tokyo High Court Judgment Hei 13.12.18 (Heisei 13(Gyo Ke) 107)	

		(2) Application to a specific disease in which dosage and administration is specified Even if compounds etc. of a claimed medicinal invention do not differ from those of a cited invention and there is no difference in the applied disease, the novelty of the claimed invention is not denied when there is a difference between the claimed medicinal invention and the cited invention in medicinal use of applying to a specific disease with a specific dosage and administration based on the attribute of compounds etc. (Examination Guidelines Part VII. Chapter 3. 2.2.2)	
III. Conflicting applications (earlier applications still unpublished at the critical date, other types of conflicting applications)	(1) Conflicting Applications In accordance with Article 22.2,when novelty of an invention or utility model application is examined ,the applications relating to the identical invention or utility model which have been filed by any entity or individual prior to the filing date of the application being examined with the Patent	Article 29-2 of the Patent Act Where an invention claimed in a patent application is identical with an invention or device (excluding an invention or device made by the inventor of the invention claimed in the said patent application) disclosed in the description, scope of claims or drawings (in the case of the foreign language written application under Article 36-2(2), foreign language	Notwithstanding Patent Act Article 29 paragraph (1), where a patent application is filed for an invention that is identical to an invention or device described in the description or drawing(s) originally attached to another application for a patent or a utility model registration that has been filed before the filing date of the patent application and laid open or published after the filing of the

	Office and published or announced on or after said filing date, will take away the novelty of the application being examined. During examination of novelty, for the sake of convenience, this kind of application that are prejudicial to the novelty of the application being examined are called “conflicting applications". When conducting a search to determine whether there exists a conflicting application, the examiner shall note that not only the claims but also the description(including drawings) of the earlier patent or patent application shall be consulted, that is, the whole contents thereof shall be taken into account. A conflicting application can also be an international application entering the Chinese national phase that was filed previously by any entity or individual, published or announced by the Patent Office on or after the filing	documents as provided in Article 36-2(1)) originally attached to the written application of another application for a patent or for a registration of a utility model which has been filed prior to the date of filing of the said patent application and published after the filing of the said patent application in the patent gazette under Article 66(3) of the Patent Act (hereinafter referred to as "gazette containing the patent") or in the utility model bulletin under Article 14(3) of the utility Model Act (Act No. 123 of 1959) (hereinafter referred to as "utility model bulletin") describing matters provided for in each of the paragraphs of the respective Article or for which the publication of the patent application has been effected, a patent shall not be granted for such an invention notwithstanding Article 29(1); provided, however, that this shall not apply where, at the time of the filing of the said patent application, the applicant of the said patent application and the applicant	patent application, the patent shall not be granted for such an invention. However, this shall not apply where the inventor of the concerned patent application and the inventor of the another application for a patent or utility model registration are the same person, or the applicant of the concerned patent application and the applicant of the another application for a patent or utility model registration are the same person at the time of filing of the concerned patent application. Patent Act Article 29(4) In applying paragraph (3), where the another application for a patent or utility model registration falls under one of the following subparagraphs, “laid open” of paragraph (3) reads “laid open or published for an international publication under Article 21 of the Patent Cooperation Treaty”, and "an invention or device described in the description or drawing(s) originally attached to the written application" reads, in case

	date of the application being examined, and is for an identical invention or utility model. It should be noted that conflicting applications refer to the applications for the identical invention or utility model filed previously before but not on the filing date of the application being examined. (Examination Guidelines 2010 Part II Chapter 3 Section 2.2) (2) Handling of Identical Inventions-Creations Article 9: For any identical invention-creation, only one patent right shall be granted. Where an applicant files on the same day applications for both patent for utility model and patent for invention relating to the identical invention-creation, and the applicant declares to abandon the patent for utility model which has been granted and does not terminate, the patent for invention may be	of the other application for a patent or for registration of a utility model are the same person. Article 39 of the Patent Act (1)Where two or more patent applications claiming identical inventions have been filed on different dates, only the applicant who filed the patent application on the earliest date shall be entitled to obtain a patent for the invention claimed. (2)Where two or more patent applications claiming identical inventions have been filed on the same date, only one applicant, who was selected by consultations between the applicants who filed the said applications, shall be entitled to obtain a patent for the invention claimed. Where no agreement is reached by consultations or consultations are unable to be held, none of the applicants shall be entitled to obtain a patent for the invention claimed. (3)Where an invention and a device claimed in applications for a patent	the international application was filed in Korean, "an invention or device described in the description, claim(s) or drawing(s) of the international application as of the international filing date" and, in case the international application was filed in a foreign language, “an invention or device described in the description, claim(s) or drawing(s) of both the international application as of the international filing date and its translation”: (i) the another application for a patent is an international application that is deemed to be a patent application according to Article 199(1) (including an international application that is deemed to be a patent application according to Article 214(4)); and (ii) the another application for a utility model registration is an international application that is deemed to be a utility model registration application according to Article 34(1) of the Utility Model

	granted. Where two or more applicants file applications for patent for the identical invention-creation, the patent right shall be granted to the applicant whose application was filed first. Rule 41. Two or more applicants who respectively file, on the same day (means the date of filing or the priority date where priority is claimed), applications for patent for the identical invention-creation, shall, after receipt of a notification from the patent administration department under the State Council, hold consultations among themselves to decide the person or persons who shall be entitled to file the application. Where an applicant files on the same day (means the date of filing) applications for both a patent for utility model and a patent for invention for the identical invention-creation, he or it shall state respectively upon	and a utility model registration are identical and the applications for a patent and a utility model registration are filed on different dates, the applicant for a patent may obtain a patent for the invention claimed therein, only if the application for a patent is filed prior to the application for a utility model registration. (4)Where an invention and a device claimed in applications for a patent and a utility model registration are identical (excluding the case where an invention claimed in a patent application based on a utility model registration under Article 46-2(1) (including a patent application that is deemed to have been filed at the time of filing of the said patent application under Article 44(2) (including its mutatis mutandis application under Article 46(5)) and a device relating to the said utility model registration are identical) and the application for a patent and a utility model registration are filed on the same date, only one of the	Act (including an international application that is deemed to be a utility model registration application according to Article 40(4) of the Utility Model Act).

	filing the application that another patent application for the identical invention-creation has been filed by him or it. If the applicant fails to do so, the issue shall be handled according to the provisions of Article 9,paragraph one of the Patent Law, only one patent right shall be granted for any identical invention-creation. Where the patent administration department under the State Council makes an announcement of the grant of patent for utility model, the statement of the applicant in accordance with the provision of paragraph two of this Rule that he has simultaneously filed an application for a patent for invention shall be announced. Where it is found after examination that there is no cause for rejection of the application for patent for invention, the patent administration department under the State Council shall notify the applicant to declare, within the	applicants, selected by consultations between the applicants, shall be entitled to obtain a patent or a utility model registration. Where no agreement is reached by consultations or no consultations are able to be held, the applicant for a patent shall not be entitled to obtain a patent for the invention claimed therein. (5)Where an application for a patent or a utility model registration has been waived, withdrawn or dismissed, or where the examiner's decision or trial decision to the effect that a patent application is to be refused has become final and binding, the application for a patent or a utility model registration shall, for the purpose of paragraphs (1) to (4), be deemed never to have been filed; provided, however, that this shall not apply to the case where the examiner's decision or trial decision to the effect that the patent application is to be refused has become final and binding on the basis that the latter sentence of	

	specified time limit, the abandonment of his or its patent for utility model. If the applicant so declares, the patent administration department under the State Council shall make the decision to grant a patent for invention, and announce at the same time both the grant of the patent for invention and the declaration of the applicant to abandon his or its patent for utility model. If the applicant refuses to abandon his or its patent for utility model, the patent administration department under the State Council shall reject the application for patent for invention. If the applicant fails to respond within the time limit, the application for patent for invention shall be deemed to have been withdrawn. The patent right for utility model ceases from the date of the announcement of grant of the patent for invention. These provisions thus establish	paragraph (2) or (4) is applicable to the said patent application. (6)The Commissioner of the Patent Office shall, in the case of paragraph (2) or (4), order the applicant to hold consultations as specified under paragraph (2) or (4) and to report the result thereof, designating an adequate time limit. (7)Where no report under the preceding paragraph is submitted within the time limited designated under the said paragraph, the Commissioner of the Patent Office may deem that no agreement under paragraph (2) or (4) has been reached.	

	the principle of non-doublepatenting. The purpose of preventing duplicate patent rights being granted to an identical invention-creation is to prevent interference between patent rights. As for invention or utility model, “identical invention-creation" referred to in Article 9 and Rule 41 means claims which exist in two or more applications or patents, and have the same extent of patent protection. Where there is an earlier application constituting a conflicting application or, after disclosure, constituting part of the prior art, the later application (or patent)shall be examined in accordance with Article 22.2 or Article 22.3,rather than in accordance with Article 9. (Examination Guidelines 2010 Part II Chapter 3 Section 6) Article 22.2: Novelty means that, the invention or utility model		

	does not form part of the prior art; nor has any entity or individual filed previously before the date of filing with the patent administration department under the State Council an application relating to the identical invention or utility model disclosed in patent application documents published or patent documents announced after the said date of filing. Article 22.3: Inventiveness means that, as compared with the prior art, the invention has prominent substantive features and represents a notable progress. (2.1) Principles of Determination Article 59.1 provides that the extent of protection of the patent right for invention or utility model patent shall be determined by the terms of the claims. The description and the appended drawings may be used to interpret the content of the claims. For avoidance of double patenting, in determining whether two		

	invention or patents are identical, the examiner shall compare the contents of the claims thereof with each other, rather than compare the claims of one with the complete disclosure of the other. In the determination of identical inventions-creations, if the extent of protection of a claim in one application or patent is identical with that of a certain claim in the other application or patent, it shall be concluded that the both are identical inventions-creations. Where the contents of the descriptions of two applications or patents are identical, but the extents of protection of their claims are different, it shall be concluded that the two claimed inventions-creations are not identical. For example, where the same applicant filed two applications the descriptions of which all contain a product and a process to produce the product, if		

	the claims of one application claim the product and the claims of the other claim the process, the inventions-creations claimed in the two applications shall be regarded as different. It shall be noted that, where the extents of protection of the claims of two inventions-creations partially overlap with each other, the inventions-creations shall not be regarded as identical. For example, where the claim of an application includes a technical feature defined by continuous numerical range, if the continuous numerical range is not completely the same as that in the claim of another invention or patent, the two applications shall not be regarded as identical inventions-creations. (Examination Guidelines 2010 Part II Chapter 3 Section 6.1) (2.2) Method of Handling (2.2.1) Handling of Two Applications (2.2.1.1) By the Same Applicant		

	Where, during examination, it is found that the same applicant has filed two patent applications for an identical inventioncreation on the same day (the date of filing, or the priority date where priority is claimed),and these two applications have met all the other conditions for patentability, the examiner shall notify the applicant of making a choice or amendments with respect to the two applications respectively. If the applicant fails to make any response within the specified time limit, the corresponding application shall be deemed to have been withdrawn. If the applications are still not in conformity with Article 9.1 after the applicant has made observations or amendments, both of the applications shall be rejected. (2.2.1.2) By Different Applicants Where, during examination,it is found that different applicants have separately filed a patent		

	application for an identical invention- creation on the same day (the date of filing, or the priority date where priority is claimed), and these applications have met all the other conditions for patentability, the examiner shall notify, in accordance with Rule 41.1,the applicants to carry on negotiations among themselves to decide who shall be the applicant. If an applicant fails to make any response within the specified time limit, the corresponding application shall be deemed to have been withdrawn. If no agreement is made after the negotiation, or, after the applicants have made their observations or amendments, the applications are still not in conformity with Article 9.1,all of the applications shall be rejected. (2.2.2) Handling of One Application and One Patent Where, during the examination of a patent application, it is found		

	that another patent application filed by the same applicant for the identical invention-creation on the same day (the date of filing, or the priority date where priority is claimed)has been granted a patent right, and the application being examined has met all the other conditions for patentability, the applicant shall be notified to make amendments. If the applicant fails to make any response within the specified time limit, the application shall be deemed to have been withdrawn. If the application is still not in conformity with Article 9.1 after the applicant has made observations or amendments, it shall be rejected. However, where an applicant files on the same day (means the date of filing)applications for both patent for utility model and patent for invention relating to the identical invention-creation, if the patent for utility model has been granted and does not		

	terminate, and the applicant has stated the fact respectively upon filing the applications, double patenting may be avoided by amending the invention application, or alternately by abandoning the patent for utility model. Therefore, during the examination of the invention application mentioned above, if the invention application has met all the other conditions for patentability, the applicant shall be notified to make a choice or make amendments. Where the applicant chooses to abandon the patent for utility model which has been granted, he shall submit a written declaration to abandon the patent for utility model at the time of making response to the Office Action. In this case, the examiner shall issue Notification to Grant Patent Right regarding the invention application which has met all the conditions for patentability but has not been granted yet, and transfer the		

	written declaration of abandoning the patent for utility model mentioned above to the relevant examination departments for registration and announcement by the Patent Office. In the announcement, it shall be indicated that the patent right for utility model mentioned above ceases from the date of the announcement of grant of the patent for invention. (Examination Guidelines 2010 Part II Chapter 3 Section 6.2)		
1. The prior art effect of conflicting applications	Article 22.2: Novelty means that, the invention or utility model does not form part of the prior art; nor has any entity or individual filed previously before the date of filing with the patent administration department under the State Council an application relating to the identical invention or utility model disclosed in patent application documents published or patent documents announced after the said date of filing.	The phrase "The claimed invention is identical to an invention or a device stated in the originally attached description, etc. of another application means that the matters used to specify the claimed invention is not different from matters used to specify an invention or device stated in the originally attached description, etc. of another application (hereinafter referred to as "a cited invention") or there is a difference between them, but it is a minor difference in embodying the	Where a patent application is filed for an invention that is identical to an invention or device described in the description or drawing(s) originally attached to another application for a patent or a utility model registration that has been filed before the filing date of the patent application and laid open or published after the filing of the patent application, the patent shall not be granted for such an invention. However, this shall not apply where the inventor of the concerned patent

	In accordance with Article 22.2,when novelty of an invention or utility model application is examined, the applications relating to the identical invention or utility model which have been filed by any entity or individual prior to the filing date of the application being examined with the Patent Office and published or announced on or after said filing date, will take away the novelty of the application being examined. During examination of novelty, for the sake of convenience, this kind of application that are prejudicial to the novelty of the application being examined are called “conflicting applications". (Examination Guidelines 2010 Part II Chapter 3 Section 2.2)	means for solving the problem (both are substantially the same). (Examination Guidelines Part II. Chapter 3. Section 2.4)	application and the inventor of the another application for a patent or utility model registration are the same person, or the applicant of the concerned patent application and the applicant of the another application for a patent or utility model registration are the same person at the time of filing of the concerned patent application. (Examination Guidelines Part III. Chapter 4. Section 2)

COMPARATIVE ANALYSIS

I. Determining novelty

A. Judicial, legislative or administrative criteria or guidelines for determining novelty

1. Legislation (law and regulations)

Relevant provisions in laws see I.A.1 in the comparative table.

2. Guidelines

see I.A.2 in the comparative table.

3. Background and purpose of the provisions relating to novelty

In JPO, novelty of the invention is required because an exclusive right of a patent is considered as a reward for the disclosure of the invention.

In SIPO, the reason an invention is patented and the monopoly with a certain period is provided to the patentee because he provides an unprecedented invention to the public, which deserves to be granted with such kind of right. The purpose of the novelty requirements under Article 22(2) of the Patent Law is to prevent the technology already known to the public from being granted a patent.

In KIPO, novelty of the invention is required because the purpose of the patent system is to exchange the disclosure of the invention for the monopoly. Thus, the monopoly shall not be granted to the invention already disclosed.

B. Determining the scope of the claimed invention

1. Basic principles of interpretation of claims

JPO, SIPO and KIPO all think that the scope of the patent right shall be based on the statements of the claim.

JPO and SIPO think that the description and the drawing can be used for interpreting claim, however, JPO explicitly provides that the interpretation of claim shall base on general knowledge as of the filling. In addition, SIPO explicitly provides that the content of the abstract can not be used for interpreting the scope of the claim.

In SIPO, in the determination of the scope of protection for a claim, generally, all the features in the claim shall be taken into account; however, the actual definitive effect of each feature shall finally be reflected on the subject matter of the claim.

a. Wording of the claims

All three offices think the wording of the claims generally shall be construed as what they normally mean and not be limited to the embodiments.

In JPO, when the claim statements are clear, terms in such a claim shall be construed as what they normally mean.

In SIPO, generally, the words used in a claim shall be understood as having the meaning which they normally have in the relevant art.

In KIPO, when the describing of the claim can be understood clearly, the examiners shall avoid limitedly interpreting the claim only based on the detailed description or figures during finding the technical features of the invention.

b. Consideration of the description and drawings

All three Offices interpret the claims by considering the description and the drawings.

The detailed provisions of the three Offices see the I.B.1.b in the comparative table.

2. Inventions claimed in specific forms of definition

a. Products defined by their function, properties, characteristics or mode of operation

In all three Offices, claims including expressions specifying a product by its function are permitted, and such claims shall be construed as every product has such function. At the same time, in JPO and KIPO, claims including expressions specifying a product

by its characteristics are permitted, and such claims shall be construed as every product has such characteristics.
In JPO and KIPO, when considering the common knowledge, a product defined by its function, characteristics shall not be construed as every special product that has such function, characteristics in some cases. However, SIPO does not explicitly exclude to be construed as such special product.
In KIPO, when the subject matters of the claimed invention is specified by its function, characteristics in the claims, the examiners shall not exclude the function, characteristics from the features of the invention when interpreting the claims. However, in JPO, if the function, properties, etc. is inherent in the product, such statement does not help to specify the product and it shall be construed as the product itself.
SIPO explicitly provides that function or effect shall be avoided as far as possible to define the invention. If the description merely states in vague terms that other alternative means may be adopted, but the person skilled in the art can not understand what they might be or how they might be used, then definition by function in the claims is not permitted. In addition, claim of pure functional definition can not be supported by the description, and therefore is not permitted.

b. Product defined by its performance(effect) or parameters

In JPO, I.B.2.a in the table also applies to such cases.
SIPO provides that features of effect or parameters shall be avoided as far as possible to be used in defining the invention. However, effect or parameters can be used to define the product claims in special situation. When using the parameters to specify the claims, the parameters used must be clearly and affirmatively verified by the person skilled in the art according to the teaching in the description or customary means in the art.
KIPO thinks that the technical features in the parameter inventions probably can not be defined by the claims themselves, so that the novelty of the parameter inventions shall be assessed after verifying the parameter according to the detailed description, figures and common knowledge.

c. Products or processes defined by their use for ... (e.g. “for use as ...”, “apparatus for ... ”, “Method for ... ”)

In all three Offices, specifying products by their use are permitted. At the same time, the actual definitive effects that the use features have on the product claims shall be considered. In SIPO, if the definition such as “used for” has no impact on the claimed product per se, then it has no influence in determining novelty, while in KIPO and JPO, the product defined by use could be novel as a use invention even if the product per se is already known, because of the limitation of use.

In addition, JPO has detailed provisions about the use definition, and also provides the handling method when an invention of product with a limitation of use shall be construed as a use invention, the details see the I.B.2.c in the comparative table.

d. Use claims

JPO and SIPO interpret the Use claims as the process claims. KIPO does not have relevant provisions about Use claims, see I.B.2.d in the comparative table.

In JPO, “Use” is interpreted as a term meaning a method for using things which is categorized into “process”.

In SIPO, the examiners shall distinguish use claims from the product claims by wording and more detailed provisions are provided about the medical use of the materials, see I.B.2.d in the comparative table.

e. Product defined by the manufacturing method or process

In all three Offices, the manufacturing process (manufacturing method) can be used to specify products, especially for the cases which the product can not be defined by its structure or other means, though it is not limited to such cases.

The three Offices think that the product defined by its manufacturing process shall be construed as the product, and for this kind of claims whether the manufacturing method will cause the product to have special structure and/or composition shall be considered.

f. References to the description or drawings

All the three offices think when a statement of a claim is made by a reference to the description or drawings, the scope of the invention maybe unclear. However, reference to the description or drawings is allowed in special situations.

C. Identification of the relevant state of the art/prior art

1. Definition of the state of the art/prior art

All three offices consider that the prior art includes disclosure by publications, and disclosure by use, without limitation on territory.

Regarding the temporal demarcation of the state of the art/prior art, in JPO, the temporal demarcation is “prior to the filing of the patent application”. “Prior to the filing of the patent application” in the Article 29(1) of JPO patent Act, not stating “prior to the date of filing of a patent application”, implies the definite time even be recorded in hours and minutes of the filing, it is the case in KIPO as well. While in SIPO, the temporal demarcation is “prior to the date of filing of a patent application”.

Regarding the interpretation of the filing date, in SIPO, it is particularly emphasized that the filing date is the priority date where applicable. JPO and KIPO have also admit priority date, when applicable.
Regarding the contents contained in the prior art, in SIPO, technologies known to public by other means are also included. In JPO, inventions that were made publicly available through an electric telecommunication line in Japan or a foreign country are also included. In KIPO, inventions publicly available through electric telecommunication lines as prescribed by Presidential Decree are also included.
Regarding the synchronous disclosure, in JPO and KIPO, when the filing date of the patent application is same as the date of disclosure of the publication, the time of disclosure of the publication is not deemed prior to the filing time of the patent application, except where the time of the application is clearly after the time of the disclosure by the publication. SIPO has no rule about this.

2. Public availability of the state of the art/ prior art

All three offices consider that technical contents in the state of secrecy are not part of the prior art. If a person assuming a duty of confidentiality discloses an invention to a third party, making the technologies available to the public, these technologies shall form part of the prior art.
In JPO and KIPO, a “publicly worked invention” means an invention which has been worked under the conditions where the contents of the invention are to be publicly known or can potentially be publicly known, including a situation where the working has been publicly conducted even without the finding of the fact that an invention has become publicly known as a result of working.
In SIPO, the determination of whether a document is a publication shall not be affected by the place or language of issue, the manner of acquisition, or its age. The amount of distribution, whether it has been read, or whether the applicant is aware of it is of no relevance either, As for the publications with the words “Internal Materials” or “Restricted Publication” or other similar wording, they are not regarded as publications. If at an exhibition or demonstration of a product no explanation of the technical contents thereof is provided so that the structure and function or composition of the product is not known to a person skilled in the art, it does not constitute a disclosure by use.
In KIPO, even when a small fraction of inner part of an invention is kept in secret with regard to working of the invention, it shall not be considered as a publicly worked invention.

3. Drawings as prior art

JPO and KIPO have no particular rule.

In SIPO, only those technical features that can be derived directly and unambiguously from the drawings belong to the contents of disclosure. The contents inferred from the drawings, and the dimensions with their relations measured from the drawings without any written description cannot be taken as the contents of disclosure.

4. Admissions as prior art

JPO has no rule relating admissions as prior art as to novelty issue.

In SIPO, related contents described in the background art part of the description of the filing document can not be cited as prior art unless detailed cited document or detailed source exists.

KIPO states that “the matters directly derivable from the facts in view of the common general knowledge as of the working can also be a basis for the finding of a publicly worked invention”, “In the case where the filing date of a patent application is the same as the date of the publication, the claimed invention does not lose novelty under the Article 29 paragraph (1) subparagraph (ii) of the Patent Act, except when the filing time of application is clearly after the time of publication”, and “The time of publication for a thesis is being when the thesis is distributed to an unspecific person in public or enters into university libraries after the final thesis examination, except when the contents of the thesis are announced in an open space before the final thesis examination”.

5. Enabling disclosure of a prior art document

In JPO, an invention can be “cited invention” only when the invention can be carried out.

In SIPO, if each has several selections for a plurality of technical features in the technical solution described in the cited document, further analysis should be given according to the technical field. Generally, for those technical fields in which technical effect is highly predictable relatively, it is allowed to consider that the cited document discloses several detailed technical solutions which are consisted of each selection of each technical feature and other technical features. Generally, for those technical fields in which technical effect is lowly predictable relatively, it is not allowed to consider that cited document discloses several detailed technical solutions which are consisted of each selection of each technical feature and other technical features.

When there is inconsistency in the prior art, entire analysis and judgment in terms of person skilled in the art should be given. When there is inconsistency between abstract and text, the text should be referred to. The rewritten abstract can be used if its date of disclosure can be determined.

In KIPO, even though the prior art constitutes an incomplete expression or there is a defect in some of the prior art, it can be cited in assessing the novelty and the inventive step, when the person skilled in the art can readily understand the technical features of the

claimed invention based on common technical knowledge or empirical rules.

6. Establishing the relevant date of the prior art document

All three offices have same rules for determining the date of disclosure when the publication indicates the time of publication. In the case where the day, month and year are indicated, it is inferred to be that date. In the case only the month or year is indicated, the last day of the month or year is regarded as the date of disclosure respectively.

In JPO and KIPO, it is ruled how to determine the date of disclosure when the publication time is not indicated in the publication, including the determination of the date of disclosure for foreign publications, derived publications, republished or reprinted publications.

In JPO, when a filing date of the patent application and a publication date are same, the time of disclosure is not deemed to be prior to the filing date without clear proof.

In SIPO, the determination of the date of disclosure is ruled for disclosure by use, contents of talking, reporting, or speaking at symposium, broadcasting, televising, or cinematographing, etc.

7. Implicit/inherent features or well-known equivalents

In JPO, the expression "inventions described in publications" means inventions recognized from the descriptions in the publications or equivalents to such descriptions in the publications. The expression "equivalents to such descriptions" means those that persons can derive from the descriptions based on their common general knowledge.

In KIPO, “Invention described in a distributed publication” means an invention which is explicitly or implicitly described in a publication. “Being implicitly described in a publication” means those that a person skilled in the art can easily recognize from the publication, taking into consideration the common general knowledge.

In SIPO, when a reference document is cited to judge novelty and inventive step of an invention or utility model, the technical contents disclosed in the reference document shall be based upon. Said technical contents include not only those technical contents expressly described in the reference document but also those implied technical contents that can be derived directly and unambiguously from the disclosure by a person skilled in the art.

8. Well-known equivalents

JPO has no relative rule.

In SIPO, direct substitution of customary means can be used for violating the novelty of the application only when the cited document is a conflicting application.
In KIPO, the inventions are substantially the same when the inventions disclosed in a cited invention and the claims have differences in non-essential terms and do not affect the technical ideas of the invention. "Well-known art" means technologies generally known in the relevant technical field, e.g., those appeared in many prior art documents, those widely known throughout the industry, or those well-known to the extent needless to present examples.

9. Prior art expressed in specific or generic terms (Generic disclosure and specific examples)

All three offices consider that the disclosure of the cited invention expressed in specific concepts violates the novelty of the invention expressed in generic concepts.
In KIPO, if an invention expressed in specific concepts can be derived directly from generic concepts according to common knowledge, the cited invention expressed in generic concepts can violate the novelty of the invention of the application.
In JPO and KIPO, "generic concept" or "upper level concept" is further defined.

10. Prior art expressed by numerical value or numerical range

JPO has no particular rule.
In SIPO, the effect to the novelty of the claimed invention or utility model may be different according to the relation between the numerical value or numerical range disclosed by the cited document and numerical range defined by the invention, such as partially overlap, entirely falling within another one , having a common end point.
In KIPO, if no numerical limitation is found in the cited invention while new numerical limitation is included in a claimed invention, and the numerical limitation can not be arbitrary chosen by a person skilled in the art or be hinted in a cited invention, the invention is regarded as novel. Additionally, when the numerical range of the invention described in the claims is included in the numerical range disclosed in a cited invention, the novelty is assessed by the critical significance of the numerical limitation.

11. Non-prejudicial disclosure

JPO and SIPO consider that the disclosure does not impact the novelty within six months from the date on which the invention was first disclosed against the will of the person having the right to obtain the patent. On the other hand, KIPO considers that the disclosure does not impact the novelty within twelve months from the date on which the invention was first disclosed against the

will of the person having the right to obtain the patent.
In JPO, when the invention is made disclosed as a result of an act of the person having the right to obtain a patent, these disclosures do not impact the novelty of the invention if the patent application is filed within six months from the first date of disclosure. And In KIPO, when the invention is made disclosed as a result of an act of the person having the right to obtain a patent, these disclosures do not impact the novelty of the invention if the patent application is filed within twelve months from the first date of disclosure. Meanwhile in SIPO, if a patent application is applied within six months from the date on which it was first exhibited at an international exhibition sponsored or recognized by the Chinese government, or it was first made public at a prescribed academic or technological meeting, the disclosure does not impact its novelty.

D. Assessment of novelty

1. Assessment approach to novelty

a. Comparison of a claimed invention with a prior art

Similarity: All of the three offices are using the same basic idea which is to compare the differing and corresponding matters between claim and prior art. If there is difference between the claim and prior art, the application shall achieve novelty.

Difference One:

The specific requirement in judging the difference between application and prior art

SIPO compare the technical features of the claimed and the cited, besides this, it also considers 4 factors to assess the substantially same technical solution, the technical field, the technical problem, expected effects.

In JPO, the claimed inventions can be identified by comparing the more specific concepts with the claimed inventions to the cited invention to find the corresponding and differing points between them. Some more specific concepts of the claimed inventions

include the detailed descriptions of the invention and the descriptions in drawings as modes carrying out the claimed inventions. Matters in the claimed and the cited inventions are interpreted based on the common general knowledge as of the filing.

KIPO does not have specific requirement for this part.

Difference two:

In KIPO, the substantially identical invention compared with prior arts means that there is no newly produced effect, since the difference in the concrete means for solving problems is caused by mere addition, conversion or deletion of well-known or commonly used arts and the difference between the claimed invention and the cited invention does not practically affect the technical idea of the claimed invention.

As to the publicly available publications and the conflicting applications, JPO and SIPO take a different assessment, JPO takes "novelty" and "identicalness" assessment respectively, while SIPO uses "direct substitution of customary means" for the conflicting applications.

b. Use of multiple prior art documents to show lack of novelty

Similarity: All of the three offices agree with the principle of Separate Comparison. That means: when determining novelty, the examiner shall compare each claim of the application separately with the one integrated technical solution from one prior art document.

Difference:

In KIPO, in a case where there are more than two embodiments in a cited documentation, an examiner should not assess novelty by combining the two embodiments. Assessing patentability through combination of cited embodiments is not a matter of novelty but

inventive step. However, it is exceptional when one cited invention is obviously drawn from more than two embodiments in considering common general knowledge.

c. Showing of lack of novelty based on “public use” or “on sale”

Difference: the definition on “pubic use”

SIPO does not give any specific guidelines.

In JPO, general rule of "inventions that were publicly worked" applies.

In KIPO, “a publicly worked invention” means an invention which has been worked under the conditions where the invention is or can potentially be publicly known.

d. Determining whether a claimed invention is novel

Similarity: If there is a difference between the claim of an application and prior art, the claim has novelty.

Difference One:

In SIPO, if there are only simple changes in wording between the claimed invention or utility model and the reference document, the invention or utility model does not possess novelty. Even though JPO and KIPO do not state this in the guideline, but in practice, they do the same.

Difference Two:

In KIPO, “substantially identical” can be used for novelty. While, in SIPO, only the technical contents that can be derived directly and unambiguously by a skilled person can be used. In JPO, “equivalent to such description”, that can be derived from the description

based on their common general knowledge can be used.

2. Assessment of the novelty of inventions claimed in specific forms definition

a. Selection inventions (generic description/disclosure doesn't anticipate the novelty of specific examples)

Generally, three offices agree with the generic description/disclosure does not anticipate the novelty of specific examples.

The detailed practices of the three Offices, see the I.D.2.a in the comparative table.

In JPO, selection inventions are inventions belonging to the technical fields in which it is difficult to expect the effects of the inventions based on the structures of the products

b. The claim includes an expression specifying a product by its function, properties, characteristics or mode of operation

In SIPO and JPO, claims providing descriptions for defining products by function, properties, characteristics or mode of operation may be difficult to compare to the cited inventions.

In JPO, if the claims are included in the following (i) or (ii). For these claims, the examiners may send a notice of the reasons for refusal for the lack of novelty according to Article 29(1) when they have a reasonable doubt that the products in the claimed inventions and cited inventions are prima facie identical, without comparison of the products between the claimed inventions and the cited inventions for finding the exact corresponding and differing points, unless differences are found in other sections.

(i) Functions or characteristics do not belong to followings below

-Inventions included in any inventions whose functions or characteristics are common;

-Used among persons skilled in the art commonly;

-Or relation to the arts commonly used is understood by persons skilled in the art, even though they are not commonly used.

(ii) One or more functions or characteristics being described below, but those inventions whose functions or characteristics are combined and included in the inventions defined by said (i) as a whole.

-Inventions included in either of the inventions whose functions or characteristics are common;

-Used among persons skilled in the art commonly;

-Or relation to the arts commonly used is understood by persons skilled in the art, even though they are not commonly used.

In SIPO, for this kind of claims, the examiner shall consider whether the feature of performance or parameters in a claim implies that the claimed product has a certain particular structure and/or composition. If the person skilled in the art can not distinguish the claimed product from that disclosed in the reference document, it can be presumed that the claimed product is identical with the product from that disclosed in the reference document.

In KIPO, such an expression should, in principle, be construed as every product that has such function, characteristic, etc., except when it should be construed otherwise because the expression is specifically defined in the detailed description. However, it is noted that there are also cases where a product described by its function, characteristic, etc. should not be construed as a specific product among all products that have such function, characteristic etc. when taking into account the common general technical knowledge at the time of the filing.

c. The claim includes an expression specifying a product by its parameter

In JPO, there is no specific guidelines regarding claims includes an expression specifying a product by its parameter. In SIPO, for this kind of claims, the examiner shall consider whether the feature of performance or parameters in a claim implies that the claimed

product has a certain particular structure and/or composition. If the performance or parameters implies that the claimed product has a structure and/or composition distinct from that of the product disclosed in the reference document, the claim has novelty. On the other hand, if the person skilled in the art from the performance or parameters can not distinguish the claimed product from that disclosed in the reference document, it can be presumed that the claimed product is identical with the product in the reference document.

In KIPO, Novelty regarding a parameter invention described in the claims is denied in general if limiting the invention with the parameter only experimentally identifies properties or characteristics of a publicly known product or there is a change only in expression by using a parameter.

In a parameter invention, if there is a “reasonable doubt” that the claimed invention and the cited invention are identical, an examiner can await written arguments or a certificate of experimental results after notifying the ground for rejection on novelty without comparing strictly the claimed invention with cited references.

d. The claim includes an expression specifying a product by its use

In SIPO, for this kind of claims, the examiner shall consider whether the feature of use in a claim implies that the claimed product has a certain particular structure and/or composition. If the use is fully determined by the inherent property of the product and does not imply any change in the structure and/or composition of the product, the product claim defined by this use feature does not have novelty as compared with the product in the reference document. However, if the use implies that the claimed product has a certain particular structure and/or composition, that is, the use indicates that the structure and/or composition of the product has changed, then the use as a definitive feature of the structure and/or composition of the product must be considered.

In KIPO, where a claim includes an expression specifying a product by its use, the examiner should interpret the claimed invention only as a product especially suitable for the use disclosed in the claim, by taking into account the detailed descriptions in the specification and drawings, and the common general technical knowledge at the time of the filing. Even if a product includes all technical characteristics described in the claims, an examiner should not regard the product as the product described in the claim when the product is not appropriate for the relevant use or when the product needs conversion to be used.

In JPO, it is understood that a product with limitation of use is the product that provides the structures etc. defined by the limitation of use, when the limitation of use would represent the structures etc. specially adapted for the use. "Use invention" is interpreted to be an invention based on the discovery of an unknown attribute of a product and finding of the product's adaptability of novel use. The concept of the use invention is generally applied to the technical fields in which it is relatively difficult to understand how to use the product from the structure or name of the product, such as the technical field in which compositions containing chemical substances are used. However, chemical compounds limited by the use generally indicate mere usefulness of the compounds, and they are interpreted as simple chemical compounds without limitation of use.

e. The claim defines a product by its manufacturing process (product-by-process claim)

In SIPO, KIPO and JPO, for this kind of claims, the examiner shall consider whether the feature of manufacturing process results in a certain particular structure and/or composition of the product. If the person skilled in the art can conclude that the process will necessarily result in a product having a particular structure and/or composition different from that of the product in the reference document, the claim has novelty. On the other hand, if the claimed product, as compared with the product in the reference document, has the same structure and composition despite the different manufacturing process, the claim does not have novelty.

E. Examiner's holding of lack of novelty (e.g. rejection) and applicant's reply to overcome the holding of lack of novelty

1. Examiner's holding of lack of novelty

All three offices consider that the examiner should describe the reasons for refusal and state the disclosed facts when sending out a notice of reasons for refusal.

In JPO, if it is clear that other reasons for refusal will be resolved if one reason for refusal is resolved, multiple reasons for refusal should not be always notified redundantly.

2. Applicant's reply (the reply can be the one overcome the holding of lack of novelty or the one not)

All three offices consider that the applicant can submit written opinions against the reasons for refusal.

II. Special consideration applicable to chemical practice

1. Novelty of compound

Similarity:

All of the three offices agree with that chemical inventions shall be still based on the general guidelines with other technical fields.

Difference:

SIPO has three specific principles on chemical compounds.

1) For a compound claimed in an application, if it has been referred to in a reference document, it is deduced that the compound

does not possess novelty. The word “refer to” mentioned above means to define clearly or explain the compound by the chemical name, the molecular formula (or structural formula), the physical/chemical parameter(s) or the manufacturing process (including the raw materials to be used).

2) Giving details on how to judge novelty especially concerning on general formulas.

3) The existence of a natural substance per se does not destroy the novelty of the invented substance. A natural substance destroys the novelty of the said invented substance only when it is disclosed in a reference document.

Meanwhile, JPO and KIPO do not have any specific requirement.

2. Novelty of composition

Similarity:

All of the three offices agree with that chemical inventions shall be still based on the general guidelines with other technical fields.

Difference:

SIPO has two specific principles on chemical compositions.

1) If there is one more component in the reference compared with application, giving novelty judgment results on the different expression of the application’s claims including close-ended, open-ended and the exclusive method.

2) For the judgment of novelty on a composition defined by its components and contents, the general guidelines shall apply.

3. Novelty of chemical product characterized by physical/chemical parameter(s) of manufacturing process

Difference:

In this part, JPO does not have any specific requirement.

Meanwhile, SIPO believes that for the claim of a chemical product characterized by physical/

chemical parameter (s), if it is impossible to compare the product characterized by said parameter (s) with that disclosed in a reference document based on the parameter (s) described and to determine the difference between them, it is deduced the product claim characterized by the said parameter (s) does not possess novelty as required in Article 22.2.

And for the claim of a chemical product characterized by manufacturing process, the novelty shall be determined on the product per se.

KIPO's answering for this part is Novelty on manufacturing process inventions containing different expressions at the end of claims. Even though inventions of manufacturing processes for drugs contain different expressions at the end of claims(for example, expressions for purposes of inventions), where their manufacturing processes are the same and the inventions are made based on the identical pharmaceutical efficacy, the inventions shall be considered to be the same and lack novelty.

In addition, KIPO's answering focuses on the claims whose subject matter is manufacturing process. But basically, this part' s question is aiming on the claim whose subject matter is chemical product and is characterized by manufacturing process. Further reason for this could be found in the articles from below.

4. <u>Novelty of use invention of chemical product</u>

Difference:

1) Could chemical products achieve novelty by merely have new use per se.

SIPO applies its guideline through a rough range of chemical produces. And SIPO considers that a known product is not rendered

novel merely because a new application thereof has been put forward. Meanwhile, KIPO and JPO apply general guidelines and have specific guideline on medical inventions. Under the medical technical field, in JPO, even if the compounds of the claimed medicinal invention do not differ from the compounds of the cited invention, the novelty of the claimed medicinal invention is not denied when the claimed medicinal invention and the cited invention differ in medicinal use of applying to a specific disease based on the attribute of such compounds. KIPO does not give a direct answer for this question. Whereas KIPO and SIPO both have the guideline following on where use inventions of pharmaceuticals regarding the same matter have different uses, the inventions shall not be considered to be identical.

2) Novelty on inventions described differently, but technically identical

KIPO has three specific guidelines for this theme.

(1) Inventions of manufacturing device for pharmaceuticals and inventions of manufacturing process for pharmaceuticals considered to be a method of using such manufacturing process shall be deemed to be identical.

(2) Inventions of pharmaceuticals and inventions of using such pharmaceuticals shall be deemed to be identical.

(3) Inventions of chemical compounds and inventions of manufacturing process of such chemical compounds shall be deemed to be identical. (This specific guideline could be used to explain why KIPO believes the subject matter of chemical products and manufacturing method of chemical products are the same. See article 3 above.)

According to KIPO's guideline, JPO and SIPO do not have anything similar.

3) Whether or not the features relating to use, such as the object, mode, route, usage amount, interval of administration can define the procedure of manufacture of a pharmaceutical.

SIPO believes those distinguishing features above merely present in the course of administration and do not enable the use to possess novelty. For the same topic, JPO and KIPO do not have any specific guidelines.

Similarity

1) Judgments on medical inventions

For this part, SIPO and JPO have very close ideas, and both offices give specific guidelines. According to SIPO's, it follows:

(1) Whether or not the new use is different in substance from the known use.

(2) Whether or not the new use is revealed directly by the mechanism of action or pharmacological action of the known use.

(3) Whether or not the new use belongs to generic (upper level) term of the known use.

Compared with the three terms above, JPO's guidelines are divided into a-e five parts altogether. Although there is difference in category, they are highly close.

III. Conflicting applications (earlier applications still unpublished at the critical date, other types of conflicting applications)

Conflicting applications

In JPO and KIPO, conflicting application does not involve same applicant or same inventor. The compared contents are claims, description and drawings of earlier patent or patent application.

In SIPO, the applicant of the conflicting application can be any entity or individual. The compared contents are claims, description and drawings of earlier patent or patent application.

There are also provisions related to identical inventions. See III. in the comparative e table for detail.