# 12

# Utility Models in Japan

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Japan introduced its utility model system in 1905, twenty years after the introduction of the patent system in 1885. Although the utility model system has been maintained to this day, the content and use of the system have changed considerably over the past century.

In rough summary, Japan's utility model system played a major role in the development of Japanese industrial technology until the 1970s. That is, until the 1970s, the number of applications for utility model registrations exceeded that for patents. However, with the improvement of the Japanese industry's technological capabilities and other factors, patent applications began to outnumber utility model applications around 1980, and the number of utility model applications declined sharply from 1985 onward. In response, the utility model system was extensively revised in 1993, including the abolition of substantive examinations, with the aim of making the system more attractive by ensuring that the system provides early protection for technologies with short life cycles. However, this revision caused problems, such as the loss of stability of rights, and the number of utility model applications has continued to decline to the present day. The recent utilization of the utility model system in Japan is about 5,000 applications/registrations per year.

This chapter first provides an overview of the current utility model system in Japan. Second, the historical background of the system is reviewed. Third, the recent use of the utility model system is presented. Fourth, an evaluation and some proposals for the revision of the utility model system in Japan will be presented.

## 12.1 OUTLINE OF THE CURRENT UTILITY MODEL SYSTEM IN JAPAN

### 12.1.1 *Overview*

The current utility model system in Japan can be summarized as follows. Supplementary explanations will be provided in the next section.



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- The subject of protection is a "device," which relates to the shape, structure, or combination of articles.[1] Here, "device" means "the creation of technical ideas utilizing the laws of nature."[2]
- The substantive requirements for utility model rights are novelty, inventive step (it must not be "extremely easy to devise"), and industrial applicability.[3] In addition, the first-to-file principle is adopted.[4]
- The examination by the Japan Patent Office (JPO) is conducted on the formal aspects of the application only, and not on its substantive aspects.
- The right holder may enforce the right only after obtaining a Utility Model Technical Opinion from the JPO and warning the alleged infringer by presenting the Opinion.[5] Upon the request for a Utility Model Technical Opinion, the JPO examiner conducts a substantive examination of each claim and evaluates the validity of the utility model right.[6]
- Term of protection is 10 years from filing date.[7]
- Criminal penalties may be imposed for infringement of utility model rights.[8]
- Conversion is possible among applications for utility model registrations, patents, and industrial design registrations.[9]
- The invalidation trial system is available to dispute the validity of a patent or utility model.
- Utility model registrations are published in the Gazette published by the JPO.[10] The information in the Gazette can be accessed online by anyone from the Japan Platform for Patent Information (J-PlatPat) provided by the National Center for Industrial Property Information and Training (INPIT).[11]

### 12.1.2 *Subject of Protection*

A "device," the subject of protection of utility model rights, is defined as "the creation of technical ideas utilizing the laws of nature."[12] In contrast, an "invention,"

[1] Articles 1 and 3(1) of the Utility Model Act (hereinafter, the "Act"). An English translation of the Act is available at www.japaneselawtranslation.go.jp/en/laws/view/4259.
[2] Article 2(1) of the Act.
[3] Article 3 of the Act.
[4] Article 7 of the Act.
[5] Article 29*bis* of the Act.
[6] Article 12 of the Act.
[7] Article 15 of the Act.
[8] Article 56 of the Act.
[9] Article 10 of the Act, Article 46 of the Patent Act, and Article 13 of the Industrial Design Act.
[10] Article 14(3) of the Act.
[11] www.j-platpat.inpit.go.jp/s0000/ja.
[12] Article 2(1) of the Act.

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which is the subject of patent protection, is defined as "the highly advanced creation of technical ideas utilizing the laws of nature."[13]

Utility model rights are granted for "a device which relates to the shape, structure, or combination of articles."[14] Therefore, a technical idea relating to an article that does not have a certain form (such as a composition of matter) or an idea relating to a method does not fall under the scope of protection. A part of an article, that is, a component part of an article that is not treated as an independent article, is also considered an article.

### 12.1.3 *Application Procedures and Costs*

The utility model application procedure is shown in Figure 12.1.

The cost of the application is as follows.[15]

- application fee: JPY 14,000
- registration fee per year: JPY 2,100 + number of claims × 100
- patent attorney's fee (estimate): JPY 150,000 – 250,000

### 12.1.4 *"Basic Requirements" and Registration*

When an application for a utility model registration is filed, the JPO examines whether the application meets the "basic requirements," but not any substantive requirements, and if the basic requirements are met, the utility model is registered.[16] The JPO may order an amendment to an application that does not meet the basic requirements.[17] If no amendment is made within the time specified in the amendment order, the JPO may dismiss the application.[18]

The basic requirement means that the application does not fall under the following categories:[19]

- The application is not for a device that can be subject to protection, that is, a device relating to the shape, structure, or combination of articles.
- Violation of public order and morals
- Violation of formal description requirements for claims
- Violation of the requirement of unity provided in Article 6 of the Act
- Material inadequacy in the description, etc.

[13] Article 2(1)(i) of the Patent Act.
[14] Article 3 of the Act. For the concepts of "article," "shape," "structure," and "combination," see part X, chapter 1, "2. Judgment on the Basic Requirements" of the JPO's "Examination Guidelines for Patent and Utility Model" available at www.jpo.go.jp/e/system/laws/rule/guideline/patent/tukujitu_kijun/index.html.
[15] US$1 ≈ JPY 150, as of November 2023.
[16] Article 14(2) of the Act.
[17] Article 6*bis* of the Act.
[18] Article 2*ter* of the Act.
[19] Article 6*bis* of the Act.

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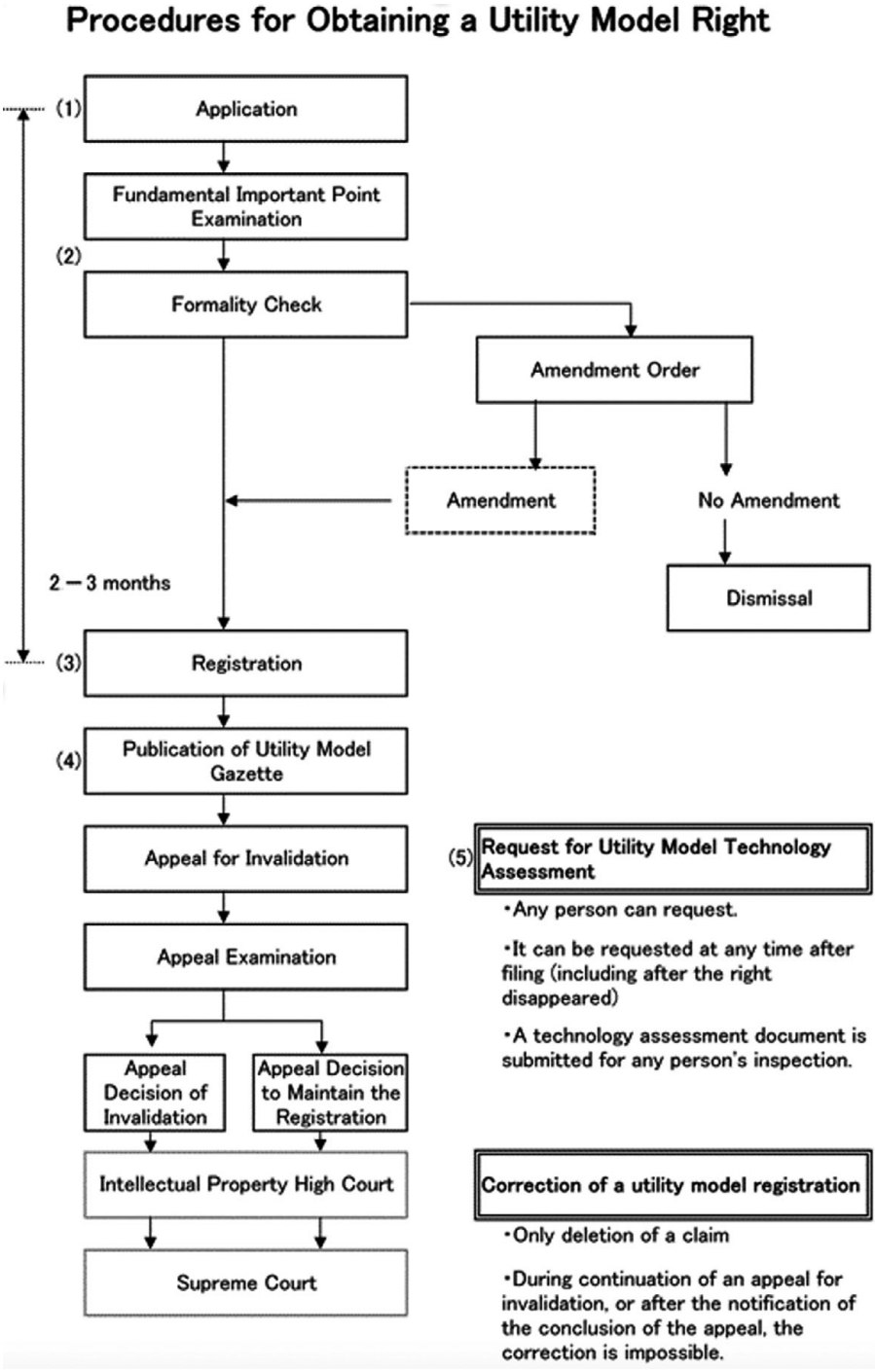



FIGURE 12.1 Procedures for obtaining a Japanese utility model right

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### 12.1.5 *Substantive Requirements and Technical Opinion by the JPO*

Substantive requirements for utility model rights include novelty, inventive step, and industrial applicability of the filed device relating to the shape, structure, or combination of articles.[20] In addition, the application must be the first to be filed for the same device (first-to-file principle).[21]

Of these, the inventive step requirement is provided as meaning that a person skilled in the art cannot "very easily" devise from publicly known devices.[22] In contrast, the inventive step requirement for patents is provided as meaning that the filed invention is simply not "easy to invent" from prior arts.[23]

The JPO does not examine these substantive requirements as a matter of course at the time of filing the application. After filing an application, any person may request the Commissioner of the Patent Office for a Utility Model Technical Opinion, and upon such request, the examiner will evaluate whether or not the claimed device meets the substantive requirements.[24]

It is understood that the Utility Model Technical Opinion by the JPO does not, by itself, have any determinative legal effect on the validity of the right.[25]

### 12.1.6 *Conversion of Application*

Applications for utility model registration, patents, and industrial design registration may be converted into one another, provided that a request for the conversion is made within a certain period of time.[26] The holder of a utility model right may also file a patent application based on their utility model registration for a period not exceeding three years from the filing date of the utility model registration.[27] In such a case, the patent application will be deemed to have been filed at the time of filing of the application for utility model registration. In addition, the utility model right must be waived at the time of filing the patent application.

[20] Article 3 of the Act.
[21] Articles 7 and 3*bis* of the Act.
[22] Article 3(2) of the Act.
[23] Article 29(2) of the Patent Act. See Section 12.4 for a critical view of the actual implementation of these requirements.
[24] Article 12 of the Act.
[25] See the decision of the Tokyo District Court of December 7, 1999, 1999 (Gyo U) 216.
[26] Article 10 of the Act, Article 46 of the Patent Act, and Article 13 of the Industrial Design Act. For example, an application for utility model registration may be converted to a patent application within three years after the application. A patent application may be converted to an application for utility model registration until the earlier of either three months from the date on which the certified copy of the examiner's initial decision rejecting the patent application is served, or nine years and six months after the filing date of the patent application.
[27] Article 46*bis* of the Patent Act.

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### 12.1.7 *Utility Model Rights and Infringement*

Once a utility model is registered, a utility model right arises.[28] A utility model right is an exclusive right to work a registered utility model in the course of business.[29] Here, "working" means the act of manufacturing, using, assigning, leasing, exporting, importing, or offering for assignment or lease an article pertaining to a device.[30]

A utility model right expires after 10 years from filing date.

For infringement of a utility model right, the right holder may claim civil remedies such as injunction[31] and compensation for damages.[32] There are special provisions concerning the presumption of the amount of damages in the Act.[33]

The holder of utility model rights may not exercise their right against an infringer until they give a warning by presenting the technical opinion report pertaining to their registered utility model.[34]

Criminal penalties (imprisonment with work for a term not exceeding five years and/or a fine not exceeding 5 million yen) may be provided for infringement of utility model rights.[35]

### 12.1.8 *Procedure for Invalidation*

Any person may file a request with the JPO for a trial to invalidate a granted utility model. At the trial, a panel consisting of three (or five in exceptional cases) administrative judges examines the validity of the utility model registration and invalidates it when the panel finds a violation of basic or substantive requirements or any other reason.[36] A party dissatisfied with the decision by the panel may appeal to the Intellectual Property High Court.

In addition, in a lawsuit concerning infringement of a utility model right, the alleged infringer may assert that the utility model registration has grounds for invalidation and prevent the alleged infringer from exercising their rights.[37]

[28] Article 14(1) of the Act.
[29] Article 16 of the Act.
[30] Article 2(3) of the Act.
[31] Article 27 of the Act.
[32] Article 709 of the Civil Code.
[33] Article 29 of the Act.
[34] Article 29*bis* of the Act.
[35] Article 56 of the Act.
[36] Article 37 of the Act.
[37] Article 30 of the Act and Article 104*ter* of the Patent Act.

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### 12.1.9 *License*

The holder of a utility model right may grant a nonexclusive or exclusive license.[38] The licensee of an exclusive license registered with the JPO may seek an injunction or compensation for damages from an infringer.[39]

## 12.2 HISTORICAL DEVELOPMENT OF JAPANESE INTELLECTUAL PROPERTY LAW AND THE UTILITY MODEL ACT

### 12.2.1 *Establishment of Intellectual Property System*

In 1867, Japan underwent a political revolution known as the Meiji Restoration, shifting from its previous system of rule by feudal lords of the samurai class to a modern system of governance. The Meiji government aimed to gain an equal footing with Western countries in diplomacy, commerce, and other areas, and rapidly developed various systems for a modern nation. This included the establishment of an intellectual property system. Specifically, the copyright system (Publication Ordinance) of 1869, the trademark system (Trademark Ordinance) of 1884, the patent system (Monopoly Patent Ordinance) of 1885, and the design system (Design Ordinance) of 1888 were established in succession. Then, the Constitution of the Empire of Japan was promulgated in 1889, the Diet was established in 1890, and in 1899, after deliberation by the Imperial Diet, the various ordinances were enacted as laws (the Patent Act, Design Act, Trademark Act, and Copyright Act). In the same year, 1899, Japan became a signatory to the Paris Convention for the Protection of Industrial Property Rights and the Berne Convention for the Protection of Copyright.

### 12.2.2 *Introduction of the Utility Model System*

In 1905, about 20 years after the introduction of the patent system, the utility model system was introduced in Japan by the Utility Model Act. The reasons for the introduction of the utility model system were as follows:[40]

> First, the need to protect "new practical devices" and "light inventions"[41] that did not fall under the definition of inventions covered by the patent system was recognized. This recognition was fueled by an awareness that the level of technology in Japan's domestic industry was still inferior to that of Europe and the U.S.,

[38] Articles 18 and 19 of the Act.
[39] Article 27 of the Act and Article 709 of the Civil Code.
[40] JPO 1984, vol. 1, 192–194. The footnotes to the following quote are not in the original, but added by the author.
[41] In the Diet deliberations on the Utility Model Act, these expressions were used by the proponents of the bill. See JPO 1984, vol. 1, 193–194.

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that the establishment of a patent system would further increase the number of applications by foreigners, and that the system at that time did not provide protection for "utility model-like new devices that fall somewhere between inventions and designs".

Second, the introduction of the Utility Model Protection Law in Germany in 1891 had a significant impact on Japan.[42]

### 12.2.3 *Changes in the Utility Model System*

#### 12.2.3.1 First Utility Model Act

The essence of the Utility Model Act of 1905 may be summarized as follows.

First, the scope of protection was defined as "a practical new device relating to the shape, structure, or combination of industrial articles." As discussed above, the current Utility Model Act protects "devices relating to the shape, structure or combination of articles," and there are differences in the inclusion of "practical" and "industrial" in the definition. We will see later that the 1921 Act introduced the concept of "type."

Second, novelty was a requirement for registration. Specifically, novelty was recognized if the invention was not identical or similar to a device that, at the time of application, was in public use in Japan or described in a public publication concerning the same or similar goods. The original Utility Model Act, like the original Patent Act, did not provide for an inventive step requirement, and, in effect, the inventive step requirement was examined within the novelty requirement, since a device that was "similar" to a publicly known device was not considered to satisfy the novelty requirement.

Third, the first-to-file principle was adopted, whereby the first to file an application for the same device could obtain a registration.

Fourth, a substantive examination system was established. In other words, an examiner of the Patent Office examines all applications for novelty, first application, non-applicability of grounds for non-registration (violation of public order and morals, etc.), and the like.

Fifth, a system of conversion of applications was established. Specifically, it became possible to convert an application for a patent or a design registration into an application for a utility model registration. However, at this point in time, the system did not permit conversion of an application for a utility model registration into an application for a patent (the latter was permitted under the 1959 Law).

[42] After the Meiji Restoration, it was the German legal system that had the most significant influence on the modernization of the Japanese legal system. The field of intellectual property law was no exception, with the Patent Act and other legal systems modeled after the German system.

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Sixth, the utility model right was considered to be an exclusive right to manufacture, sell, disseminate, or use the registered article. The term of protection was three years from registration, but could be extended for another three years upon request, for a total of six years.

Seventh, the invalidation trial system was established as a procedure to dispute the validity of utility model registrations. The JPO examined the validity of a registration based on a petition, and those who were dissatisfied with the decision of the JPO (trial decision) could appeal to a court. This mechanism basically remains the same today.

#### 12.2.3.2 Until the 1921 Amendment

Subsequently, in the 1909 amendment, the Utility Model Act was amended to limit the effect of the utility model right to acts "in the course of business." The Industrial Design Act was also amended to the same effect at the same time. In 1916, the Utility Model Act was also amended to extend the duration of the utility model right by an additional four years. This allowed protection for up to ten years, instead of the previous term of six years (three years, and three years by extension). The reasons for this extension were that the previous six-year term was not sufficient to obtain profits from the market through products protected by the utility model right, and that the term of protection was too short compared to patent rights (the maximum term of protection at that time was twenty-five years) and industrial design rights (ten years at that time).[43]

In 1921, another amendment was made. In this amendment, first, the scope of protection of the utility model system was changed to "a practical type" relating to the shape, structure, or combination of articles. This change was made because of criticism that the conventional "device" was not substantially different from "invention," which was the subject of patent protection.[44] Here, "type" is a term modeled after "Muster" in German law. In the Diet debate on the amendment, the representative of the government explained that "type" meant the external form of an article.[45] In other words, a type was understood to be the specific form of an article.

Second, the 1921 amendment set the term of protection for utility model rights at ten years. The previous system allowed the term to be extended for up to ten years, but the new system provided uniform protection for a period of ten years.

Third, a compulsory licensing system was introduced. Under this system, where a holder of a utility model right was required to work a registered utility model or registered design of another person in order to work the utility model, and the other person refused to license the utility model or registered design right without

[43] JPO 1984, vol. 1, 316.
[44] JPO 1984, vol. 1, 431.
[45] Ibid.

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justifiable reason, the holder could compel the other right holder to license the latter's right through a trial before the JPO.[46]

To mention the Paris Convention, the 1911 revision (Washington Act of 1911) clearly included the utility model in Article 2 of the National Treatment Principle. At this time, only Germany and Japan had a utility model system.[47] Furthermore, the Paris Convention Revision of 1925 (Hague Act of 1925) placed a definition of industrial property in Article 1, in which utility models were specifically mentioned. On the other hand, Article 2 on national treatment stopped enumerating individual industrial property (including utility models) and replaced it with the general term "industrial property."

#### 12.2.3.3 Enactment of the 1959 Act (Current Law)

Japan suffered a devastating blow in World War II. After the war ended in 1945, the country began to rebuild, and in the process, a review of the industrial property system was conducted. In 1950, the "System Revision Study and Deliberation Office" was established within the JPO, and in 1951, an advisory council was established to study the revision of the industrial property system. As a result, the four industrial property laws (the Patent Act, Utility Model Act, Industrial Design Act, and Trademark Act) were enacted as entirely new laws in 1959, and these laws went into effect in 1960. These 1959 laws remain the current laws, although they have undergone many amendments since then.

The main changes in the 1959 Utility Model Act are, first, that the subject of protection was modified from "type" (since the 1921 Act) to "device" as a technical idea, returning to the concept of the original Act.

Second, a new inventive step requirement was established. As mentioned above, an inventive step was previously evaluated in the examination of the novelty requirement, but in 1959 this was made an independent requirement (similar amendments were made to the Patent Act).

Third, the conversion of an application for a utility model registration to an application for a patent or a design registration was permitted in addition to the previously permitted conversion of an application for a patent or a design registration to an application for a utility model registration.

In the process of reviewing the system in the 1950s, the abolition of the utility model system was also discussed. The main rationale advanced for abolition was the overlap with the patent system. The significance of the utility model system had long been debated. In addition, in the discussion for the 1959 revision, the scope of protection of the utility model system was going to be revised from the traditional

[46] The compulsory licensing system exists in the current Act in a more expanded manner. See Articles 21–23 of the Act.

[47] Ricketson 2015, 422.

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"type" to "device" as a technical idea, and its character as a protection system for technical ideas similar to the patent system became clearer again. The question was raised as to whether the coexistence of the patent system and the utility model system was necessary.

However, the government argued for maintaining the utility model system, pointing out that the utility model system had been actively used, especially by small and medium-sized enterprises (SMEs), contributing to industrial development, and that if the utility model system were abolished, many of the subjects of the system would be incorporated into the patent system, which would mean a decline in the level of patented inventions. The argument was also made that the abolition of the utility model system would lead to the protection of technical ideas that would not be suitable for strong protection under the patent system, which would be contrary to the original purpose of the patent system.[48]

Regarding the significance of the utility model system at the time of the enactment of the 1959 Act, for example, a contemporaneous commentary by two renowned scholars explains:[49]

> In general, the Utility Model Act plays an extremely insufficient role in terms of a country's policy for technological development or in terms of its function as a market regulation, and even the necessity of its existence is questionable.
>
> However, despite such a nature of the Utility Model Act, it is clear that, both in reality and historically, Japan's utility model registration system has been used extensively and has fulfilled a significant function. In other words, the protection provided by the Utility Model Act in Japan is much stronger than the protection under the equivalent law in Germany, the mother country of utility model law, and since the enforcement of this Act in 1905, the number of applications for registration under this system has far exceeded that of patent applications. Needless to say, this fact clearly shows that the utility model registration system, which was originally not necessary to exist, is actually indispensable and plays an important role under Japan's industrial structure. This is a clear indication of the peculiarities inherent in the process of technological development, and thus in the industrial structure of Japan.
>
> The rapid expansion of the use of this system is testimony to the extremely low level of technology in Japan at the time, and the fact that most new technologies were either for light consumer goods, or for producer goods that were very low-level. The role of the Utility Model Act was further strengthened after World War I, albeit in a different aspect. Here, the imbalance in the industrial structure had to be adjusted in response to the fact that Japan's industries had established production of producer goods on the one hand and created small and medium-sized enterprises (SMEs) on the other. The coexistence of the Patent Act and the Utility Model Act became necessary as a system to deal with the dual structure of technology that emerged,

[48] JPO 1984, vol. 2, 285.
[49] Kaneko and Someya 1960, 456–457.

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> and the Utility Model Act began to function as a special market regulation for competition among SMEs, as a way to prevent collusion in the fierce competition among SMEs.
>
> In the postwar period, Japan's technology developed rapidly, mainly through the introduction of advanced technologies from Western countries. The division into a small number of large industrial sectors with a high level of technology (the so-called basic production goods and raw materials production sector and the general assembly industry sector) and small and medium-sized industrial sectors with a low level of technology (the so-called nondurable light consumer goods production sector and the secondary processed products production sector) became more extreme and the technology gap widened during the rapid development of technologies. And the qualitative development of so-called technological innovation was almost exclusively concentrated in the former.
>
> The Utility Model Act ... is forced to further strengthen its character as a market regulation against competition among SMEs with a low degree of technology, and, since the Patent Act is intended to protect only higher technology, the Utility Model Act is required to protect lower technology. ... Therefore, it is necessary to satisfy both aspects: on the one hand, to strengthen the character of the Utility Model Act as a market regulation, and on the other hand, to create a link between the subject matter of patents and the subject matter of utility model registrations, that is, to replace the distinction between the two by a quantitative rather than a qualitative one, so that they can interact with each other. In order to achieve this, the imbalance in the legal system and difficulties in the examination process caused by the lack of a clear distinction between the subject matter of the patent and utility model systems must be accepted.

#### 12.2.3.4 1993 Law Amendment and Subsequent Amendments

Utility model applications in Japan have declined sharply since the late 1980s. Therefore, in the 1990s, a major review of the utility model system was conducted, and the Act was revised in 1993. First, the substantive examination was abolished and the system shifted to a nonexamination registration system. Second, the term of protection was shortened to six years from the filing date. The purpose of this amendment was to clarify the division of roles between the patent system and the utility model system as systems for the protection of technical ideas, and to simplify the latter into a system that provides early protection for technologies with short life cycles. Another reason for abolishing the substantive examination was to reduce the burden of patent and utility model examinations, which at the time were being delayed considerably.[50]

However, even after the 1993 revision of the Act, the number of applications for utility model registrations continued to decline, and the annual number of applications, which peaked at over 200,000 (in 1987), fell to less than 10,000 in 2000.

[50] Yoshifuji 1998, 702–703.

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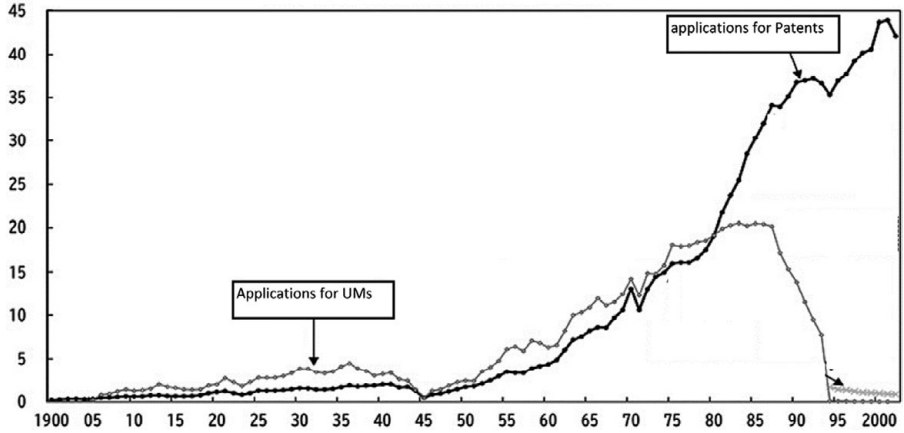



FIGURE 12.2 Applications for Japanese patents and utility models
Based on Advisory Council for the Japan Patent Office 2004, 8.

In 2005, in an effort to make the utility model system more attractive, the term of protection was extended (from six to ten years from the filing date) and a mechanism allowing patent applications based on utility model registrations was introduced.[51] However, the number of applications and registrations has been still on the decline, standing at around 5,000 per year in recent years (see below).

## 12.3 STATUS AND USE OF THE UTILITY MODEL SYSTEM

### 12.3.1 *Trends in Applications and Registrations*

Figure 12.2 shows trends in applications for utility model registrations and patents up to the year 2000. The number of applications for both types increased significantly during the period from around 1955 to 1973 which is called the "high-growth" period of the Japanese economy. Until around 1980, the number of applications for utility model registration was higher than that for patents. Thus, the utility model system was actively used until that time.

However, after around 1980, patent applications continued to increase significantly, while applications for utility model registrations remained almost flat and declined sharply from the late 1980s onward. This is believed to be due to the rise in the level of technology in Japan.

Recent trends in applications and registrations are shown in Figure 12.3 and Table 12.1.[52]

[51] Article 46*bis* of the Patent Act. See Section 12.1.6.
[52] The data are from the statistics available from the JPO website at www.jpo.go.jp/e/resources/statistics/index.html.

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TABLE 12.1 *Utility models in Japan (2011–2022)*

| | Utility models | | Patents | |
|---|---|---|---|---|
| Year | Applications | Registrations | Applications | Registrations |
| 2022 | 4,513 | 4,615 | 289,530 | 201,420 |
| 2021 | 5,239 | 5,499 | 289,200 | 184,372 |
| 2020 | 6,018 | 5,518 | 288,472 | 179,383 |
| 2019 | 5,241 | 5,033 | 307,969 | 179,910 |
| 2018 | 5,388 | 5,303 | 313,567 | 194,525 |
| 2017 | 6,106 | 6,024 | 318,481 | 199,577 |
| 2016 | 6,480 | 6,297 | 318,381 | 203,087 |
| 2015 | 6,860 | 6,695 | 318,721 | 189,358 |
| 2014 | 7,095 | 7,017 | 325,989 | 227,142 |
| 2013 | 7,622 | 7,363 | 328,436 | 277,079 |
| 2012 | 8,112 | 8,054 | 342,796 | 274,791 |
| 2011 | 7,984 | 7,595 | 342,610 | 238,323 |

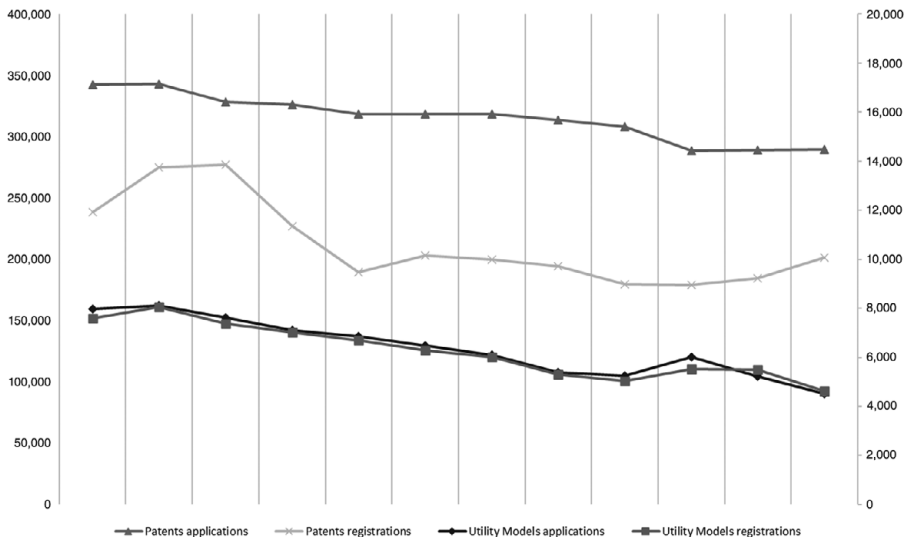



FIGURE 12.3 Applications and registrations for utility models (in units in the right axis) and patents (in units in the left axis) from 2011 to 2022

### 12.3.2 *Sectors Utilizing the System*

According to a list by the JPO,[53] the largest numbers of utility model applications in 2021 were made for furniture and household goods, transportation or packaging items, clothing, and medical or veterinary items.

[53] See JPO 2023, 22–24.

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## 12.4 RECENT DISCUSSIONS ON THE SYSTEM

A research committee established by the Japan Patent Attorneys Association in 2021 has identified the following problems with the current utility model system in Japan.[54]

- It is difficult to exercise the rights. Because the rights are registered without substantive examination, the rights are not stable, and there is a restriction that rights can be exercised only after a warning is given by presenting a Utility Model Technical Opinion, making the system difficult for users to utilize.
- The scope of protection is too narrow and does not adequately respond to recent technological trends.
- With respect to the inventive step requirement, although the Act adopts a standard of being not "very easy to devise," distinguishing it from the inventive step requirement under the Patent Act, there is no substantive difference in the actual examination by the JPO.
- In recent years, the examination of patent applications in Japan has become more expeditious and the accelerated examination mechanisms are also available, making the advantages of early grant of rights in the utility model system relatively small.

Therefore, the committee recommended reform of the utility model system. Specifically, the proposed amendments include the following:

- Expand the scope of protection. The limitation that a device must relate to the shape, structure, or combination of articles should be abolished, and general devices (technological ideas) should be eligible for protection.
- Substantive examinations should be introduced as a mandatory or optional system.
- With regard to the inventive step requirement, the examination guidelines should be revised in order to appropriately implement the statutory language that it is not "very easy to devise."
- Shorten the term of rights protection.

A prominent scholar has also proposed a reform to make the utility model system more user-friendly for individual inventors and small high-tech companies, including by expanding the scope of protection, simplifying disclosure and claim forms, simplifying examination, and granting statutory nonexclusive licenses to third parties who agree to cross-license in the future.[55]

Despite the above recommendations, at this point, there is no explicit indication that the JPO will review the utility model system, and for the time being the status quo is likely to continue.

[54] First Team of the 2021 Committee on Patents 2022, 5.
[55] Takenaka 2021b.

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