JAPAN PATENT ATTORNEYS ASSOCIATION

October 23, 2026

SCP/38 JPAA Statement

The Japan Patent Attorneys Association (JPAA) was established under the Patent Attorneys Act in Japan in May of 1915, and it is the sole professional bar association of patent attorneys in Japan. At present, JPAA has about 12,000 members practicing intellectual property law in Japan. Its members practice in all areas of intellectual property law, including patent, design, and trademark law, as well as copyright and unfair competition.

JPAA greatly appreciates the efforts and dedication of the Secretariat to organize the meeting in order to move forward the discussion on various important issues. JPAA is also grateful for this opportunity to submit comments on the meeting documents uploaded on the WIPO website. We would be happy to answer any questions regarding our comments below.

Agenda 5. Exceptions and limitations to patent rights

*− Draft reference document on the exception regarding private and/or non-commercial use (Document **SCP/38/3**)*

JPAA Statement on SCP/38/3

(1) With respect to the term “gyo to shite” (as a business) in Article 68 of the Japanese Patent Act, we propose that the expression “commercially work the patented invention” in the Appendix be revised to “work the patented invention as a business.” We consider this revision to be consistent with the response of the Japan Patent Office to the SCP questionnaire (Q2), which states that a patentee has the exclusive right to work the patented invention “as a business”.
(https://www.wipo.int/en/web/scp/electronic-forum/exceptions/replies/japan#Q2)

(2) “Gyo to shite” (as a business) under Article 68 of the Japanese Patent Act is not limited to activities conducted for profit. Under the prevailing interpretation in Japan, this requirement excludes from the scope of the patent right only working for personal or household purposes. Even non-profit activities conducted by universities, public research institutions, hospitals, and the like may, depending on the nature of such activities, constitute working “as a business.” Therefore, we consider it desirable to clarify that an activity does not fall outside the scope of patent rights merely because it is conducted on a non-profit basis.

(3) We also consider it desirable to clearly distinguish, as separate legal issues, the limitation on the scope of a patent right under Article 68 of the Japanese Patent Act and the limitation on the effect of a patent right with respect to working for experimental or research purposes as provided in Article 69(1).

(4) We consider that the above revisions would clarify the relationship among private use, non-commercial use, and “gyo to shite” under Japanese law, and would contribute to improving the accuracy of comparisons among national systems and legal predictability for users.