

## 【Grant-in-Aid for Scientific Research (S)】

### Broad Section A



Title of Project : Cross-Sectional Review of Intellectual Property Laws from the Viewpoint of Fostering and Securing Public Domain

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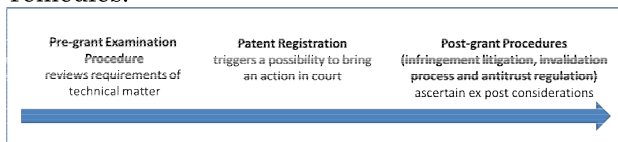
Keyword : Intellectual Property, Public Domain, Patent, Copyright, Trademark

#### 【Purpose and Background of the Research】

In the world of conventional intellectual property law studies, contrary to many concepts of intellectual creations and creators which are placed at the core of intellectual property, public domain is rarely at the spotlight, beyond being negatively defined as unsuitable object of intellectual property rights. However, as the intellectual property law encourages creation and aims to develop industries and culture, its ultimate goals should be to enrich public domain and to allow enjoying its use by the public, and the creators' right to their creations should be only a means to realize it. This research thus aims at constructing a public-domain-centered intellectual property law from the viewpoint of enriching public domain and ensuring its use.

#### 【Research Methods】

With respect to disputes on the boundaries of public domain, there are limits to applying all-or-nothing methodology to granting rights upon the satisfaction of their subsistence requirements. Therefore, the intellectual property rights, being action regulations, establish a general methodology for solving by processes connected to dealing with each scenario of right subsistence, protection scope, remedies and the like by the approach realizing desirable behavior regulations through appropriately judging various relevant circumstances by a particular institution in a series of processes leading from the right subsistence, through decision on infringement, to remedies.



#### 【Expected Research Achievements and Scientific Significance】

Intellectual property rights, as opposed to property rights towards tangible things, are easy to become the object of lobbying due to the high

degree of freedom in system design with regard to what kind of action can be regulated. As the nature of the right, which allow a small number of rightholders to regulate the uses of numerous individuals, produces considerable benefits to rightholders, while the users' benefits, contrary to the rightholders' ones, tend to be dispersed and small, the intentions of the rightholders enthusiastic in lobbying are strongly reflected in policy making, and thus the rights tend to be excessively strengthened (minoritarian bias). However, the conventional arguments starting with intellectual creations and creators work in a direction to rather promote this bias.

This research, which places into the center the position of seeking to foster and secure public domain as the purpose of intellectual property rights, has significance in providing the foundation for overcoming such bias of policy making by arguing for setting the position of those, for whom it is hard to participate in the policy making processes, as default for mind setting.

#### 【Publications Relevant to the Project】

- Yoshiyuki Tamura, "Muddling Through" of Patent System Towards Innovation (1)-(5), IPLP J. Vol. 35, 27-50, Vol. 36, 153-179, Vol. 39, 293-315 (2011-2012), Vol. 46, 269-292 (2015), Vol. 50, 175-254 (2018)
- Yoshiyuki Tamura, Thinking about the Menu of Regulations on Exploiting Copyrighted Materials, 42 Copyright Law Journal 22-68 (2016)
- Yoshiyuki Tamura, Copyright Reform in Japan: An Analysis of "Structural Problems" in the Digitized and Internet Age, 44 IPLP J. 25-140 (2014)

【Term of Project】 FY2018-2022

【Budget Allocation】 110,700 Thousand Yen

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