

## **V. Other Affirmative Defenses**

### **1. Prior User's Right (Patent Law Article 79)**

A person who did business by practicing the patented invention or was in preparation of doing such business in Japan at the time of filing of the patent application may raise a defense of prior user's right. To raise this defense preservation of evidences which shows the time of practice of the invention in business or preparation of doing such business prior to the filing date of the patent application is required.

### **2. License, Implied License and Consumption of Right**

Once a patentee or its licensee places their products in a market, the patentee may not assert the right of patent to those products.

### **3. Statute of Limitation**

In Japan monetary compensation based on patent infringement may be claimed in two ways. One is under tort theory and the other is under the theory of unjust enrichment. Statute of limitation is 3 years in case the cause of action is tort, and 10 years if the cause of action is unjust enrichment. Lost profit may be recoverable only under the cause of action of tort. Only reasonable royalty may be recoverable under unjust enrichment.

### **4. Abuse of Right**

Abuse of right is a general defense in civil action, that is, the plaintiff has a legal right of patent but may not enforce its right if such enforcement is abuse of right.