

Canadian Patent Office. In Japan, it is published in a journal, which allows wide dissemination of the information. Japanese companies carefully study these published applications for patents, to see what other companies are doing and to make use of all available information as soon as possible.

Japanese patents are also much more narrowly defined than are their Western counterparts and are often issued for modifications to an existing patent which would not normally be permitted under Western patent practice. Competitors therefore will often make enough minor changes to file a variety of improvement patents around the basic patent. Once the original patent has been surrounded this way, it is almost impossible for anyone who wishes to use the basic patent to license it without licensing the surrounding patents because of the patent law's compulsory licensing provisions for dependent patents.

As well, average patent pendency in Japan averages over five years from application to grant, making it one of the longest among developed countries. Patents, once granted, are valid in Japan for up to 20 years from the date of the original application, but until one is actually granted, it is very difficult to enforce the theoretical rights provided for by statute, or to restrain others from misusing an invention. Delays in granting the patent also shorten its effective life.

However, recent changes in Japanese regulations, which will allow patent applications to be filed in English provided a Japanese translation follows within a reasonable period of time, should help Canadian companies win patents in Japan. The Japanese system, like the Canadian one, is based on a "first-to-file" method, wherein patents are awarded to the person who first files for patent protection. This system puts a premium on filing applications quickly.

Processing of trademark applications in Japan is also very slow, sometimes taking three or four years and until the application is approved, there is no penalty for infringement.

Underlying these discrepancies lies a fundamental difference in the objectives of the two systems. The Japanese patent system continues to have as its primary objective the rapid and efficient dissemination and diffusion of technology, with protection of individual intellectual property rights secondary. The intent is to share technology, not to protect it, in order to encourage cooperation and promote Japanese industry as a whole.