

New Intellectual Property Policy for Pro-Innovation

- Intellectual Property System as Global Infrastructure -

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Policy Recommendations

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1. Basic Concepts

“Pro-patent policy” which is the basic idea of intellectual property policy in Japan ought to be maintained. We should rather construct a new intellectual property system for promoting innovation corresponding to globalization and upgrading of technology.

(1) Basic idea: Maintenance and enhancement of pro-patent policy

- Intellectual property rights are a resource for all human beings. Japan has had a policy for enhancing the protection of intellectual property (i.e. pro-patent policy) for ten years.
- The basic principle of the pro-patent policy are activating the cycle of “creation,” “protection,” and “utilization” of intellectual property.
- In this committee, we think it necessary to confirm the importance of the basic principle of this pro-patent policy and also to maintain it in any future policy. We propose a new Intellectual property policy for Pro-Innovation.

(2) Policy recommendation: Construction of an intellectual property system for promoting innovation adapted for change

- Intellectual property systems throughout the world are presently facing big changes such as “globalization” and “upgrading of technology.” And “open innovation” has been widely seen. These changes also cause “intense competition among enterprises regarding intellectual property.”
- “Development of information and communications technology (ICT)” exists behind these changes. Development of IT has promoted globalization and upgrading of technology and also brought about enormous changes in the search environment for patents.
- For promoting innovation, both the Japanese and world IP systems must deal with these changes with keeping a patent quality. To achieve the goals, it is necessary to use IT to the fullest.
- In order to deal with these changes, this committee proposes an activity plan for innovative changes based on the present state of the changes which intellectual property systems are currently facing.

2. Outline of Draft Policy Recommendations

< Analysis of the Present state >

Due to globalization,

(1) Increase in international patent protection needs

- It is increasingly needed to efficiently protect one invention as intellectual property worldwide.

Due to globalization,

(2) Rapid increase in the number of patent applications throughout the world

- The number of patent applications throughout the world has increased to approx. 1.66 million.
- 40% of them are duplicated applications.

Due to globalization

(3) Confrontation between the North and South over intellectual property

- Most of patent applications in developing countries are filed by applicants in developed countries.
- Issues of intellectual property are being discussed in multilateral.

Due to intensified competition of business environment regarding patents,

(4) Increasing uncertainty and business risk

- Cost for intellectual property litigation has highly increased.
- Activities of so-called “patent trolls” have increased the level of business risk.

Scientific and technological advances have resulted in...

(5) The development of open innovation

- In addition to a vertically integrated R&D system, an open innovation system has developed.
- R&D is done by various bodies such as universities and venture enterprises.

Globalization and the development of open innovation and ICT have resulted in

(6) Innovation by various entities and the geographic expansion of innovation

- With the development of open innovation, competition in research and that in patent application have overlapped with each other.
- Information on the IP and technology in other countries has been becoming more important..

< Basic Goals >

I. Realization of a Sustainable Global Patent System

In order to efficiently protect one invention as intellectual property worldwide,

- (i) it is necessary to improve the patent examination system in which examinations are flexibly and timely performed corresponding to “User Needs” and to enhance international cooperation.

In order to cope with the rapid increase in the number of patent applications, by making the best use of IT

- (ii) “Enhancing efficiency” of patent examination is necessary.

In order to resolve the confrontation between the North and South for intellectual property,

- (iii) It is necessary to enhance an intellectual property system so as to contribute more “efficiently” towards the entire global economy, inter alia, the development of developing countries.

In order to realize an efficient and effective intellectual property system,

- (iv) Improvement of “patent quality” and global harmonization of, for example, patent systems are needed.

II. Reducing the Amount of Uncertainty in the Patent System

For reducing the amount of uncertainty of patent and business risk,

- (v) Enhance “patent quality” and build a highly “transparent” and “predictable” intellectual property system.

III. Development of an Infrastructure for the Promotion of Innovation

- (vi) “Reconstruction” of an infrastructure for promoting innovation is necessary. Recommendation7

< Recommendations for Innovative Changes >

By promoting examination cooperation such as the work sharing among developed countries and provision of examination results to developing countries

- (a) Construct a more substantive international patent collaboration as the “Virtual Global Patent Office ”. Recommendation1

By such activities as enhancing the accelerated examination system toward flexible and timely patent examination, as performed expeditiously if needed,

- (b) Establish a flexible examination system corresponding to the various needs of applicants. Recommendation2

Based on development of IT and patent harmonization,

- (c) Consider the role of government and the private sector including applicants in a prior-art search.

For checking up on examination guidelines periodically and enhancing the stability of examination,

- (g) Build a highly transparent and predictable patent examination mechanism. Recommendation5

- (i) Support the Establishment of comprehensive production-type IP Businesses which would encourage R&D by various entities and produce IP strategically with the development of open innovation. Recommendation8

- (j) Facilitate the utilization of IP related to standardization which is getting more important with the development of open innovation. Recommendation9

- (k) Realize a seamless search environment which would make it possible to search for a variety of information, such as research papers and Japanese/foreign patents and technologies, all at once. Recommendation10

By having an active role in patent harmonization as a country having patent law intermediate between European and American law,

- (d) Promote international patent harmonization. Recommendation3

By sharing successful experience linking intellectual property and business, which leads to the growth of industries in developing countries,

- (e) Promote the use of an intellectual property system in developing countries. Recommendation4

- (f) Steadily take countermeasures against counterfeiting and piracy.

- (h) Discuss the possibility of introducing guidelines for a countermeasure against patent trolls.

It will define acts considered as “rights abuse” at the exercise of a right. Recommendation6

- (l) Introduce a community patent review system on a trial basis and gather useful knowledge from various researchers and engineers. Recommendation11

- (m) Promote linkage between R&D policy and IP policy in order to enhance the efficiency of R&D policy from the “perspective of intellectual property.” Recommendation12

- (n) Establish IP Producer dispatching Program to promote R&D in a consortium where multiple universities and research institutions are cooperatively engaged in R&D. Recommendation13

3.The intellectual property system for developing innovation well adapted for globalization

< Analysis of Present State >

Due to globalization,

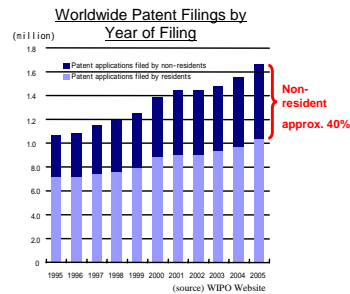
(1) Diversified needs of applicants

- Some inventions need patent protection only in Japan and some inventions need that in foreign countries. Some inventions need early patent protection and some inventions do not need early protection.

Due to globalization,

(2) Rapid increase in the number of patent applications throughout the world.

- The number of patent applications in the world has been increasing rapidly, with 166 million in 2005.
- 40% of these patent applications are duplicate applications by non-residents.

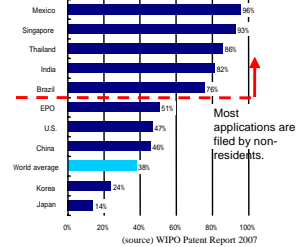


Due to globalization,

(3) Confrontation between the North and South over intellectual property

- Most of the patent applications in developing countries were filed by applicants in developed countries
- Issues of intellectual property are discussed not only at WIPO but also in multifora.

Non-resident Filings as a Percentage of Total Filings by Office (2005)



*The rate of non-resident filings with ARIPO/OAPI is reported to be about 97%.

< Basic Goals >

I. Realization of a sustainable global patent system

In order to efficiently protect one invention as intellectual property worldwide,

- (i) It is necessary to improve the patent examination system in which examinations are flexibly and timely performed corresponding to "User Needs" and to enhance international cooperation.
 - In order to enable applicants to efficiently obtain international patents, it is necessary to deepen international cooperation in the work sharing. By deepening cooperation, expeditious examinations are expected to be performed because examination results in the Office of First Filing can be utilized in the examination of the Office of Second Filing.

In order to cope with the rapid increase in the number of patent applications, by making the best use of IT

- (ii) "Enhancing the efficiency" of patent examination is necessary
 - In order to cope with duplicated applications, the number of which is increasing, it is necessary for each patent office to implement "a work sharing in examination" by using the examination results made by other patent offices to enhance the efficiency of examination.
 - By performing examinations while flexibly corresponding to various needs of applicants such as their desire for accelerated examination, expeditious examination can be made effectively.

In order to realize an efficient and effective intellectual property system,

- (iii) Improvement of "patent quality" and global harmonization of, for example, patent systems are needed.

- In order to realize a sustainable patent system, the basic premise is that examination quality in each patent office is ensured. To do so, 'cooperation with each country' must be constantly made among patent offices.

In order to resolve the confrontation between the North and South for intellectual property,

- (iv) It is necessary to enhance the intellectual property system so as to contribute more "efficiently" towards the entire global economy, inter alia, the development of developing countries.
 - It is necessary to show 'merits and effects of the intellectual property system for developing countries 'in order to build or improve the intellectual property system throughout the world including that in developing countries.

< Recommendations for Innovative Changes > < Future Activity Plan >

By promoting examination cooperation such as the work sharing among developed countries and provision of examination results to developing countries,

(a) Construct a more substantive international patent collaboration as the "Virtual Global Patent Office".

Recommendation1

- A system in which one invention can be efficiently protected as intellectual property worldwide is required.
- It is efficient for applicants because they can obtain patent judgment more easily and faster.
- For each patent office, examinations can be performed more efficiently because redundancy of duplicated patent examinations can be reduced in each country where examination is made.
- Diversified promotion is needed including enhancement of linkage among patent offices by IT, harmonization of patent laws and examination guidelines, and global consistency being made in examination quality.

Promote international "harmonization" of patent law (to be described later)

Promote international "harmonization" of "patent examination guidelines." (to be described later)

Encourage the building of international mutual trust in "quality of examination" (to be described later)

Realize a seamless search environment (to be described later)

Promote the work sharing in examination including the "patent prosecution highway program" in which the final results of patent examination are mutually used in developed countries, "JP-FIRST" in which examination judgments are released more quickly, and the sharing of search results of prior art.

Extend the use of PCT in WIPO and establish a system(*) for accessing information on patent applications in countries including developing countries * The system is the Digital Access Service for Priority Documents.

Construct a more substantive cooperation framework as the "Virtual Global Patent Office" by encouraging more patent offices in each country in the world to participate in the examination cooperation on a voluntary basis.

By such activities as enhancing the accelerated examination system toward flexible and timely patent examination, as performed expeditiously if needed,

(b) Establish a flexible examination system corresponding to the various needs of applicants.

Recommendation2

- By realization of global and seamless search environment in which various documents throughout the world can be searched in the public and private sectors, which will be described later, cooperation in prior art searches among them will become easier.

Introduce a super accelerated examination system in which more expeditious examinations are performed than in the existing accelerated examination system..

Consider an examination system in which examinations are performed in multiple kinds of timing in order to correspond to the various needs of applicants

Realization of the seamless search environment is to be described later)

Based on development of IT and patent harmonization, (c) Consider the role of government and the private sector including applicants in a prior-art search.

By having an active role in patent harmonization as a country having a patent law intermediate between European and American law,

(d) Promote international patent harmonization.

Recommendation3

- It is important to continue to encourage European countries to show flexibility and also to support the movement of a change to a first-to-file principle in the U.S.

Japan plays an active role in patent harmonization.

Study a possible amendment of Japanese Patent Law, which would be needed by international patent harmonization.

By reaching a consensus among developed countries at an early stage, an extensive discussion about patent harmonization at WIPO would be reactivated, aiming at realization of world-wide patent harmonization.

For self-supporting growth of industries in developing countries,

- Promote improvement of the intellectual property system, which is expected to lead to development in developing countries

- It is inadequate that improvement of intellectual property system in developing countries be understood merely in the context of "a countermeasure against counterfeiting and piracy" or "promotion of direct investment" by developed countries.
- It is important to promote accumulation of technology and knowledge in developing countries based on the intellectual property system in order for those countries to develop their own industries.

By sharing successful experience linking intellectual property and the business, which leads to the growth of industries in developing countries,

(e) Promote the use of an intellectual property system in developing countries.

Recommendation4

Support for enhancing the implementation capability of the intellectual property systems in developing countries

(f) Steadily take countermeasures against counterfeiting and piracy.

By sharing the recognition that "improvement of the intellectual property systems contributes to development in developing countries" with developing countries, globally improve the intellectual property system toward a system covering the entire world.

4. The Intellectual Property System to Create Innovation for Reducing Uncertainty and Business Risk

< Analysis of the Present State >

Due to intensified competition in the business environment regarding patents,
(4) Increasing uncertainty and business risk

- Costs for intellectual property litigation have been increasing because of globalization and highly advanced technology.
- In the U.S., median litigation costs \$4 million on average for the plaintiff and defendant each (when more than \$25 million is at stake in a patent suit.)
- It takes 12 years on average until a doubtful patent is finally found to be invalid.
(Source) 2006 Economic report by the President

- In the U.S., a study shows that in industries other than the chemical and pharmaceutical industries, litigation costs exceeded the benefit from patents.

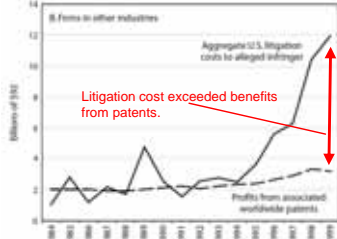


Figure 1.1. Aggregate Profits from Patents and Aggregate Litigation Costs for the U.S. Public from 1980 to 2005. (Source) Bessen and Meurer, *Patent Failure* (2008)

- Due to an increase in the number of patent disputes, many have been racing to obtain patents in order to warn off competitors, and thus, costs to acquire patents have increased for each applicant. Additionally, in some industries such as semiconductors, etc., where related technologies tend to overlap, there are other disputes regarding claim construction, resulting in additional costs.
- High demand for patents could result in an increase in the granting of low quality patents, which plays a role in causing "patent thickets" and "patent trolls" and leads to more business risk.
- Despite no clear definition for so-called "patent trolls," their activities have also caused concern in Japan.

Often-cited cases for patent trolls.

- RIM Co. Ltd., the company manufacturing "Blackberry," a wireless communication terminal, has settled with NTP, a patent holding company, by paying \$612.5 million.
- In Japan, some patent trolls have enforced groups of patents related to electronic components against companies other than electronic component companies, such as automobile manufacturers..

< Basic Goals >

II. Reducing the Amount of Uncertainty in the Patent System

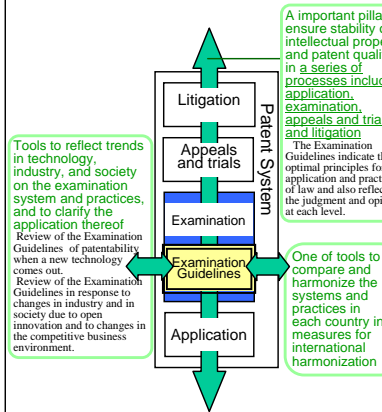
For reducing the uncertainty of patent and business risk,

- (v) Enhance "patent quality" and build a highly "transparent" and "predictable" intellectual property system
 - For lowering uncertainty at the stages of obtainment and protection of patent rights as much as possible and also for reducing more business risk than ever, the enhancement of patent quality and the construction of a highly transparent and predictable intellectual property system are needed.
 - The enhancement of patent quality is also expected for the countermeasure against patent trolls. Additionally, it is required to study criteria served as the guide for the enforcement of patent rights as well.

< Recommendations for Innovative Changes >

< Future Activity Plan >

For checking up on examination guidelines periodically and enhancing the stability of examination,
(g) Build a highly transparent and predictable patent examination mechanism
Recommendation5



Establish a new Committee in the Industrial Structure Council and provide the latest examination guidelines both at home and abroad. **Ensure predictability of patent acquisition and stability of patent rights** by sharing the guidelines among persons concerned in application, examination, appeals and trials, and litigation.

Consider how patent examination should be operated **in response to the rapid advance in sophisticated technology and in response to industrial and social changes.**

Check up on examination guidelines periodically in order to make them **harmonized with patent systems around the world.**

Invite opinions through public comments by presenting the draft of the Examination Guidelines etc. **not only in Japanese but also in English.**

Make the Examination Guidelines, etc. more understandable by **visualizing and structuring them based on hypertext technology, etc.**

Enhance the stability of the intellectual property system by considering examination guidelines as its core in a series of processes of patent procedure from examination to litigation.

(h) Discuss the possibility of introducing guidelines for a countermeasure against patent trolls.
It will define acts considered as "rights abuse" at the exercise of a right.
Recommendation6

Discuss whether or not a guideline which served as a guide for interpreting right-abuse theory in the Civil Code **should be established.**

Study the consumption of damage in intellectual property litigation etc. in order to consider the problems of patent trolls in Japan.

Facilitate licensing activity of standard technologies by accumulating and making public IP policy etc. varying among standard institutions. (to be described later)

Secure smooth utilization of standard technologies by improving the quality of rights through reference to publicly-known technologies related to the standard at the patent examination. (to be described later)

5. IP System for promoting Innovation in Open Innovation era

< Analysis of Present State >

Scientific and technological advances have resulted in...

(5) The development of open innovation

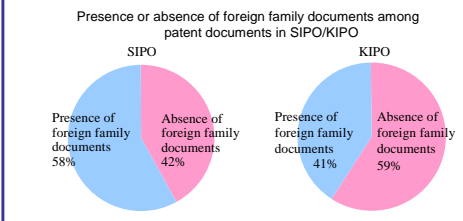
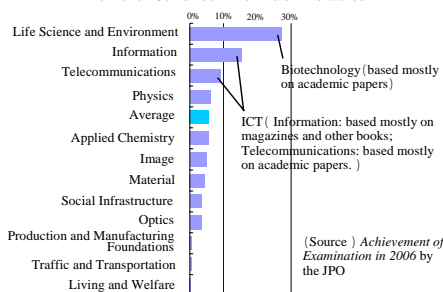
- In addition to a vertically integrated R&D system, an open innovation system has been developed.
- R&D is done by various entities such as universities and venture enterprises.
- An IP system is expected to function as an infrastructure that will help facilitate the distribution of knowledge/technology in an open-innovation environment.

Globalization and the development of open innovation and IT have resulted in...

(6) Innovation by various entities and the geographic expansion of innovation

- The emergence of such an environment, due to globalization, has helped lower the barrier between research papers and patents. The development of an environment that will allow users to access both research paper information and patent information at the same time is essential.
- For patent examination, non-patent literature and IP information in each country is becoming more important. The development of an environment providing easy access to research paper information and IP information is necessary.

Percentage of Refused Applications Based on Information Contained in Non-Patent literatures



*Machine translation into English is provided for the patent documents of China and South Korea.

(Source) Prepared by the JPO from "Derwent World Patent Index (1985 to 2007)"

< Basic Goals >

III. Development of an Infrastructure for the Promotion of Innovation

In Japan, we can find two types of R&D systems in companies: a vertically-integrated system and an open innovation system.

In such a mixed R&D environment, reconstruction of the infrastructural environment should be achieved in order to improve the efficiency of R&D by all types of entities, such as companies and universities. Its content is outlined as follows:

(vi) "Reconstruction" of an infrastructure for promoting innovation is necessary.

Recommendation7

< The new IP business >

- With the development of open innovation, various entities started to carry out R&D. New IP businesses which can produce R&D and IP are now appearing.
- We should develop an environment in which IP businesses would be established.

< Standardization >

- Due to the development of open innovation, "standardization" is becoming more important. A scheme providing for the smooth standardization and the popularization of standardized technologies is necessary.

< A common search environment >

- Acquiring the latest knowledge and information is important not only for R&D in companies/universities but also for patent application/examination. Therefore, the development of an infrastructure that enables users to easily search research papers and patent information at the same time is required.

< Coordination of R&D policy and IP policy >

- The competition in the field of research papers and in the field of IP sometimes overlap. Consequently, it is required to formulate R&D policy with "perspective of intellectual property."
- In order to secure the flexibility of R&D, greater availability of basic patents, such as those for research tools, is needed.

< Recommendations for Innovative Changes > < Future Activity Plan >

(i) Support the establishment of comprehensive production-type IP businesses which would encourage R&D by various entities and produce IP strategically.

Recommendation8

- Intellectual Ventures, a U.S. company, organized a fund amounting to \$2 billion. IV manages research by sharing its roadmap with universities. According to its roadmap, IV acquires rights for the knowledge held by universities and manages the commercialization thereof strategically.

IP businesses which can produce R&D and IP seem to have a significant role to play. They are expected to **(i) plan R&D activities which coordinate companies and universities, (ii) support the strategic filing of a patent, (iii) manage an IP portfolio, (iv) and formulate a strategy for utilization and commercialization of those IP portfolios.**

It is necessary for a business to be financed by private capital and operated competitively.

What role should government play to improve the environment for such a business driven by the private sector?

(j) Facilitate the utilization of IP related to standardization which is getting more important with the development of open innovation.

Recommendation9

Facilitate licensing activity of standardized technologies by improving public access to license policy/license conditions regarding standardized patents/patents belonging to a patent pool.

Secure smooth utilization of standardized technologies by improving the quality of rights through improving public access via patent examiners to publicly-known technologies related to the standardization.

(k) Create a search environment as common innovation infrastructure for R&D in companies/universities and procedure for patent application/examination. It would enable efficient acquisition of useful technology information dispersed due to open innovation.

- Google patent provides cost-free services for easy searching of U.S. patents.
- In the U.S., a community patent review is now being executed on a trial basis. It is said that the U.K. and EPO are planning to execute this on a trial basis in the near future.

Realize a seamless search environment which would make it possible to search for a variety of information, such as research papers and Japanese/foreign patents and technologies, all at once.

Recommendation10

Build the JPO's next search system (2014 onward) as an open system for the purpose of: sharing the data with the private sector; the development of tools such as a translation dictionary and thesaurus; the construction of a feedback mechanism.

(l) Introduce a community patent review system on a trial basis and gather useful knowledge from various researchers and engineers.

Recommendation11

Improve researchers' and engineers' understanding of IP system.

(m) Promote linkage between R&D policy and IP policy in order to enhance the efficiency of R&D policy from the "perspective of intellectual property."

Recommendation12

Aim at constructing a strategic **IP portfolio** in R&D projects.

Provide information on licenses about research tool patents (such as laboratory mice) and promote their use.

(n) Establish IP Producer dispatching Program to promote R&D in a consortium where multiple universities and research institutions are cooperatively engaged in R&D.

Recommendation13

The Japan Patent Office and INPIT would send a support team led by the IP producer to a research institution, thereby supporting the formulation of R&D strategy and IP strategy in a focused way.

- In the study of iPS, an example of the consortium R&D, the formulation of the IP strategy and the coordination thereof with R&D strategy are currently under discussion.

Recommendation1

Toward “Virtual Global Patent Office”

Where one invention efficiently becomes global intellectual property

<Outline>

With the progression of economic globalization, it is becoming more important for applicants to efficiently protect one invention as global intellectual property. Therefore, we need (a) to promote the international harmonization of patent law and examination guidelines and global consistency in patent quality and search environment in order to improve patent predictability for applicants, (b) to promote the work sharing for examinations among patent offices in order to respond to the needs of applicants who desire to efficiently protect their invention as global intellectual property. By pursuing the above efforts, patent offices in each country are expected to function as a “Virtual Global Patent Office” for applicants.

Toward a ‘Virtual Global Patent Office’ where one invention efficiently becomes global intellectual property

By (a) improving patent predictability globally and (b) acceleration of examination in each countries, electronically-connected patent offices in each different countries can play the role of a “Virtual Global Patent Office.”

(a) For applicants, patent predictability before filing of a patent application improves.

For applicants who desire to acquire patents globally, patent predictability before filing of a patent application will improve, and costs for searches before filing will decrease, as well.

(b) For applicants, more efficiency can be achieved in patent prosecution, which is carried out after filing of a patent application.

With respect to patent prosecution, which is carried out after filing, since examination results of the Office of First Filing can be utilized in the Office of Second Filing, simplification of patent prosecution and acceleration of examination is expected.

International patent harmonization (to be described later)

Harmonization of Patent Law in different countries, such as a change from a first-to-invent principle to a first-to-file principle in the US., is necessary.

International harmonization of patent examination standards

Harmonization of patent examination “standards” for judgment of patentability in different countries is necessary in this era of highly-developed technology.

Global consistency in patent quality (to be described later)

Mutual trust among patent offices is to be developed where each application is appropriately examined under examination standards and the result of such an examination is mutually utilized among countries.

Global consistency in the search environment

Further enhancement of the connection by using IT between patent offices in different countries is necessary.

Virtuous cycle of international patent harmonization which is promoted by accumulation of an examination experiment through work sharing and promotion of the work sharing which is accelerated by harmonization.

Promoting the work sharing for examination among the Patent Offices in the world

It is necessary to expand the network of examination cooperation among countries around the world on a voluntary basis by deepening the work sharing at various levels of the examination stage with WIPO playing a main role.

- (i) Use the final examination results of the Office of First Filing in the Office of Second Filing.
 - Further expansion of the “Patent Prosecution Highway” among developed countries.
- (ii) Use the judgment in the first office action of the Office of First Filing
 - JP-FIRST (JP-Fast Information Release Strategy), in which results in the first office action in Japan are released more quickly.
 - SHARE proposal by the U.S.
 - Quicker release of the national phase examination results of a PCT application under the current PCT system to the rest of the world corresponding to the needs of applicants.
- (iii) Utilize the search results of prior art made in the Office of First Filing
 - Utilize a “PCT international search report” under the current PCT system.
- (iv) “Electronic exchange of documents” with the information system
 - Utilize an electronic exchange of priority documents among developed countries
 - Global electronic exchange of documents under a framework of WIPO

“Virtual Global Patent Office” as a global infrastructure

In support of private enterprises in developed and developing countries for their business activities and possible global partnerships toward a “Virtual Global Patent Office” ~ Sharing the concepts ~ Advocate concepts toward construction of a “Virtual Global Patent Office” in various international conferences to encourage more countries to understand the concepts

Cooperation in such as Trilateral offices¹ and Five offices² to a framework where more countries voluntarily participate.

Construction of a cooperation framework in WIPO

(a) Global cooperation for efficient protection of patents

Work sharing corresponding to “User Needs”

- Encourage more countries capable of performing work sharing to participate in PPH, Patent Prosecution Highway, on a voluntary basis
- Advance implementation of the work sharing, such as JP-FIRST, JP-Fast Information Release Strategy

These efforts enable applicants to efficiently protect one invention as a global intellectual property. Because overseas offices can utilize the examination result of Japan in the framework, such as that of PPH. This can lead to early examination in overseas offices. Therefore, applicants can efficiently protect one invention for which early patent protection is desired as a global intellectual property. With respect to PPH, it is important to encourage more countries to participate on a voluntary basis in addition to the U.S., the U.K., South Korea, Germany.

Work sharing in the framework of PCT

- Advance the PCT reform by which parallel processing of an international search and a national phase examination is promoted, such as the effort of parallel processing in Japan in order to encourage many countries including developing countries to utilize examination judgments in the national phase examination of a PCT application for enhancing the efficiency of the patent systems in the world.

(b) Patent harmonization ~ In order to enhance the efficiency of work sharing ~

Promotion of patent harmonization among major countries

- Advance substantive patent law harmonization in the meeting of developed countries

Continue to discuss patent harmonization in WIPO

- Activate the discussion of patent harmonization in WIPO

(c) High quality patent examination which is internationally consistent

Promotion of harmonization of or consistency in various quality

- Promote consistency in patent examination quality by accumulation of examination practice experience of work sharing

(i) Harmonization of examination guidelines and (ii) Consistency in examination quality including examination judgment at a high level should be promoted. In concrete terms, in addition to examination practice, an examiner exchange program is conducted. These, by which understanding of examination judgments of other Offices is deepened, lead to building mutual trust and enhancement of consistency in examination quality including the quality of examination judgment at a high level. Work sharing enables working more effectively by harmonization or enhancement of consistency. Therefore, a virtuous cycle in which enhancement of consistency in examination quality leads to enhancement of efficiency of work sharing via which enhancement of consistency in examination quality is expected.

~ Toward establishment of virtuous cycle between the enhancement of efficiency of work sharing and the further enhancement of consistency in patent quality ~

Encourage growing examination cooperation

- Encourage more countries capable of performing work sharing to participate on the premise of the building of trust

(d) IT infrastructure supporting for Work Sharing

The efforts for construction or improvement of IT infrastructure among Trilateral Offices.

- Continuously consider and review the efforts to release the examination results through AIPN, Advanced Industrial Property Network, and to exchange examination documents through the Dossier Access System (DAS) in order to enhance and promote the efforts.

The efforts for construction or improvement of IT infrastructure in WIPO

- Promote efforts to improve the system called “DAS”, Digital Access Service, to exchange electronic priority documents in WIPO in order to upgrade and expand the infrastructure supporting international Work Sharing

The efforts among the trilateral offices and in WIPO should be promoted in order to improve the infrastructure supporting Work Sharing. This seems to effectively encourage more countries around the world to participate in the efforts of work sharing.

1: The Trilateral Offices of the Japan Patent Office, the US Patent and Trademark Office (USPTO) and the European Patent Office (EPO) have held the Trilateral Conference every year since 1983.

2: The Five Offices of the Japan Patent Office, the US Patent and Trademark Office (USPTO), the European Patent Office (EPO), the Korean Industrial Property Office (KIPO) and State Intellectual Property Office of the People’s Republic of China (SIPO) held the five offices conference in May 2007 for the first time. Trilateral Conference had been held among JPO, USPTO and EPO or among JPO, SIPO and KIPO, respectively, before that. However, the five offices conference was a first attempt.

Recommendation2

Patent Examination meeting the various needs of applicants, by expanding "the accelerated examination" at the JPO

<Outline>

By further expanding and providing a variety of "the accelerated examination system" which has already been implemented at the Patent Office, it's necessary to promote further acceleration of patent examination while flexibly meeting various needs of applicants.

<STEP 1 (in the immediate future)>

Establishing a super accelerated examination system

For applicants who want a more accelerated examination compared to the current one (which normally takes two or three months), examination will be done **within two weeks or in one month**.

- Target Application (Draft)
- **leading-edge technology**, such as biotechnology, nanotechnology, and environment technology
 - Targets are limited to applications for which international **work sharing** is performed (the Patent Examination Highway Program, JP-FIRST, etc.)

<STEP 2>

Toward realization of an examination system providing multiple time frames, during one of which an office action is made corresponding to the needs of applicants

- Prepare various time frames during one of which an office action is made, similar to these three time frames
- Ensure the transparency of the examination process, so that applicants know when the examination will be performed.

- (a) Super accelerated examination Examination is done within period of **two weeks to one month**
- (b) Accelerated examination Examination is done within period of **two months to six months**
- (c) Ordinary examination Examination is done within ordinary time frame

By these efforts the various needs of applicants will be realized.

Concept of Examination System (Draft)

- Super accelerated examination may causes delay of another examination. The influence like this which is caused by introduction of the examination system should be considered.
- Plan to draw up a concept aiming at an examination system corresponding to "the User Needs" by Oct 2008 based on the evaluation.
- (i) **Requirements** in the super accelerated examination system
Set specific requirements for applicants from the point of view of fairness between Super Accelerated Examination and Ordinary Examination (For example, **additional cost and attachment of prior art search, etc.**)
- (ii) Develop concrete measures to ensure the transparency of the examination process, by which applicants know when the examination will be performed.

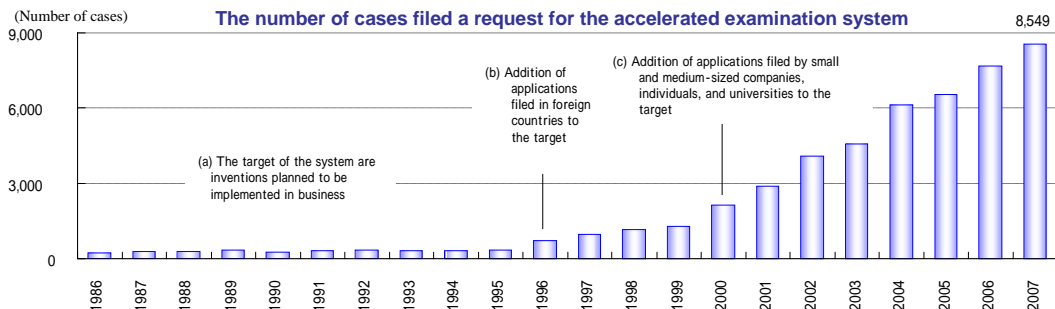
<STEP 3>

Toward construction of an examination system in which an examination is performed at a time that corresponds to User needs

- Try to develop a new index which indicates the timeliness of examinations in the light of "User Needs"
- In order to enhance applicant satisfaction, increase the option of time frames during one of which an office action is made in addition to above three type of examination, if needed
- Since there will be various applications with different examination deadlines due to the introduction of an examination system having multiple time frames, efficient progress management system of examination will be needed. Therefore, enhance and improve the information system currently being developed in order to equip the information system with the efficient progress management system

<Reference: current accelerated examination system (since 1986)>

- In this current system, when applicants file a patent application corresponding to the following, **the application will be subject to accelerated examination.**
 - (a) When it is planned to be implemented in business.
 - (b) When the application has already been filed in a foreign country.
 - (c) Applications filed by small and medium-sized companies, individuals, or universities.
- Presently, it takes **normally about two or three months** until applicants receive the results of examination after filing a request for accelerated examination.
- The accelerated examination system was used for 8,500 cases annually. This accounts for **approximately 3% of the total number of cases (more than 300,000) examined.**



Recommendation3

Promotion of international patent harmonization in which Japan plays an active role

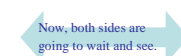
<Outline>

As one factor to support the "Virtual Global Patent Office", harmonization of substantive patent law among different countries is required. However, as substantive harmonization among Japan, the U.S., and Europe has not been realized, efficiency in seeking the protection of one invention as global intellectual property is not maximized yet.

Japan has a patent law system intermediate between that of the U.S. and that of Europe. By taking advantage of this, **Japan should play an active role in discussion on international patent harmonization** and seek to overcome the difference between the U.S. and Europe toward harmonization of the system of the U.S. and that of Europe.

<The Present Structure>

The U.S. is under deliberation for revision of the Patent Law Historical conversion from a "first-to-invent principle" to a "first-to-file principle."
However, this is contingent on expansion of the grace period by Europe and Japan.



In Europe, there are differences in opinion. Some countries are reluctant to expand the grace period.

Promotion of international patent harmonization

By Japan playing an active role as a country having a system intermediate between the U.S. system and the European system.

(a) Harmonization toward a first-to-file principle

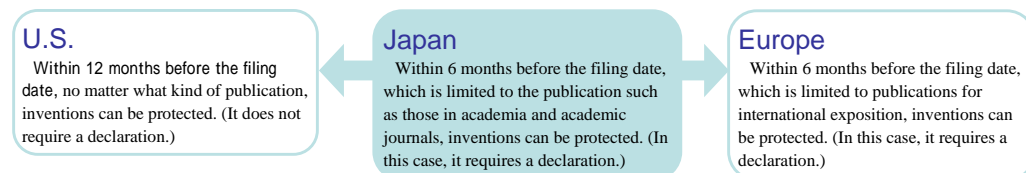
Japan encourages European countries to form a common opinion in Europe and take a flexible attitude toward the expansion of the grace period. This will encourage the conversion of the U.S. patent system to a "first-to-file principle."

(b) Consideration of other issues

Japan has a patent law system intermediate between that of the U.S. and that of Europe, regarding the given three points to be discussed for patent harmonization. Taking advantage of this, Japan will play an active role in the discussion for patent harmonization().

In order to timely amend the Japanese Patent Law in response to the development of the negotiations, it is necessary to consider following issues in domestic law in advance.

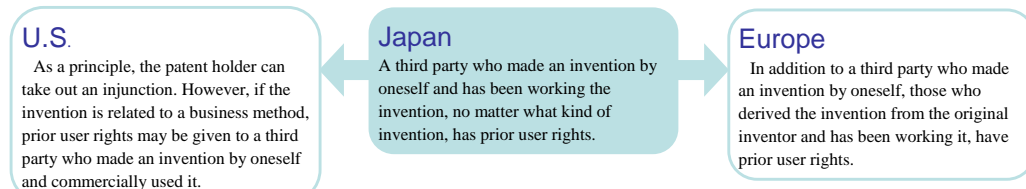
(i) Object and Duration of the grace period lasting from the publication of an invention to its filing date



(ii) Adoption of a PCT secret prior art (Whether PCT applications not published in the official language, should be considered as a secret prior art for the later filing applications in the country or the region)



(iii) Prior user rights of a third party other than the patent holder



Recommendation4

Assistance in Launching Intellectual Creation Cycle in Developing Countries for Establishment of Global Intellectual Property Infrastructure: A New Initiative of Japan – Information Sharing on Best Practices of Utilization of Intellectual Property in Business –

<Outline >

With the globalization of the world economy, the number of patent applications filed in developing countries has been increasing. The vast majority of those patent applications, however, continue to be filed by applicants in developed countries, constituting a background for a north-south conflict regarding intellectual property policy.

In order for developing countries to change such a situation and achieve economic advancement through the utilization of the intellectual property systems based on creative activities in those developing countries, improvement of their own intellectual property systems is essential. Due attention should be paid to ensure that such improvement leads to the establishment of the global intellectual property infrastructure so that both worldwide players and their local partners enjoy a level playing field of business for their better collaboration, thereby benefiting developing countries as well as developed.

Japan has experience in the advancement of its economy through, among other measures, the enhancement of its intellectual property systems in order to promote the intellectual creation cycle including the creation, protection, and utilization of intellectual property.

On the basis of this experience, effective assistance to developing countries is considered to include:

- encouraging the improvement of their intellectual property systems;
- sharing with developing countries best practices of utilization of intellectual property in business to promote the intellectual creation cycle; and
- thereby facilitating the self-sustaining economic development of developing countries.

Carrying out assistance taking advantage of Japan's own experience of achieving advancement through the promotion of the intellectual creation cycle – For the economic development of developing countries –

(a) Importance of promoting the intellectual creation cycle

Importance should be attached to the establishment of the intellectual creation cycle in developing countries, with a view to promoting their self-sustaining economic development. This, in turn, is expected to lead to the advancement of regional industries including local industries.

(b) Significance of intellectual property protection as a basis for technology transfer, etc.

Intellectual property protection forms a basis for direct investment and technology transfer from developed countries, and is therefore indispensable for the self-sustaining development of developing countries in this context as well.

– Sharing Best Practices of Utilization of Intellectual Property in Business –

(i) Promotion of the intellectual creation cycle – Sharing information regarding the successful linkage of intellectual property with business –

With a view to promoting the intellectual creation cycle and facilitating the self-sustaining economic development of developing countries, it is considered necessary to share information with developing countries regarding the successful linkage of intellectual property and business in Japan and other countries. Specifically, proposals should be made at WIPO including the following:

- a) Both developed and developing countries continuously share information worldwide on (I) the successful linkage of intellectual property and business and (II) government assistance of small and medium-sized enterprises (SMEs) in the intellectual property field. It would be useful to include examples of the successful utilization of intellectual property in the context of measures for regional industry promotion such as the "One Village One Product" program;
- b) Developed countries, in particular, play an active role in collecting examples of successful linkage of intellectual property and business, and cooperate with WIPO to share such information;
- c) Both developed and developing countries collaborate in the dissemination of knowledge regarding cases of successfully linking intellectual property and business as well as measures to support SME activities, in view of contextualizing such knowledge in the economy of developing countries; and
- d) WIPO organizes meetings and seminars in which the participants include relevant authorities such as the World Bank and UNCTAD and experts in the areas concerned.

(ii) Assistance in the use of information technology and the development of human resources

With a view to facilitating the improvement of the intellectual property systems of developing countries, the Japan Patent Office has been assisting Asian countries in the use of information technology, the development of human resources, and the introduction of work-sharing schemes in examination, taking into account the development stage of each country. It is considered important, hereafter, to embark upon assistance to African countries, among others, having the above in mind.

Recommendation5

For checking up on the Examination Guidelines periodically and enhancing the stability of the patent examination system, Build a Highly Transparent and Predictable Patent Examination Mechanism

<Outline >

For lowering uncertainty at the stages of acquisition and protection of patent rights as much as possible and also for reducing more business risks than ever, the enhancement of "patent quality" and "a highly transparent and predictable patent examination mechanism" are needed.

To achieve the above goals, we attempt to improve the communication channel of the patent system with the Examination Guidelines as its core to enhance stability in operation of the patent system and the quality of a patent by increasing transparency in the planning and revising process of the Examination Guidelines and by actively delivering minutes about the discussions in this process.

<Concrete measures >

1. Increasing transparency in the planning and revision process of the Examination Guidelines / Establishment of a new organization in the Industrial Structure Council

In order to enhance stability in operation of the patent system and the quality of a patent, we attempt to improve the communication channel of the patent system with the Examination Guidelines as its core by increasing transparency in the process of planning and revising the Examination Guidelines and by actively delivering minutes about discussions in this process and by inviting public comments not only in Japanese but also in English.

For this purpose, the following organization will be established under the Patent System Subcommittee of the Intellectual Property Policy Committee.

<Establishment of a new Committee in the Industrial Structure Council >

- Investigate how patent examination should be conducted including establishing Examination Guidelines
- Members:



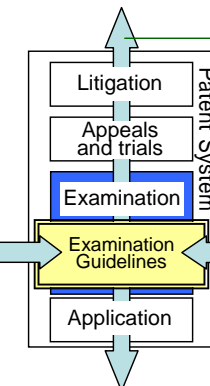
- The Committee will be met periodically several times a year.
- The Committee will deliver reports about discussions during the revision process both at home and abroad to enhance the transparency.
- The JPO invites opinions through public comments by presenting the draft of the Examination Guidelines etc. not only in Japanese but also in English.

<The communication channel of the patent system with the "Examination Guidelines" as its core>

Tools that reflect trends in technology, industry, and society on the examination system and practices and that clarify the application thereof

Review of the Examination Guidelines of patentability when a new technology comes out.

Review of the Examination Guidelines in response to changes in industry and in society due to open innovation and to changes in the competitive business environment.



A important pillar to ensure stability of intellectual property and patent quality during a series of patent-related processes including application, examination, appeals and trials, and litigation

The Examination Guidelines indicate the optimal principles for the application and practice of law and also reflect judgments and opinions in each level of the processes.

One of tools for comparing and harmonizing the systems and practices in each country when creating measures for international harmonization

2. Visualization and structuring of Examination Guidelines, etc. (based on hypertext)

Make the Examination Guidelines, etc. more understandable for inventors, applicants, representatives, legal professionals, etc. by visualizing and structuring them based on hypertext technology, etc. Specifically, make the Examination Guidelines and related matters more accessible through a hypertext system.

Guideline for Anti-Patent Troll Measures

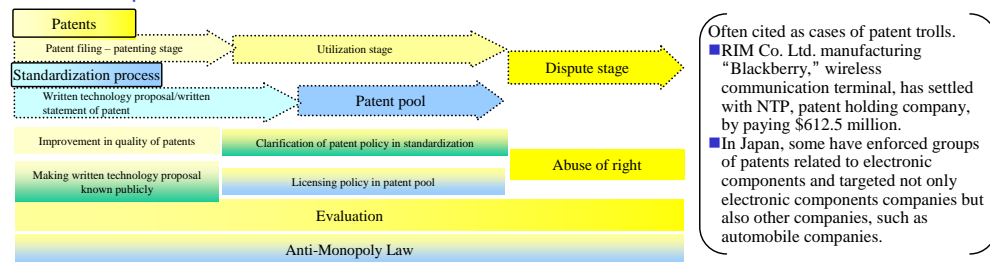
< Outline >

The U.S. and other nations have come to pay due attention to the patent troll problem because it is seen as a factor hampering innovative activities. The patent troll issue encompasses a wide variety of ways of IPR enforcement. It is difficult, therefore, to unambiguously define this issue. A solution to this issue, therefore, will require careful consideration from diverse perspectives including IP systems, "abuse of right" principle in the civil law, and standardization.

< Definition of patent troll >

There is no unanimously accepted definition of patent troll. Some define it, for instance, as an individual or an organization who own patents, while not engaging in R&D, manufacturing or sales, and use the patents to obtain large settlements or license fees. Others say that it is difficult to define patent troll and so the term should be defined on a case-by-case basis.

< Outline of patent troll issue >



- Prosecution stage: Further enhancement of quality of patent by improving access to technical information adopted as a standard.
- Utilization stage: Facilitation of patent utilization by improving access to information such as license policy in patent pool and license conditions.
- Dispute stage: Clarification of applicability of "abuse of right" principle to the patent right enforcement.

Establishment of a Exploratory Committee

The Committee will discuss guidelines for the applicability of "abuse of right" principle in the context of patent right enforcement. In the discussion, the Committee will also consider if such guidelines are necessary.

■ Committee members :

Legal professional

Economists

Corporate experts

■ Details to be discussed :

Clarification of applicability of "abuse of right" principle

Some mention regarding the applicability of "abuse of right" principle in relation to the software patents can be found in Interpretative Guidelines on Electronic Commerce and Information Property Trading* (published by the Ministry of Economy, Trade and Industry (METI) in March 2007).

The Committee will discuss the preparation of guidelines on application of "abuse of right" principle for patents other than those relating to software.

*Interpretative Guidelines on Electronic Commerce and Information Property Trading (published by METI in March 2007)
The Guidelines, which served as a guide for interpreting the Civil Code, set out that enforcement of a software-related patent right that satisfies at least one of the following three conditions can be regarded as an "abuse of right".
(1) Where the person exercising the right subjectively has malicious intent, such as to cause damage to others.
(2) Where such person has malicious intent to cause unreasonable damage to another party by exercising such right.
(3) The exercise of such right causes far more significant damage to the other party or to society compared with the benefits gained by the party exercising such right.

Development of Open Innovation Against the Backdrop of Changes in the Environment Surrounding Innovations

< Changes in the environment surrounding innovations >

Increased sophistication/complication of technologies and shorter product lifecycles

With the recent increase in sophistication/complication of technologies, the Japanese industrial structure has changed into a style of horizontal division of labor. In some industries, more and more modular products have come to be manufactured.

In addition, diversified customer's needs may shorten the lifecycle of the product.

Development of ICT and worldwide knowledge sharing

An environment has come to be established that will allow engineers all around the world to easily access technical knowledge. Against this backdrop, various entities have come to carry out R&D activities across wider geographical areas. As a result, abundant useful knowledge/information has come to be found throughout the world.

Behind these changes in the environment surrounding (activities related to) innovation, vertical-integrated innovation is being replaced by open innovation in which an entity can make profits by allowing outside players to use the entity's own technologies or can achieve speedier R&D /commercialization by utilizing outside technologies.

< Development of open innovation >

- Therefore, in open innovation, smooth circulation/distribution/flow of knowledge/technologies between outside players is a very important factor because, in open innovation, the active introduction of leading technologies from outside players can help expedite R&D activities in the main player and, on the other hand, the main player can earn profits by licensing its unused technology to an outside player.
- A corporation should choose an optimal R&D system utilizing advantages in both closed-type/open-type innovations depending on the market/competition environment or the type of the technology.
- Overseas companies have been globally carrying out their business activities effectively utilizing advantages of both closed-type/open-type innovations.

Examples of open innovations by foreign firms

(1) Companies making open their R&D policy to the public

IBM has been putting great emphasis on an open-innovation policy. It has been promoting R&D activities utilizing technologies developed by other companies based on the concept that sources held by the company or outside both comprise its R&D functions. Particularly, it has been focusing its energy on an open source-type R&D. To promote its open source-type R&D, it has been supporting the development of an open-source software. For example, it made the decision to provide as many as 500 patents it held to an open-source community.

(2) Companies promoting M&A actively from the R&D perspective

Intel Corporation has been working to increase its technical capabilities through the active utilization of outside resources. Research cooperation with universities is an area of particular interest. Its efforts in this regard include the establishment of the Intel Research Council. Through this Council, it has been offering financial assistance to university R&D projects in which it sees great potential and possible future contribution to the technical fields it has strategically been promoting. It also established a venture capital within the company (Intel Capital) which has been enabling Intel to introduce the achievements made by Intel Capital into Intel's business strategy.

(3) Funds focusing on the function as producer of R&D and patenting in other companies

Intellectual Ventures discuss with engineers in the leading technology fields and scientists certain technological issues to determine the direction of technology in the future. Patent attorneys also attend this meeting, and patent application strategies are formulated based on the result of discussion.

Comments from Japan Business Federation

Open innovation is one of the important options for promoting innovation and resolving socio-economic problems. The intellectual property system was originally built for securing the monopoly of a right, but excessive insistence on an individual right may disrupt the effective function of innovation.

< Changes in the role of IPRs >

Some people see IPRs serving as a kind of currency in an open-innovation environment because it enhances the smooth flow of knowledge and technology. Under a closed-innovation environment, an IPRs holder can exclusively use a technology it developed. In addition to such a role, IPRs is expected to function as an infrastructure that will help facilitate the distribution of knowledge/technology.

< Development of IP system underpinning ecosystem in open-innovation environment >

With the view of developing an IP system that will encourage innovations corresponding to an open-innovation environment, it is also essential to improve following environments:

- Environment accelerating IP business
- Environment accelerating licensing regarding IP adopted as a standard
- Environment enabling the seamless search for research paper/patent information

Comments from Microsoft Corporation
Strong IPR protection is essential to encouraging and promoting open innovation. Companies will feel confident about sharing inventions and technology with one another only if they know that their contributions will not be misappropriated. Patents, in particular, serve as the currency of open innovation.

< Schedule >

This Committee will be established in the summer of 2008 or later.
This Committee will prepare guidelines or a study report in fiscal 2008.

Recommendation8

Support establishment of comprehensive production-type IP businesses

< Outline >

In the movement toward open innovation, the importance of businesses with a comprehensive R&D strategy and IP strategy is increasing.

We can see new businesses mainly in the U.S. which consider not only patent rights but "the whole process of IP production" in open innovation as a target of a business. Such kinds of businesses are beginning to gain ground in other regions including Asia.

In Japan, it is considered essential to improve the business environment to encourage the establishment of new IP businesses with a comprehensive R&D strategy and IP strategy.

Invention session hosted by U.S. Intellectual Ventures

Engineers in leading technology fields and scientists will discuss certain technological issues to determine the direction of technology in the future. Patent application strategies are formulated based on the results of the discussions.

Intellectual Ventures has supported R&D in the U.S. and Asia with total expenditures of 200 billion dollars through this "invention session" and managed the IP produced by the R&D project.

< 4 Functions necessary for comprehensive production-type IP businesses >

Function 1 Breakthrough and IP

Researchers and engineers in various fields gather and exchange ideas to make a breakthrough in R&D.
At the same time, IP strategies are decided for the future commercialization.

Function 2 Sharing of a roadmap for the future of R&D

Through active discussion with a wide range of business entities, researchers and engineers, a roadmap for the future can be shared.

Function 4 By maintaining plural patent portfolios, control the amount of risk for R&D

By maintaining plural patent portfolios, R&D can be carried out aggressively while the amount of risk can be controlled appropriately.

Function 3 Portfolio management of IP

The businesses will construct strategic IP portfolios in order to improve the value of IP and the latitude of R&D in the future.
This portfolio can be enlarged through the transfer or licensing of patent rights.

By comprehensively managing and operating these functions with a certain amount of funding, the business can produce R&D strategy and IP strategy comprehensively.

< Division of roles in private sector and government >

● In order to coordinate the IP activities of universities/companies from R&D to production of intellectual property in a unified manner, an entity managed by the private sector and based on private capital should be established.

- Possible members of private sector entity
- (1) Experts in technology (Manufacturing engineers, young researchers, postdoctorates, etc.)
 - (2) Those who can collect information on commercial needs (ex.: business firms)
 - (3) Experts in financial technologies (Investment banks, securities companies, etc.)
 - (4) Experts in intellectual property strategies (patent attorneys, etc.)

● It seems to be necessary for the government to encourage the utilization of human and long term financial resources for the establishment of such IP businesses with the support of public funding. For example, the support with establishment of an institution (tentatively) called the "Innovation Network Corporation Japan" with public funding is needed so that IP businesses that support private sector enterprises will be established by private initiative. It is expected that the establishment of the "Innovation Network Corporation Japan" will lead to the creation of new business models.

Recommendation9

IP System Supporting the Promotion of Standardization

< Outline >

Along with the development of open innovation, the importance of standardization has been growing. Particularly, under open innovation, standardization by de facto standard and consortium has been spreading.

On the other hand, standardization which excludes patented technology has been virtually impossible in the fields of advanced technology.

Thus, it is important to promote the further improvement of the quality of patents related to standard technology and to improve the environment where such a patent is smoothly used, in order to promote standardization.

Examples of standard-provisions type patent pool and conversion percentage of applicable royalty

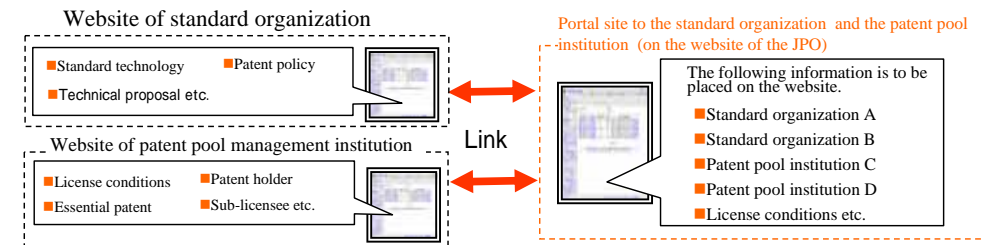
Name of patent pool	Administrator, Time of inauguration	Enterprise belonging to a pool	Essential patent	Nonmember of a pool	licensee	Representative model (shipping rate)	Applicable royalty	Conversion rate of royalty	
MPEG2	MPEG LA, 1977	7 enterprises & 1 university at the time of inauguration, 22 enterprises & 1 university in April, 2004	Only an essential patent covered by a pool / at first 125 patents (34 families), as of July 2004 644 patents (127 families)	Lacent, IBM	734 enterprises	DVD (100 dollars)	2.5 dollars each	2.5%	
DVD	DVD-6C	6C Group, TOSHIBA, 1988	TOSHIBA, sushita, Mitsubishi, Time-Turner, Hitachi, Victor Company of Japan, IBM	180 US Patents for a player, 166 US Patents for a recorder	Thomson	245 enterprises for Hardware (decoder, encoder), 157 enterprises for Disk	ditto	3.0 dollars each	3.0%
	DVD-3C	3C Group, PHILIPS, 1998	PHILIPS, SONY, PIONEER, LGE (HP for write-in model)	131 US Patents for a player, 106 US Patents for a recorder		179 enterprises for Hardware (decoder, encoder), 216 enterprises for Disk	ditto	3.5 dollars each	3.5%
3G Patent Platform	3G Patent Platform, 2003	7 enterprises for W-CDMA1 (ETRI, FUJITSU, KPN, NEC, NTT DoCoMo, Mitsubishi, Siemens)		QUALCOMM, Motorola, Ericsson, Nokia, and		The third-generation mobile phone (250 dollars)	2-4 dollars each	1.2%	

*As for the applicable royalty, intermediate values were taken for those which have width in value.
(Source) General Information of Patent Pool" by Hisashi Kato, Japan Institute of Invention and Innovation 2006
"Technical Standard and Competition Policy - Focusing on the Consortium Technical Standard" by Sadao Nagaoka, Yuko Yamane, Reiko Aoki, and Satoko Wakui, Competition Policy Research Center 2005

- The Number of essential patents adapted as a standard is increasing. Accordingly, the number of relevant companies are increasing too.
- The number of companies belonging to a patent pool is increasing.
- The number of companies not belonging to patent pool but holding essential patents is increasing.

< Specific Actions >

- Promotion of environmental improvements to further raise the quality of rights concerning standard technology
Promote environmental improvements that enhance the quality of patent right of standardized technology. For example, in cooperation with standards organizations, the JPO's access to written technical proposals, in order to examine patent applications, during the period in which a standard is being discussed should be improved.
- Promotion of environmental improvements to facilitate the use of standard technologies
Licensing policy and licensing conditions regarding standardized patents and patents that belong to a pool should be accessible to individuals and companies that want to use standardized technology through links on the JPO's website to respective websites of standard organizations and patent-pool institutions.



- Clarification of the applicability of antimonopoly Act to IP transactions.
The Japan Fair Trade Commission (JFTC) has issued the following two guidelines to illustrate the applicability of the Antimonopoly Act to IP transactions: "Guidelines for the use of Intellectual Property under the Antimonopoly Law" (September 2007) and "Guidelines on Standardization and Patent Pool Arrangements" (June 2005).
In the U.S., authorities have been clearly expressing their policy for standardization and IP. In light of this trend, Japan, as well, is expected to clarify its policy applying the Antimonopoly Act and allow licensing among relevant parties for standardization.

< Schedule >

In fiscal 2008, the JPO will promote cooperation with organizations that establish standard technology and with patent pool institutions. Thereafter, the JPO will consider environmental improvements to further raise the quality of a right for standards-related technology and for facilitating the use of standard technology.

Recommendation10

The seamless Search Environment as a Global Innovation-Infrastructure

Development of new search system in JPO for work-sharing between public and private sectors

< Outline >

The new search system of the JPO will be designed to be accessible to external users to the utmost extent in order to promote innovation in universities and companies. In other words, the improvement of an environment which realizes a worldwide seamless search for patent information and technology information is expected.

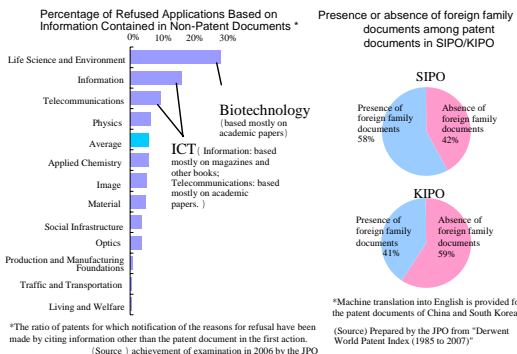
< Background >

With the recent economic globalization and development of IT, various and geographically-widespread entities have come to be involved in innovation. Due to such environmental changes surrounding innovation, not only research papers but also patent information are of increasing importance. Therefore, in order to promote effective R&D in universities and companies, the development of an environment that will provide network availability of both research papers and patent information is expected.

In patent prosecution, the growing importance of the information contained in non-patent documents and foreign patent documents is recognized. The development of the infrastructure which will enable an efficient search for them is essential.

< Specific Actions >

The JPO aims to develop an environment that will enable users to seamlessly search for all necessary information, including research papers, technical information held by private companies, and Japanese/foreign patent document information, at the same time.



1. Expansion/sharing of information contents

>Sharing of technical information with universities and companies

Aimed at sharing of technical information data with universities and companies through such means as the establishment of closer links between databases held by universities/companies and databases held by the JPO.

>Expansion of information contents held by the JPO

Aimed at collecting/accumulating in Chinese/Korean language patent documents as well as technical information which is not usually stored in databases in the private sector

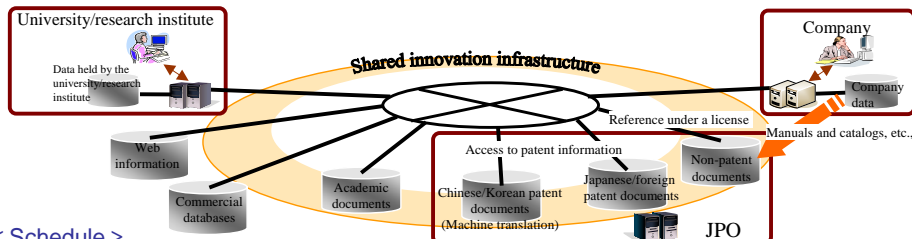
2. Increasing accessibility (e.g. search functions)

Tools that will enable an efficient search (as follows) will be developed and shared with outside users.

- Conceptual search, figure/image search,
- Rules for an enhanced search engine,
- Dictionaries for translation incl. thesauruses

3. Construction of a feedback mechanism

Information contents/systems held by the JPO will be made accessible to the private sector to the extent possible as public goods to encourage R&D activity in the private sector. On the other hand, the JPO will improve its search system by reference to feedback from the outside users who use the system.



< Schedule >

Autumn 2008: Formulation/announcement of a basic plan for the new search system. An opportunity will be provided for universities and companies to offer their opinions.
January 2014: A new search system will be released.

Recommendation11

Japanese-Version Community Patent Review on a Pilot Basis

< Outline >

Community Patent Review (CPR) is a measure led by the private sector in which a community, consisting of researchers/engineers in companies/universities, reviews over the Internet a pending patent application (e.g. disclosure of information on most relevant prior arts and discussion about the application) and, then, submit appropriate prior art documents to the JPO as reference material for examination.

The U.S. has been implementing a CPR pilot project. A similar project is now under consideration in the U.K. Japan will also start a CPR pilot project because CPR is expected to become a globally-utilized infrastructure.

< Background >

With the recent IT development and globalization of innovations, technology information has come to exist in different parts of the world in such forms as patent documents and research papers.

For a more secure patent right under these circumstances, such technology information scattered across the world should be compiled through the knowledge of researchers and then utilized in patent examination prosecution.

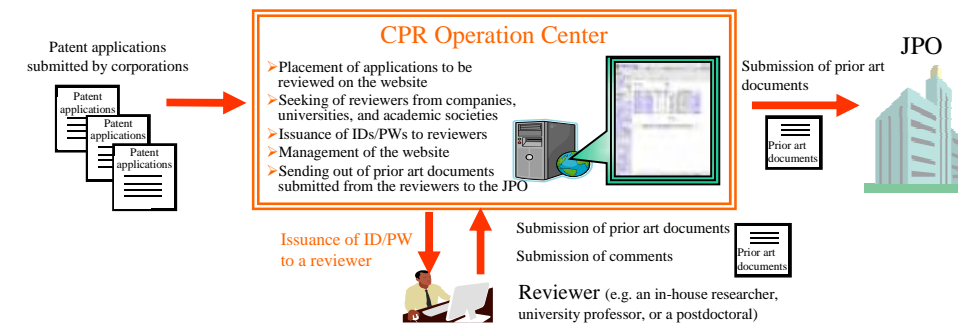
Against this backdrop, the U.S. has proposed a Community Patent Review as part of its approaches to improve patent quality and implemented a pilot project.

< Specific actions >

Start of Japanese-version CPR pilot project to review advantages of CPR

1. Japanese-version CPR pilot project

- A CPR operation center will be selected. A website utilizing a commercial portal site will be created.
- Patent applications (projected to be about 30-40 applications), which some companies have allowed to be reviewed, will be placed on the CPR Website for a certain period to receive prior art documents/comments from reviewers.
- The operation center will select from among the submitted prior art documents those documents that are regarded as containing useful information for examination while considering the reviewers' comments. Then, it will send the selected prior art documents to the JPO through an information and communications system.



2. Community Patent Review Committee

- The Committee is supposed to consist of about 7 people including university professors (in the fields of IP and engineering), corporate experts (IP and legal matters), corporate researchers, and patent attorneys.
- The Committee will analyze the progress of the CPR pilot project in the U.S., that of Japanese-version and issues relating to Japanese Patent Act and Copyright Act.

< Schedule >

A Japanese-version CPR pilot project will be started by the summer of fiscal 2008 and continued until the end of fiscal 2008, ending March 31, 2009. Discussion about the start of a full-scale CPR operation will be held based on the results of the pilot project and review submitted by the Committee.

Recommendation12

Linkage between R&D and IP Strategy
See R&D with “perspective of intellectual property”

< Outline >

In the process of R&D, such as the case of iPS cells, the competition in the field of research papers and competition in the field of IP sometimes overlap each other. In order to lead the world, it is essential to succeed not only in research but also in IP. “perspective of intellectual property” is therefore required; i.e., seeing things from the standpoint of IP and from the starting point of R&D in order to link R&D achievements and economy/society together. For this purpose, IP experts with “perspective of intellectual property” will be dispatched to R&D consortiums in order to support the formulation of R&D strategy, IP strategy and licensing strategy including licensing conditions. It is also required to promote the utilization of research tool patents.

< Concrete Measures >

1.IP-Producer dispatching Program (See Reference 13)

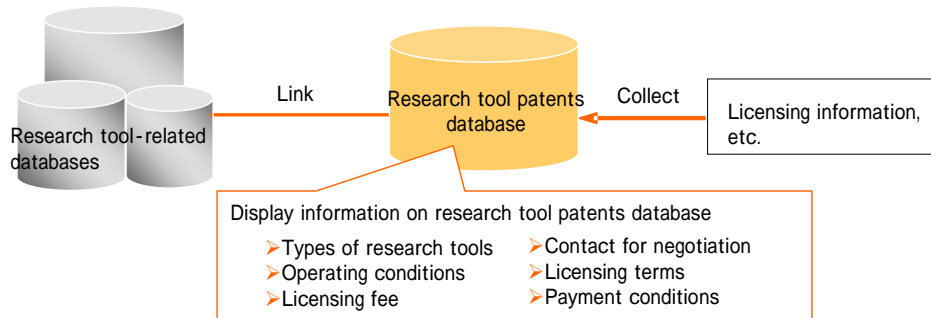
- Dispatching experts consisting of IP producers to projects such as “R&D consortiums” in which universities and research institutions are cooperatively participate.
- Formulate R&D strategy by utilizing patent information and the strategy of IP as fruits of R&D for the construction of an IP portfolio. In addition, clarify IP acquisition and licensing conditions that the involvement of multiple organizations and researchers make inevitably complicated so that IP utilization is promoted much further.

2. Nurturing specialists with “perspective of intellectual property”

- Since it is desirable that specialists with “perspective of intellectual property” should continuously be allocated in the field of R&D, IP producers are also expected to help young researchers and postdoctorals to be more conscious of IP.

3. Constructing databases of research tool patents and patent-related tangibles

- If a research tool for R&D has no substitutability and is patented, the researchers utilizing the relevant research tool are required to have a license to utilize the relevant research tool. In the negotiation of such research-tool-patent licenses, it is often difficult to reach an agreement because of the conflict between right holders and users over license conditions.
- A database of research tool patents will be conducted in order to facilitate their smooth utilization. It will accumulate the information regarding research tool patents owned by universities and companies and their licensing conditions and then widely disclose them. (“Guidelines regarding smooth utilization of research tools in the field of Life Science” (See the General Council on Science and Technology dated March 1, 2007)



< Schedule >

Start constructing research tool patents from FY2008.
Licensing information, etc. is collected and accumulated for early release.

Recommendation13

The IP Producer Dispatching Program by the JPO and INPIT
for an R&D consortium into which national funds were invested

< Outline >

The JPO and INPIT (National Center for Industrial Property Information and Training) are planning to send IP-strategic experts for a certain intensive period to an “R&D consortium” in which multiple universities and research institutions have cooperatively participated. The aim of this program is to support the formulation of strategies regarding IP, such as patent applications and patent utilization, in the R&D consortium in order to promote R&D.

< Concrete measures >

- 1.Target R&D consortium
Those projects such as an “R&D consortium” for which multiple universities and research institutions are cooperatively working.
- 2.IP-strategic expert team
Dispatched teams are organized by the INPIT (National Center for Industrial Property Information and Training), for example as follows:

Intellectual property producer (newly established)

-leader of the support team

{The IP producer shall be chosen among persons who can lead both R&D and management in the entity. }

Patent information advisor with a good deal of knowledge of the movement of related technology and patents.

Patent licensing advisor with a good understanding of commercialization.

Patent attorney with expertise in specific technical fields and ability to establish strong patent rights in application procedures.

3.Support provided by the dispatched team

- (1) Support for formulation of R&D strategy by utilizing patent information such as a “Patent map” or “Survey of patent application technology trends”
- (2) Formulation of IP strategy of R&D project (constructing a strategic IP portfolio including not only the core patent but also peripheral patents.)
- (3) Formulation of strategy for utilization and commercialization of patents such as preparation of “license agreements” to be required in the future commercializing stage.

License strategies include, for example:

- As to the research tool patent portfolio, patent rights should be licensed at a reasonable price in order to promote R&D, and it is also important to utilize the research tool patent application database.
- As to the patent portfolio which has high probability of leading to business operations, it is important to take a license strategy, to make profits after having constructed the strategic portfolio.

< Schedule >

This program will be implemented experimentally in 2008.

**List of the Members of the Policy Committee on
Innovation and Intellectual Property**

Hatsuo AOKI	Senior Advisor to the Board, Astellas Pharma Inc.
Takafumi FUJITA	Professor, Institute of Industrial Science/Director, Division of University Corporate Relations, The University of Tokyo
Takuya GOTO	Advisor, Kao Corporation
Motoshige ITOH	Dean and Professor, Faculty of Economics, The University of Tokyo
Sadao NAGAOKA	Professor, Institute of Innovation Research, Hitotsubashi University
Nobuhiro NAKAYAMA	lawyer, Nishimura & Asahi
○ Tamotsu NOMAKUCHI	Chairman, MITSUBISHI ELECTRIC CORPORATION
Akihiko SAITO	Chairman, DENSO Corporation

○: Chairperson of Committee

List of the Members of the PCIIP Working Group

Reiko AOKI	Professor, Institute of Economic Research, Hitotsubashi University.
Masahiro EZAKI	Senior General Manager, Intellectual Property Div, Toyota Motor Corporation
Makoto GONOKAMI	Professor, Department of Applied Physics, Graduate School of Engineering, The University of Tokyo
Takuya HASEGAWA	Attorney at Law & Patent Attorney, Hasegawa Sogo Law Office
Kohzo ITO	Professor, Department of Materials Sciences, Graduate School of Frontier Sciences, The University of Tokyo
Masanobu KATOH	Corporate Vice President, Law & Intellectual Property Unit, Fujitsu Limited
Takashi MATSUZAWA	Managing Director, Nemoto & Co., Ltd
○ Sadao NAGAOKA	Professor, Institute of Innovation Research, Hitotsubashi University
Yuzuru OKABE	Deputy President, Patent Attorney, OKABE INTERNATIONAL PATENT OFFICE
Hideki OTSUYAMA	President and CEO, SBI Intechstra Co., Ltd.
Tetsuo WADA	Professor, Faculty of Economics, Gakushuin University
Yuji WATANABE	Vice President, Intellectual Property, Astellas Pharma Inc.
Atsushi YAMADA	Professor, School of International and Public Policy, Hitotsubashi University

○: Chairperson of Working Group

Schedule of PCIIP Meetings

- ◇ The First Meeting of PCIIP December 18(Tue), 2007
- ◆ The First Meeting of Working Group on PCIIP January 23(Wed.), 2008

Public comments on the topics to be discussed by the PCIIP in Japanese and English.

January 23 (Wed.), 2008 to February 25(Mon.), 2008

- ◇ The Second Meeting of Working Group on PCIIP February 28(Thu), 2008
- ◆ The Second Meeting of PCIIP April 14(Mon.), 2008
- ◆ The Third Meeting of Working Group on PCIIP May 23(Fri.), 2008

Public comments on the draft policy recommendations/report formulated by the PCIIP.

Japanese : May 30 (Fri.), 2008 to June 26(Thu.), 2008

English : June 16 (Mon.), 2008 to July 11(Fri.), 2008

- ◇ The Third Meeting of PCIIP June 30(Mon), 2008

Discussion Process in PCIIP

The PCIIP initially asked for public comments in Japanese and English in order to obtain the most advanced ideas from around the world for consideration in its discussions on IP in an interactive manner, and gathered comments on the existing IP system and on the challenges of developing a new IP system that keeps pace with socioeconomic changes.

After the aforementioned PCIIP discussions had been held, public comments were invited on the corresponding draft policy recommendations and draft report, in which the discussions of the PCIIP were summarized, and comments were received not only from institutions in Japan but also from those abroad, including foreign IP offices, IP-related organs, and overseas companies.

The PCIIP also conducted an in-depth study on the relationship between innovation and IP policy through opinion exchanges with more than 100 Japanese and foreign enterprises.

Based on the various comments it obtained through these activities, the PCIIP compiled a final set of policy recommendations and report on establishing the intellectual property system as a global infrastructure for pro-innovation.