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ENISHI

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# IP Friends Connections



This Magazine is published as part of the Intellectual Property Cooperation in Human Resource Development Program of the Japan Patent Office. The aim of this Magazine is to follow up on training programs through the dissemination of information to IP Friends, those who have completed training courses of the above program.

We very much hope that the information in this publication related to intellectual property, and the comments from either IP Friends or lectures, will prove beneficial to you in your work.



**JAPAN PATENT OFFICE**

【The meaning of 縁 (Enishi)】

“Enishi” refers to the bond created between people when encountering someone they were destined to meet. We have chosen this term as the title for our publication because we are all members of the Intellectual Property community, and the bonds created between us extend beyond national borders. We hope that you will use this informative publication to deepen the “Enishi” you have created with your IP Friends.

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# Report of FY2017 JPO/IPR Training Course on Operational Patent Examination Training Program from APIC

Summary of Operational Patent Examination Training Programs 2017  
Tuesday, September 12 to Wednesday, November 1, 2017

Operational Patent Examination Training (OPET), a training program that runs about two months, was held for the ninth time. The participants included two patent examiners each from Brazil, Egypt and Turkey, with four from India.

The participants were Mr. Alexandre Godinho Silva and Ms. Paula Daniela Braga Adamis De Barros of Brazil; Mr. Ahmed Alla Mohamed Abdelzaher Salem and Mr. Mohammed Hosni Ali Esmael of Egypt; Mr. Yavuz Oziba and Ms. Zumrut Yar of Turkey; and Mr. Parveen Kumar, Mr. Rajeev Kumar, Mr. Rajesh Patel, and Ms. Suman Verma of India.

On September 12, an orientation session was held in which the trainees introduced themselves to each other, and the APIC/AOTS staff were introduced. Despite some early nervousness, the trainees soon familiarized themselves with the classes and life in Japan. As the days went by, the trainees got to know each other by engaging in discussions or casual conversations between or after classes, and occasionally going out together for sightseeing or shopping.

On September 13, the trainees visited the Japan Patent Office (JPO). They toured the trial court and the National Center for Industrial Property Information and Training (INPIT), and paid their respects to the Deputy Commissioner, Kunihiro Shimano.



On September 14, trainees gave presentations on their respective countries. They described the current situation and any issues in patent examination in the four countries. The many presentation attendees earnestly asked questions about the situation regarding intellectual property and specific patent examples in each country. The trainees had further discussion with each other during the Q&A, and in the process raised more discussion points and deepened their understanding of intellectual property in their own countries.

This training is intended to support the strengthening of the International Searching Authority (ISA) structure and the improvement of patent examination abilities at intellectual property agencies. This is achieved by developing the skills of those examining Patent Coop-



eration Treaty cases (especially the creation of International Search Reports [ISR] or others), targeting ISA examiners. In addition to the existing curriculum's focus on decision making in patent examination, the program has been expanded to delve deeper, including guidance on know-how for creating ISRs.

This year's curriculum was developed with the aim of gaining intensive knowledge necessary in each stage of the actual patent examination and ISR writing processes.

Specifically, the lineup of classes over the eight weeks of training mirrored the actual flow of patent examination and ISR writing. Training started with understanding the invention in the application concerned, then moved on to searching, conducting a comparative review of the invention, determining the patentability, and concluded with making the final decision or writing the ISR. This step-by-step approach allowed the information to not just be understood and memorized, but also to be systematically organized in the trainees' minds.



Firstly, classes were held with a focus on gaining an understanding of the invention in the application concerned as well as matters specifying the cited invention. This was followed by classes and exercises for learning search methods such as J-Plat Pat, the Patent Map, International Patent Classification, and F1/F terms, which allowed the trainees to obtain know-how on researching existing technology to ensure a smooth examination process. The trainees learned not only about public databases, but also the usefulness of privately-offered search tools by visiting Clarivate Analytics.

On-the-job training was also held for the searching process, so that trainees can learn specific methods while watching JPO examiners work. This elicited positive feedback from trainees, who commented that it was a valuable opportunity to experience the actual examination process by patent examiners in Japan.

There were also classes and visits covering intellectual property management in Japanese businesses. The trainees visited Canon Inc., where they were able to learn about a range of topics from intellectual property and how it is managed, to the structure of teams and policies in technology development.

Additionally, the trainees visited Techno WING Ota and Kyoritsu Chemical-Check Lab., Corp. They learned about the specialized technology development capabilities of small- to medium-sized businesses in Japan, and the importance and methods of contributing to business by managing and applying their unique intellectual assets.

The trainees commented that both visits were valuable, as they were able to gain a strong understanding of actual business experiences as well as the know-how that comes with those





experiences.

Next were high-level patent examination classes featuring exercises in various topics, such as novelty or inventiveness, to impart practical know-how on patent examination. The lecturers gave an introductory briefing and provided specific examples to be considered. Based on that, the trainees produced their own answers and engaged in discussions with the lecturers or other trainees. Then, the lecturers gave their feedback and comments. This class format proved to be practical and intensive.

After learning the criteria for decision making in examinations, the trainees moved onto exercises in writing ISRs. The class was taught by a JPO examiner, who gave a comprehensive course and exercises from the basics to the advanced level of ISR over one week.

For these exercises, the class was split into groups for chemicals and electronics, according to the trainees' area of expertise. The demanding program required knowledge of not just patent examination criteria and patent laws, but also a high level of understanding as engineers for a proper interpretation of the example. The trainees commented that although the classes were difficult to understand, it was a highly productive learning experience.

As this training program emphasizes visualizing achieved results, classes on 1) "Prior issues searching exercise" were held on October 3 and 5, and classes on 2) "Discussion on patent examination work in the trainees' countries" on October 4. The aim was to check the effect of the training and to obtain feedback on what had been achieved.

For class 1, the trainees took up one issue, read the specifications, searched the existing technology, and made a conclusion for the examination, entirely on their own, based on the knowledge they accumulated since day one of this program. They later presented and shared their results through discussion among trainees.

For class 2, trainees were asked in advance to submit cases that they examined in their own countries. They made presentations about these cases, followed by discussion between trainees and feedback from the lecturer.

The knowledge and experience gained from classes 1 and 2 were ultimately compiled as a deliverable document from the training program in the October 31 session "Creation and presentation of example cases." It was constructed from a truly unique perspective, as the cases were analyzed by patent examiners from each country based on the examination process in Japan. It is hoped that the trainees will take these example cases home, and apply them as a manual when sharing the results of this program in the intellectual property agencies in their respective countries.

In general, the curriculum was very demanding and challenging for the trainees, but thanks in part to their willingness to learn, they were able to complete the entire program with no issues. Not only the trainees themselves, but also the lecturers have commented that the content of the program was beneficial for the future.

The course completion ceremony was held on the final day, and certificates were handed to each trainee by the Director for the International Cooperation Division, Kazuo Hoshino. Representing the trainees, Mr. Parveen Kumar gave a speech expressing their gratitude. Thus, the approximately two-month training was concluded.

This is the longest program for invited trainees, and highly intensive classes were provided to the relatively small group of ten trainees. The lecturers, many of whom were active or former examiners, shared in detail their deep, specialized knowledge. All the trainees asked many relevant questions, which resulted in discussion-style classes. The lecturers also gave positive feedback, commenting that not only did the trainees obtain knowledge about Japan, the lecturers and trainees were able to engage in discussions that deepened their understanding of each other.

After class on weekdays and on weekends, the trainees visited various parts of Japan and made the most of their stay. As the program was conducted over a long term, they were able to interact with trainees participating in other courses.

The program ended successfully, and the trainees went home with smiles on their faces. We wish them the best in their future success.



## Report of FY2017 JPO / IPR Training Course on Trademark Examinations under the Madrid System for Malaysia

The Training Course on Trademark Examinations under the Madrid System for Malaysia was held from January 11 to 17, 2018, targeting 10 trademark examiners from the Intellectual Property Corporation of Malaysia (MyIPO). Malaysia is on the verge of acceding to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol), and the training course was designed to enhance the professional expertise that trainees will need in order to address the issues that this accession will raise.

OJT lectures were delivered by JPO members, with the trainees learning through sample drafts of office actions, including the Notification of Provisional Refusal. Case studies were also utilized in order to deepen their understanding of examination procedures and methods. On the topic of file wrapper management, the trainees toured JPO's onsite file wrapper storage area. The colors of the files in the storage area differ for each fiscal year, and all four corners of the files are marked so that they can easily be distinguished from any angle. Trainees remarked that it was very helpful to see such good practices. In this training course, JPO's experiences with operations relating to the Madrid Protocol were shared with trainees mainly through lectures. However, some trainees commented that they would have liked to learn about more practical matters while experiencing operations that were actually conducted in the office.

We received feedback on a lecture entitled "Comparison of Trademark System in Japan and Malaysia," whereby the trainees said that since they were able to share information and experiences comparing the trademark systems of Japan and Malaysia, they would like to use the knowledge obtained through the lecture in order to improve the trademark system in Malaysia.

The lecture on the final day was titled "Sharing the Japanese Experience on Madrid Protocol Affiliation." Trainees commented that this provided a very interesting and useful opportunity to hear from a lecturer who had experience as both a JPO examiner and patent attorney.

In the Evaluation Meeting, some trainees said that although all the lectures were useful, it was challenging to learn all of the content in one week, so it would be necessary for them to continue studying in the future. Specifically, they said that they wanted to learn about non-traditional trademarks, as well as how to set similar group codes and observe actual examination procedures.

We have heard that MyIPO is busy making preparations in anticipation of acceding to the Madrid Protocol by the end of 2018. We hope that the trainees will widely share and make use of the knowledge that they learned in this training course.





## FY2017 Training Courses Completed (Yearbook)



IP Trainers



Substantive Examinations of Trademark for Vietnam





Patent Examinations (Basic Program)



IP Protection Lawyers





Trademark Examinations under the Madrid System for Indonesia



Practitioners Specializing in Patents





Establishing an IP Office in Myanmar



Establishing Patent Examination Guidelines for ASEAN





Operational Patent Examination Training Program



Patent Examination Practices for Thailand





Trademark Examinations under the Madrid System for Cambodia



Patent Examination Management





Substantive Examinations of Designs



Substantive Examinations of Trademarks





Patent Examinations in Specific Technical Fields for Latin American Countries



Practitioners Specializing in Trademarks





Managing IP



Trademark Examinations under the Madrid System for Malaysia





Anti-Counterfeiting Measures for Practitioners



Trademark Examination Practices (Basic Program)



Business Management for the Philippines





# Report of FY2017 Follow-up Seminar from APIC (Myanmar)

## Follow-up Seminar in Myanmar

On January 24, 2018, a follow-up seminar was held in Nay Pyi Taw, Myanmar (organized by the Japan Patent Office (JPO), and supported by the Department of Research and Innovation, Ministry of Education, Myanmar). This seminar was conducted for the purpose of training follow-up, and was held by recruiting participants from among those with intellectual property-related experience in Myanmar, with particular focus on former participants of the JPO training courses held in Japan.

The theme of the seminar was “Promoting IP Management for Research Collaboration between Universities and Industries.” The seminar consisted of two sessions, “IP Management in Universities and Enterprises” and “SMEs Policy in Myanmar and Human Resource Development in Japan,” with lectures provided by specialists from the intellectual property office, IP related organizations, universities, and associations from both countries. In the question and answer period that followed each session, active discussions between participants and lecturers were held.

In Myanmar, toward the establishment of an intellectual property system as a basic infrastructure for economic development, the Department of Research and Innovation, Ministry of Education is playing a central role in making preparations in cooperation with other ministries and agencies.

At the beginning of the seminar, Mr. Win Khaing Moe, Director General, Department of Research and Innovation, Ministry of Education, and Ms. Hiromi Takaoka, Director, Quality Management Office, Administrative Affairs Division, JPO, delivered their opening speeches, followed by lectures given by persons from the Ministry of Education and the JPO. Thereafter, experts from Myanmar and Japan alternately gave lectures in each session.

In the question and answer period that followed each session, lecturers from Myanmar made the following comments: “Although there is no IP office representing universities in Myanmar yet, we hope that universities will manage their own research results by discussing with university authorities and establishing an IP office,” and “Some research results generated by universities and research institutions in Myanmar can be used by SMEs. Thus, the establishment of an intellectual property system will facilitate the commercialization of such results.”

Sharing opinions among all seminar participants will enhance the IP-related network and is significant for specialists in each field to further expand their knowledge.

It is hoped that former trainees and IP-related persons in Myanmar who participated in this seminar will play leading roles in the future.



①Mr. Win Khaing Moe, Director General, Department of Research and Innovation, Ministry of Education, Myanmar



②Ms. Hiromi Takaoka, Director, Quality Management Office, Administrative Affairs Division, JPO



③Dr. Moe Moe Thwe, Deputy Director General, Head of IP Department, Department of Research and Innovation, Ministry of Education, Myanmar





④Group photo of the seminar



⑤Seminar scene

## FY2017 Follow-up Seminar Completed (Yearbook)



Follow up Seminar in Vietnam



Follow up Seminar in Lao PDR





Follow up Seminar in Indonesia



Follow up Seminar in Myanmar

## Questionnaire Results IPR training course in Japan and appreciation for your cooperation

As you know, we requested that everyone who completed our seminar from April 2014 to September 2017 fill out our questionnaire in order for us to evaluate the effectiveness of the seminars.

In order to continue advancing JPO's "Cooperation in Human Resource Development," we would also like to ask for your active participation as IP Friends in various projects for our course alumni.

Thank you again for your cooperation with our survey.  
The tallied results for each question are as follows:

### Details of the Survey

1) Survey period: November 2 - 30, 2017

2) Area of survey:

- 1.Trainees that completed WIPO short term training courses and WIPO long term research programs from FY 2014 - FY 2015
- 2.Trainees that completed JICA training courses from FY 2014 - FY 2017
- 3.Trainees that completed JPO short term training courses and JPO long term research programs from FY 2014 - FY 2017

excluding those whose contact information (email) is unknown .

Government employees: 829 trainees, private sector employees: 374 trainees (total: 1203 trainees)

3) You may respond either by completing this online questionnaire

### ■ Number of replies

|                   | Number of valid responses | Number of questionnaires sent | Response rate (%) |
|-------------------|---------------------------|-------------------------------|-------------------|
| Government sector | 274                       | 829                           | 33 (%)            |
| Private sector    | 123                       | 374                           | 33 (%)            |
| Total             | 397                       | 1203                          | 33 (%)            |



## ■ Breakdown of respondents (classification by field)

|                   |  | Number of valid responses | Number of questionnaires sent | Response rate① (%) | Response rate② (%) |
|-------------------|--|---------------------------|-------------------------------|--------------------|--------------------|
| Government sector | Intellectual Property Office           | 249                       | 732                           | 34 (%)             | 63 (%)             |
|                   | Court                                  | 9                         | 44                            | 20 (%)             | 2 (%)              |
|                   | Prosecutor's Office                    | 0                         | 4                             | 0 (%)              | 0 (%)              |
|                   | Police Office                          | 0                         | 1                             | 0 (%)              | 0 (%)              |
|                   | Customs Office                         | 6                         | 18                            | 33 (%)             | 2 (%)              |
|                   | Other                                  | 9                         | 30                            | 30 (%)             | 2 (%)              |
| Private sector    | Research Institute                     | 4                         | 8                             | 50 (%)             | 1 (%)              |
|                   | University or Educational Institution  | 26                        | 84                            | 31 (%)             | 7 (%)              |
|                   | Government-related Organization        | 0                         | 1                             | 0 (%)              | 0 (%)              |
|                   | Employee of a private company          | 23                        | 80                            | 29 (%)             | 6 (%)              |
|                   | Employee of a legal or consulting firm | 70                        | 201                           | 35 (%)             | 18 (%)             |
|                   | Total                                  | 397                       | 1203                          | 33 (%)             | 100 (%)            |

※Response rate① indicates the ratio of valid responses to questionnaires sent within each field.

※Response rate② indicates the ratio of valid responses of each field to the total number of valid responses.

## 1-1. What kind of activities did you conduct after completing the training?

(Multiple answers allowed)

| Government employees   |                           |               | Employees in the private sector  |                           |               |
|--|---------------------------|---------------|--|---------------------------|---------------|
|  | Number of valid responses | Response rate |  | Number of valid responses | Response rate |
| 1) Reporting [Submitted a written report (details/results of the training) to the office]  | 225                       | 82%           | 1) Reporting [Submitted a written report (details/results of the training) to the office]  | 44                        | 36%           |
| 1) Reporting [Reported verbally the details/results of the training to the office]   | 118                       | 43%           | 1) Reporting [Reported verbally the details/results of the training to the office]   | 92                        | 75%           |
| 2) Self-improvement [Utilized the training text as a reference book or as a useful reference tool for my work]                                 | 186                       | 68%           | 2) Self-improvement [Utilized the training text as a reference book or as a useful reference tool for my work]                                 | 87                        | 71%           |
| 2) Self-improvement [Reviewed what I had learned in Japan after returning to my home country]  | 173                       | 63%           | 2) Self-improvement [Reviewed what I had learned in Japan after returning to my home country]  | 83                        | 67%           |
| 2) Self-improvement [Became increasingly aware of Intellectual Property and have started studies on my own after returning to my home country] | 137                       | 50%           | 2) Self-improvement [Became increasingly aware of Intellectual Property and have started studies on my own after returning to my home country] | 76                        | 62%           |
| 3) Spreading knowledge to others [Held a study group or seminar]   | 122                       | 45%           | 3) Spreading knowledge to others [Held a study group or seminar]   | 64                        | 52%           |
| 3) Spreading knowledge to others [Submitted articles to a research journal or magazine]  | 25                        | 9%            | 3) Spreading knowledge to others [Submitted articles to a research journal or magazine]  | 17                        | 14%           |
| 3) Spreading knowledge to others [Exchanged information with other trainees from a different country that attended the same course]            | 140                       | 51%           | 3) Spreading knowledge to others [Created materials or documents regarding IP]   | 58                        | 47%           |
| 4) Other [Did not engage in any specific activities]   | 36                        | 13%           | 3) Spreading knowledge to others [Exchanged information with other trainees from a different country that attended the same course]            | 65                        | 53%           |
| 4) Other   | 16                        | 6%            | 4) Other [Did not engage in any specific activities]   | 4                         | 3%            |
| Total  | 1178                      |               | 4) Other   | 5                         | 4%            |
|  |                           |               | Total  | 595                       |               |



## 1-2. What did you find useful in the training?

(Multiple answers allowed)

| Government employees  |                           |               | Employees in the private sector   |                           |               |
|---|---------------------------|---------------|---|---------------------------|---------------|
|   | Number of valid responses | Response rate |   | Number of valid responses | Response rate |
| 1) Awareness of IP [It increased my awareness of IP trends in Japan, and the IP policies of the JPO]  | 209                       | 76%           | 1) Awareness of IP [It increased my awareness of IP trends in Japan, and the IP policies of the JPO]  | 110                       | 89%           |
| 1) Awareness of IP [I strongly felt the need to improve the IP landscape of my home country in order to fully make use of what I had learned in the training] | 169                       | 62%           | 1) Awareness of IP [I strongly felt the need to improve the IP landscape of my home country in order to fully make use of what I had learned in the training] | 73                        | 59%           |
| 1) Awareness of IP [It increased my opportunities to utilize AIPN and J-PlatPat (IPDL)]   | 83                        | 30%           | 1) Awareness of IP [It increased my opportunities to utilize AIPN and J-PlatPat (IPDL)]   | 37                        | 30%           |
| 2) Improvement of skills [It allowed me to see IP from a broader range of perspectives]   | 186                       | 68%           | 2) Improvement of skills [It allowed me to see IP from a broader range of perspectives]   | 104                       | 85%           |
| 2) Improvement of skills [It increased my knowledge that can be used at work]   | 242                       | 88%           | 2) Improvement of skills [It increased my knowledge that can be used at work]   | 102                       | 83%           |
| 2) Improvement of skills [I was able to use the training text as a reference book]  | 159                       | 58%           | 2) Improvement of skills [I was able to use the training text as a reference book]  | 75                        | 61%           |
| 2) Improvement of skills [I was able to take on a leadership role in my daily work through the knowledge I gained in the training]                            | 84                        | 31%           | 2) Improvement of skills [I was able to take on a leadership role in my daily work through the knowledge I gained in the training]                            | 52                        | 42%           |
| 2) Improvement of skills [It enabled me to respond to consultations with my co-workers]   | 163                       | 59%           | 2) Improvement of skills [It enabled me to respond to consultations with my co-workers]   | 74                        | 60%           |
| 2) Improvement of skills [It led to the resolution of work-related issues]  | 93                        | 34%           | 2) Improvement of skills [It led to the resolution of work-related issues]  | 49                        | 40%           |
| 2) Improvement of skills [It helped clarify the judgment criteria used in assessments]  | 107                       | 39%           | 2) Improvement of skills [I improved at drafting documents (specifications, etc.)]  | 38                        | 31%           |

| Government employees  |                           |               | Employees in the private sector   |                           |               |
|---|---------------------------|---------------|---|---------------------------|---------------|
|   | Number of valid responses | Response rate |   | Number of valid responses | Response rate |
| 2) Improvement of skills [As a trainee that completed the training course in Japan, I have an increased awareness and more confidence in my work]                         | 184                       | 67%           | 2) Improvement of skills [As a trainee that completed the JPO training course in Japan, I have an increased awareness and more confidence in my work]               | 96                        | 78%           |
| 3) Professional relationships [Someone I got to know during the training became a person I could discuss questions and issues]  | 129                       | 47%           | 3) Professional relationships [Someone I got to know during the training became a person I could discuss questions and issues]                                      | 73                        | 59%           |
| 3) Professional relationships [It allowed me to establish a human network with relevant people in Japan, which is beneficial for my work]                                 | 107                       | 39%           | 3) Professional relationships [It allowed me to establish a human network with relevant people in Japan, which is beneficial for my work]                           | 66                        | 54%           |
| 3) Professional relationships [It allowed me to establish a human network with trainees from other countries that attended the training, which is beneficial for my work] | 174                       | 64%           | 3) Professional relationships [It allowed me to establish a network with trainees from other countries that attended the training, which is beneficial for my work] | 110                       | 89%           |
| 4) It was not useful. [It increased my knowledge of IP. However, this did not benefit me after I returned to my home country]   | 24                        | 9%            | 4) It was not useful. [It increased my knowledge of IP. However, this did not benefit me after I returned to my home country]                                       | 6                         | 5%            |
| 4) It was not useful. [I was unable to experience the kind of lectures that I had expected prior to going to Japan, so it was not particularly useful]                    | 13                        | 5%            | 4) It was not useful. [I was unable to experience the kind of lectures that I had expected prior to going to Japan, so it was not particularly useful]              | 4                         | 3%            |
| 5) Other  | 22                        | 8%            | 5) Other  | 3                         | 2%            |
| Total   | 2148                      |               | Total   | 1072                      |               |



### 1-3. Is the training you received in Japan proving useful in your work?

| Government employees   |                           |               | Employees in the private sector  |                           |               |
|--|---------------------------|---------------|--|---------------------------|---------------|
|  | Number of valid responses | Response rate |  | Number of valid responses | Response rate |
| The content of the lectures was directly relevant to my work. Therefore, the lectures were very useful.  | 145                       | 53%           | The content of the lectures was directly relevant to my work. Therefore, the lectures were very useful.  | 64                        | 52%           |
| There were some lectures that have proved to be useful in my work. Therefore, the lectures were useful to a certain degree.                          | 74                        | 27%           | There were some lectures that have proved to be useful in my work. Therefore, the lectures were useful to a certain degree.                          | 43                        | 35%           |
| There was a change in my work after attending the training, after which I was able to make better use of the knowledge I had gained in the training. | 41                        | 15%           | There was a change in my work after attending the training, after which I was able to make better use of the knowledge I had gained in the training. | 11                        | 9%            |
| The knowledge related to IP has been beneficial in itself. However, this knowledge has not been relevant to my work.                                 | 5                         | 2%            | The knowledge related to IP has been beneficial in itself. However, this knowledge has not been relevant to my work.                                 | 5                         | 4%            |
| There was a change in my work after attending the training. Therefore, I was unable to make use of the knowledge I had gained in the training.       | 6                         | 2%            | There was a change in my work after attending the training. Therefore, I was unable to make use of the knowledge I had gained in the training.       | 0                         | 0%            |
| Other  | 3                         | 1%            | Other  | 0                         | 0%            |
| Total  | 274                       | 100%          | Total  | 123                       | 100%          |

## 2-1. Based on your experiences during the training, what do you feel would be necessary to make the JPO training better?

(Multiple answers allowed)

| Government employees  |                           |               | Employees in the private sector   |                           |               |
|---|---------------------------|---------------|---|---------------------------|---------------|
|   | Number of valid responses | Response rate |   | Number of valid responses | Response rate |
| 1) Establishing new courses [Establishing courses with new themes]  | 176                       | 64%           | 1) Establishing new courses [Establishing courses with new themes]  | 87                        | 71%           |
| 1) Establishing new courses [Implementing higher level courses]   | 175                       | 64%           | 1) Establishing new courses [Implementing higher level courses]   | 71                        | 58%           |
| 2) Introduction of new methodology for training [Improving interactive methods]   | 216                       | 79%           | 2) Introduction of new methodology for training [Improving interactive methods]   | 95                        | 77%           |
| 2) Introduction of new methodology for training [Setting pre-assignments]   | 71                        | 26%           | 2) Introduction of new methodology for training [Setting pre-assignments]   | 28                        | 23%           |
| 2) Introduction of new methodology for training [Implementing achievement tests]  | 59                        | 22%           | 2) Introduction of new methodology for training [Implementing achievement tests]  | 29                        | 24%           |
| 3) Provision of tools [Conducting courses in English that do not require an interpreter]  | 124                       | 45%           | 3) Provision of tools [Conducting courses in English that do not require an interpreter]  | 64                        | 52%           |
| 3) Provision of tools [Conducting courses in the native language of the trainees attending the training]  | 66                        | 24%           | 3) Provision of tools [Conducting courses in the native language of the trainees attending the training]  | 10                        | 8%            |
| 3) Provision of tools [Providing tools that enable participants to take courses online]   | 104                       | 38%           | 3) Provision of tools [Providing tools that enable participants to take courses online]   | 45                        | 37%           |
| 3) Provision of tools [Providing study materials for review and further studies]  | 163                       | 59%           | 3) Provision of tools [Providing study materials for review and further studies]  | 81                        | 66%           |
| 4) Enhancement of support systems [Establishing a system in which one can consult with the JPO officials or experts in Japan after completing the training] | 206                       | 75%           | 4) Enhancement of support systems [Establishing a system in which one can consult with the JPO officials or experts in Japan after completing the training] | 92                        | 75%           |
| 4) Enhancement of support systems [Providing a place where former trainees can communicate with each other after completing the training]                   | 164                       | 60%           | 4) Enhancement of support systems [Providing a place where former trainees can communicate with each other after completing the training]                   | 77                        | 63%           |
| 4) Enhancement of support systems [Other]   | 0                         | 0%            | 4) Enhancement of support systems [Other]   | 0                         | 0%            |
| Total   | 1524                      |               | Total   | 679                       |               |



### 3-1. What do you feel as a problem in your current work?

(Multiple answers allowed)

| Government employees  |                           |               | Employees in the private sector   |                           |               |
|---|---------------------------|---------------|---|---------------------------|---------------|
|   | Number of valid responses | Response rate |   | Number of valid responses | Response rate |
| Lack of knowledge/understanding   | 65                        | 24%           | Lack of knowledge/understanding   | 36                        | 29%           |
| Lack of experience  | 80                        | 29%           | Lack of experience  | 41                        | 33%           |
| Lack of relationship with other departments/institutions                          | 72                        | 26%           | Lack of relationship with government institutions                                 | 32                        | 26%           |
| Delay in introduction of information technology (IT)                              | 100                       | 36%           | Low work efficiency   | 17                        | 14%           |
| Lack of human resources   | 133                       | 49%           | Low public awareness of IP  | 73                        | 59%           |
| Low work efficiency   | 62                        | 23%           | Lack of structures that enable consultation with professionals about daily issues | 55                        | 45%           |
| Slow implementation of business processes in your IP Office                       | 65                        | 24%           | Lack of motivation to improve the IP system                                       | 38                        | 31%           |
| A large number of backlogs  | 102                       | 37%           | Other   | 6                         | 5%            |
| Low public awareness of IP  | 155                       | 57%           | Total   | 298                       |               |
| Lack of structures that enable consultation with professionals about daily issues | 76                        | 28%           |   |                           |               |
| Lack of motivation to improve the IP system                                       | 77                        | 28%           |   |                           |               |
| Other   | 5                         | 2%            |   |                           |               |
| Total   | 992                       |               |   |                           |               |

### 3-2. What do you feel would be necessary to solve the above issues?

(Multiple answers allowed)

| Government employees                      |                           |               | Employees in the private sector           |                           |               |
|---|---------------------------|---------------|---|---------------------------|---------------|
|   | Number of valid responses | Response rate |   | Number of valid responses | Response rate |
| Accession to a treaty                     | 30                        | 11%           | Accession to a treaty                     | 5                         | 4%            |
| Revision of laws, rules and guidelines    | 117                       | 43%           | Revision of laws, rules and guidelines    | 45                        | 37%           |
| Establishment of new policies             | 118                       | 43%           | Establishment of new policies             | 37                        | 30%           |
| Increase in budget                        | 138                       | 50%           | Increase in budget                        | 43                        | 35%           |
| Securing human resources                  | 134                       | 49%           | Securing human resources                  | 58                        | 47%           |
| Development of IT infrastructure          | 164                       | 60%           | Establishment/improvement of work manuals | 36                        | 29%           |
| Establishment/improvement of work manuals | 105                       | 38%           | Promotion of education on IP              | 94                        | 76%           |
| Promotion of education on IP              | 193                       | 70%           | Outreach activities                       | 42                        | 34%           |
| Outreach activities                       | 79                        | 29%           | Support from WIPO                         | 52                        | 42%           |
| Support from WIPO                         | 139                       | 51%           | Support from other IP Offices             | 59                        | 48%           |
| Support from other IP Offices             | 140                       | 51%           | not sure                                  | 0                         | 0%            |
| not sure                                  | 3                         | 1%            | Other                                     | 7                         | 6%            |
| Other                                     | 4                         | 1%            | Total                                     | 478                       |               |
| Total                                     | 1364                      |               |   |                           |               |

### 3-3. What kind of support would you desire from the JPO to help address the above problems?

(Multiple answers allowed)

| Government employees  |                           |               | Employees in the private sector   |                           |               |
|---|---------------------------|---------------|---|---------------------------|---------------|
|   | Number of valid responses | Response rate |   | Number of valid responses | Response rate |
| Conducting training in Japan  | 227                       | 83%           | Conducting training in Japan  | 82                        | 67%           |
| Conducting training in my country                                       | 159                       | 58%           | Conducting training in my country                                       | 74                        | 60%           |
| Sending experts to my IP Office   | 142                       | 52%           | Sending experts to my IP Office   | 38                        | 31%           |
| Holding seminars that last for one to several days                      | 130                       | 47%           | Holding seminars that last for one to several days                      | 62                        | 50%           |
| Conducting distance learning by using IT systems                        | 128                       | 47%           | Conducting distance learning by using IT systems                        | 55                        | 45%           |
| Sending information on a regular basis through email, newsletters, etc. | 92                        | 34%           | Sending information on a regular basis through email, newsletters, etc. | 68                        | 55%           |
| Other   | 5                         | 2%            | Other   | 3                         | 2%            |
| Total   | 883                       |               | Total   | 382                       |               |



## Training course experience in Japan

### Chile's National Industrial Property Strategy and its current implementation



Ms. Eileen Maeve Frodden Kelly

Ms. Eileen Maeve Frodden Kelly (Chile)

*(FY2016 JPO/IPR Training Course for IP Trainers, June 15 – June 29, 2016)*

### Personal considerations

First of all, I would like to share with you some remarks about my personal experience visiting Japan during June 2016.



For me, the invitation to attend the “JPO/IPR Training Course for IP Trainers”<sup>1</sup> held during the Summer of 2016 in Tokyo, Japan, was a very important opportunity. This was not only because of the professional experience I was going to live, but also because visiting Japan was something I had wanted to do for a long time.

My father was a JICA scholar during two years in the late 70's, living first in Tokyo and then on Innoshima Island, Hiroshima. My mother and I joined him during his second year in Japan, and she also started to study at the Cancer Institute Hospital. In my case, I attended the Hospital's Kindergarten. That was my first experience in a school so far away from my country. I had the opportunity to start talking and singing in Japanese in parallel to Spanish, my mother tongue.

Later, my mother maintained a very strong relation with Japan through her job as a medical doctor and university researcher, supporting the Chilean-Japanese Institute for Digestive Diseases (Instituto Chileno Japonés de Enfermedades Digestivas). Many times we had Japanese visitors over for dinner with us at home and my parents also went back to Japan a couple of times. As you can tell, Japan remained present in our lives and memories.

That is the reason why visiting Japan almost 40 years later was so significant for me, not only on a professional level, but especially a personal one. Unfortunately, I could not remember how to speak in Japanese... but I was able to recognize many words, the delicate kindness of the Japanese people, and some places I had heard about from my parents during my childhood.

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<sup>1</sup> Conducted by the Overseas Human Resources and Industry Development Association (currently AOTS) and the Japan Institute for Promoting Invention and Innovation (JIPII)

The way all of the APIC staff took care of us during this visit, and all of the little details they had in mind in order to organize the training program and make our stay in Tokyo easy and pleasant, will remain in my memories—just like the experiences lived by my parents many years ago did too.

## The Training

The lectures we attended during our two weeks of the Training Course for IP Trainers gave me the opportunity not only to improve the way I can teach and disseminate IP in my country, but also to understand the Japanese system and to meet very talented professionals from my region and from the Asian region as well, which certainly contributed to display a very complete panorama of the IP System among countries with similar characteristics.



During our stay, attendees were asked to share some notions about the IP system in our countries. In that moment, INAPI was working in a very important national initiative. But because it was not officially launched yet, we did not mention it. I will address that initiative in this text.

## National IP Strategy of Chile<sup>2</sup>

In December 2016, the National Industrial Property Strategy (NIPS) was launched in Chile. The document is the result of more than two years of work by a team of the National Institute of Industrial Property (IN-API) with the support of the World Intellectual Property Organization (WIPO). The strategy constitutes a set of steps and measures intended to promote and utilize IP as an effective instrument for economic and social development, fostering innovation, the spread of knowledge and also contributing to market regulation. At the beginning of its preparation, INAPI launched a public consultation in 2015 and also interviewed a very significant group of stakeholders coming from all fields: public and private sectors, universities, agencies, inventors, entrepreneurs, etc. An international expert provided by WIPO helped in the strategy's design as well.



The final document includes an overview and analysis of the current Industrial Property

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<sup>2</sup> Launch of the National Industrial Property Strategy, Palacio de La Moneda, December 2016. Director General of INAPI, Mr. Maximiliano Santa Cruz; President of Chile, Ms. Michelle Bachelet and Minister of Economy, Mr. Luis Felipe Céspedes.



System in Chile, concluding with a proposal of 60 measures to be implemented in different areas over both the short and medium term. During 2017, INAPI worked hard to develop the implementation of some of the recommendations. Currently, 25 of them have been achieved, and the rest will be fully implemented by 2018.

I will now briefly explain some of the recommendations included in the strategy<sup>3</sup>, with an emphasis upon those related to IP training and the spread of knowledge<sup>4</sup>, for which the experiences in Japan will be helpful for their implementation.

## Conclusions, proposals and recommendations

### I. General Recommendations

**The need for an all-inclusive intellectual property strategy (N°1).** The national strategy refers exclusively to the areas of intellectual property overseen by INAPI: IP rights such as trademarks, patents, industrial designs and geographical indications. This may not exclude the eventual creation of an all-inclusive strategy for all categories of intellectual property rights (IPRs), including copyright, related rights, plant varieties protection and others. This has not been done yet, as the different categories of IPRs are governed by different ministries, and apparently the criteria applied to each different category of rights is not always the same, since the interests at play are also different. In the near future, it will be important to develop a coordinated strategy for these categories of IPRs.

NIPS proposes to open a dialog space for a broad and deep discussion, first at the highest political level and then at a technical one, with all stakeholders. This is so that each concerned actor may have an opportunity to express its point of view, and determine the advantages and disadvantages of not only a comprehensive intellectual property strategy, but especially a unified national intellectual property system.

**Institutional reform (N°36)** INAPI was created in 2009, and has come a long way in these few years. However, because of the progress achieved in the field of industrial property, NIPS establishes that INAPI must study and propose an institutional reform that may allow the Institute to perform its functions more efficiently. Numerous changes have occurred since its creation, such as the modifications to proceedings of industrial property rights, the introduction of new online platforms, the need to prepare and include more formal and substantive examiners, the implementation of the ISA/IPEA system and the paperless office, the new design and translation of INAPI's website, the implementation of technological services, etc.



<sup>3</sup> Followed by their corresponding number in brackets.

<sup>4</sup> The complete IP Strategy can be found here: [www.inapi.cl](http://www.inapi.cl)

During 2017, INAPI successfully implemented a **Teleworking Program (N°44)**, becoming the first Public Agency in the history of Chile in which a number of officials are allowed to work from their homes. For 2018, the number of teleworkers will increase from 10% of the staff to 35%, thanks to the positive evaluation of this initiative.

In all its years of existence, INAPI has sought to **simplify forms and procedures (N°21)** as much as possible, while reducing all costs that do not imply changes to the applicable laws. In this sense, the website was improved. The new one ([www.inapi.cl](http://www.inapi.cl)) will be launched in January 2018, and will be simpler and user friendly.

Other recommendations in this sense are the replacement of the publication in the Official Gazette with a **free online publication (N°22)**, **abbreviated procedures for processing utility models and industrial drawings and designs (N°23)** and the implementation of the **digital processing of legal procedures (N°24)**.

## II. Enforcement

**Training in the field of enforcement (N°4).** Although in recent years enforcement issues have not been drawing the same level of attention from the mass media –which has focused on the progress made by the system– the enforcement of IP rights in Chile continues to be perceived as an important issue in some IP rankings regarding the country, as well as among several of those interviewed during the preparation of the NIPS, particularly researchers at universities and institutes.

NIPS proposes that INAPI must make greater efforts to ensure the necessary assistance from WIPO and other specialized agencies in terms of training on specific IP issues for civil and criminal judges, the Public Ministry, the National Economic Prosecutor, the Customs Service, the Police, the Industrial Property Court, the Internal Tax Service, etc., so that they all may be better prepared on the issue of IP—thereby improving perceptions on the enforcement of IP rights, both within Chile and abroad. In this regard the first training program specially designed for Judges took place in 2017, with WIPO's support.

**Working group on enforcement of intellectual property rights (N°5).** In terms of the enforcement of intellectual property rights, Chile has several institutions with different competencies, but there is no space for them to jointly plan, inform and coordinate their efforts, except in specific cases.

Consequently, and considering how important this issue is both internally and abroad, INAPI established a working group with all agencies involved in the enforcement of intellectual property rights, such as INAPI, DDI (Copyrights), the National Customs Service, the Internal Revenue Service, the Chilean Police force (*Carabineros*), the Investigative Police on Intellectual Property Rights (BRIDEPI), and the Agricultural and Cattle Service. This new space will essentially be responsible for information and coordination among all members of the working group, and if necessary, it will also be responsible for proposals on enforcement issues. Currently they are working on **Statistics on enforcement (N°6)**, in which this type of information is readily available to the public. In this regard, the way in which the information available in each agency can be shared and compared with the data of other agencies has already



been defined.

### III. Education and training on industrial property issues

Education in the area of industrial property is a complex issue, because its target audience is quite diverse and requires explaining different types of information according to each audience's initial level of knowledge and needs within the system.

**Specific Training Programs (N°8).** NIPS establishes that the emphasis should not be placed upon the protection of IPRs itself, but on comprehensive management and strategies for industrial property, where the main goals are value generation and technological transfer, and protection is simply one aspect. The costs of protection must be contrasted with the expected benefits, considering the entire spectrum of industrial property rights. This could occur on different levels, from initial training for students to ongoing education for potential users throughout the country.

For a first target audience, IP training must essentially be practical, providing information on industrial property in Chile and throughout the world, teaching legal principles, procedures and processes; but above all based on practical cases – with their successes and failures– of all types of inventors (scholars, private citizens, SMEs, local companies, multinationals, etc.). A second audience requires detailed knowledge on protection itself. For example, in terms of patents: how to draft good abstracts, specifications and claims; and the need to determine a protection strategy. A third audience requires even more specific elements, such as knowledge of IP treaties, IP valuation, IP marketing, technological transfer, etc.

During 2017, INAPI designed and expanded several training programs in order to satisfy the specific needs of each individual identified target audience. For example the new “INAPI en terreno” initiative (“INAPI in the field”) trained stakeholders in four cities outside of Santiago, aiming to reach people who usually do not engage in that kind of activities.

**Approaching industrial property to the general public (N°10).** Besides dedicating a section of INAPI's website to show successful cases where industrial property has helped to create value in Chile or abroad, a continuous emphasis on television shows about the dissemination of industrial property is also needed, including interviews with inventors, designers and scientists, where they may share their experiences on industrial property strategies. This should not exclude cases in which some inventions did not make it to the marketplace, in order to clearly present the difficulties and weaknesses of the innovation system, which must be assumed.

Currently, thanks to WIPO's support, INAPI is working in the second season of the TV show called “Inventando Chile” (Inventing Chile), which displays current Chilean inventions and inventors<sup>5</sup>.

**Inclusion of IP courses in university science and engineering disciplines (N°11°).** Currently, with a few exceptions, intellectual and industrial property rights courses are mostly

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<sup>5</sup> Available on Youtube, in spanish, via the INAPI account.

offered by Chilean law schools in order to train future lawyers as experts on IP.

This is not sufficient for creating a culture on industrial property throughout the country, in which future CEOs and researchers of both large and small companies can become involved in a strategy for creating and protecting industrial property that is either produced internally or acquired from third parties. Today, it is essential to include the teaching of IP principles and regulations in the training of future engineers, scientists and researchers who work at universities, research centers, or companies and generate knowledge that could potentially be patented, as well as designers and OTLs (Technology Transfer and Licensing Offices). During the first semester of 2018, the first pilot project for Engineering students will be launched at Universidad Católica, which was the N°1 Chilean university in filing patent applications during 2016.

**IP training for CEOs (N°12).** France's National Institute of Industrial Property has designed and managed a program called "Coaching INPI" or "Master IP Class", which offers concrete tools that can help top business executives implement appropriate IP strategies.

Thanks to INPI France's association with companies such as Safran and Alstom, they have been able to share experiences on the efficient use of IP. This program aims to provide training for 10 to 12 CEOs from each company, and includes three stages. The first consists of a collective seminar plus a personalized diagnosis of the company, where the goal is to share experiences and understanding regarding the most useful tools for the company on the competitive market. The second stage considers individual work, analyzing a strategy for defending IP rights, contract management, technological monitoring, and an assessment of the competition, among others. Finally, the third stage is a collective seminar with information or feedback (debriefing), where conclusions are drawn for the company.

INAPI has designed a training program similar to the Master IP Class at INPI France, which is targeted towards CEOs at local companies (especially those in strategic sectors). This program will be launched during 2018.

**Transfer and licensing offices (N°14).** INAPI has promoted and works closely with OTLs (Technological Transfer and Licensing Offices, translated from its acronym in Spanish). However, it is necessary to design and provide specialized training on the comprehensive management of industrial property and IP strategies for OTL's personnel, so that they may become comprehensive industrial property professionals, and not just a researchers' companion in the application processes to obtain IPR protection. In order to achieve this, OTLs must have a "critical mass", and those that have not yet achieved this on their own may conveniently join forces with similar OTLs according to geographical location or their main area of technology.

**Greater dissemination of patented inventions that have fallen into the public domain (N°19).** INAPI has been a global pioneer with the implementation of its website [www.dominiopublico.cl](http://www.dominiopublico.cl) and the regular publication of public domain newsletters, although these must nevertheless achieve a greater circulation.

INAPI must seek ways to further disseminate its public domain newsletters and related information, including adding a "public domain" field to the search engine in its patent data-



base, advertising the database in general, and insisting on this aspect in its tutorials.

**Assistance for individual inventors in preparing their patent applications (N°50)** INAPI offers specialized services for its users—especially Chilean and individual applicants – in order to assist them in filing their applications more effectively, particularly within the country. However, despite the high rate of acceptance, the satisfaction and success rate among users with respect to this service, particularly in terms of patents, does not appear to be sufficient.

To breach this gap, the State could establish a program for assisting individual inventors so that their applications may be prepared by professionals outside INAPI (pro bono), thus improving the quality of their applications and increasing the number of applications that lead to the granting of patents, utility models, and industrial drawings and designs.

INAPI shall evaluate the creation of a program for assisting individual inventors, to be submitted for consideration by the competent authorities, which could be implemented with private sector collaboration in pro bono activities.

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As you may see, the last three years have been very active in the Industrial Property System in Chile. We are still in the process of improving it in order to reach a more effective, modern and accessible IP environment, in which users and common people are better prepared and informed to use it and take advantages of all its benefits.

Trainings such as the one I attended during 2016 help to have an idea of how other countries, such as Japan, a leader in this area, have approached the challenges that imply implementing an IP strategy and how to train others in the different aspects of IPRs.

## IP Teaching in Japan - A Good Experience for Vietnam



Ms. Nguyen Ngoc Duy My (Vietnam)

Ms. Nguyen Ngoc Duy My

*(FY2017 JPO/IPR Training Course for IP Trainers, June 13 – June 27, 2017)*

It was my pleasure to be part of the IP Course for Trainers, which was jointly held by JPO, HIDA, JIPII and APIC from 13-27 June 2017 in Japan. It was so impressive even though I have previously attended many IP courses. I learnt so much more about IP and awareness on IP in Japan from this course. However, the most extraordinary aspect was the IP teaching methods.

### 1. The combination of many subjects in IP teaching

During the course, I learnt that to organize a lesson about IP for many levels, there are many subjects to join in, not just IP organizations. It can either be IP organizations, schools of many different levels, or businesses that relate directly or indirectly to the IP's objects.

### 2. The beneficiaries of several IP learners

Besides the combination of many subjects in IP teaching, I was surprisingly impressed by IP teaching in Japan, because the Japanese teach IP for many grade levels from kindergarten through high school and university. This means that IP does not have to wait until college to be taught. For different levels, there are different way to teach and transmit information. This shows that creativity can be achieved for everyone, from children to adults, from students to workers, from officers to housewives.

### 3. Methods of IP teaching

I became strongly interested in methods of IP teaching after the course. Firstly, IP teaching for kindergarten students is very effective and suitable for their ages. Specifically, in class, every time the teachers showed the kids an animation or cartoon, they said, “...*the directors who made the film allowed me to show it to you...*” Time after time, the kids will learn that *it is not a common sense that they get to see the movie; they need permission from the owner.* Awareness is formed, and the kids will have a sense of respect regarding the use of intellectual products.

Another activity that caught my eye was when I joined the field trip at a high school. Here we observed and attended with the 11 graders as they learnt about laws of invention and researching invention. The students were very excited. The lesson ended with the group of 6-7 students giving a presentation to us about the ideas for awesome products they had, which could be developed into inventions if their characteristics were eligible for protection. The students also listened to our advice enthusiastically. I feel that this method helps them to



understand about invention law, stimulate their creativity, and treasure it as well. When they treasure their inventions, they will also respect the inventions of the others. Through this lesson, I learnt that Japanese can be creative while they are still in school. Knowing how to conduct research for inventions helps them to approach humanity's intelligence quickly, and then create their own inventions on the shoulders of giants.

Furthermore, the Japanese use manga and anime to teach active learning because they know that these are children's favorite things, so they use that advantage to transmit knowledge about IP and stimulate the young generation. Learning IP from manga and anime is easier, faster, and more convenient than others.

Another time, the teacher guided us to do a creative activity called making Paper Towers. Each team was given eight small pieces of paper, and within ten minutes, they had to build a tower that could stand for at least ten seconds. The team with the highest tower would win. According to the teacher, this activity was carried out at lots of schools, and the highest record was 1.15m. Through this activity, we learnt how to utilize teamwork, as well as which methods were best for the game. I realized that if this game and others were applied at schools in Japan, the students must be having a lot of fun. Now I understood why Japan has so much spirit and creative products in the world.



#### 4. IP teaching program

From the course, I learned about a very special exam in Japan, the National Test on IP. This is an IP test that everyone can attend in order to get an IP certificate. The impressive thing is that companies are excited to send their employees to take the test. To take part in and pass the test, employees must know about IP. Therefore, not only do the employees get the advantages of knowing about IP, but the companies get advantages from the employees too. Such a good way for both sides.

Later, I learned that Japan does not have a standard nationwide textbook on IP, but that each school could have different IP programs and methods while still transmitting the basics about IP and stimulating creativity. The philosophy that I learnt from IP teaching in Japan is this: Do not only teach about IP law like in Vietnam, but also about the creative spirit, along

with the attitude of respecting our own intellectual products and those of others.

The listed methods will be very effective for people in Vietnam, where IP law is only taught at university and for law students only, not for younger kids where they can understand it at its basic level, and also not leading and teaching them how to be creative and respect others' creativity when they are young- which is a very suitable age for orientation.

To conclude, it was a pleasure for me to join in this course. The knowledge and experience that I gathered is helping, and will continue to help me a lot in teaching IP at the university I am working at. It also supports me in cooperating with high schools and organizations in developing IP activities in the future.





## Contributions from FY2017 Long Term Fellowship Researchers

A Short Four Months; yet Rich in Experiences, Memories and Knowledge



Mr. Chhayhong Eung (Cambodia)

Mr. Chhayhong Eung

I had the excellent opportunity to be selected to participate in the Study- / Research Fellowship Program 2017, organized and sponsored by the Japan Patent Office (JPO). The program is extremely good and practical, and it plays a very vital role in building capacity, competency and expertise in the specific selected field for each participant. Throughout the research period participants have the chance to study in detail the IP System of Japan, meet and get practical knowledge and experience from various Japanese IP experts and professors through discussion on the proposed research theme, and attend many short term training courses organized by the JPO allowing the participants to connect and share the IP knowledge with different short term participants from many countries. Moreover, participants are arranged to have one supervisor and two advisors for seeking advice and assistance during the whole period of research. As requested, the participants are also arranged for meeting and discussion with JPO staff to get further deep understanding and updated information on the topic. One of the most important things, among others, is that through the analysis of research study with the comments and advice from the IP experts of Japan, practical recommendations are proposed for the improvement and development of the specific proposed issues.



Courtesy Visit Ms. Naoko MUNAKATA, JPO Commissioner.

Taking this opportunity, I would like to express my sincere thanks and gratitude to the JPO and DIP for organizing and providing this valuable chance to take part in this long term research program. Furthermore, I would like to say thank you very much to the APIC staff for all your kind assistance, support, arrangements, taking care of me and providing me with many unforgettable memories in Japan.

My program had a four-month period, from June to October 2017. As being nominated by my Department (DIP) and selected by the JPO to participate in the program, the most important thing for me was to critically think and decide the theme of the research that contributes the most to my work. Having been promoted to work in the Litigation Division of DIP since 2016 and needing to develop my knowledge and capacity in dealing with IP cases, the theme of Study of the Appeal Board System of Japan for the Future Development of Appeal Board System in Cambodia had been willingly set up. The objective goals of the research were to study into detail the operational system of the Appeal Board System of Japan, its procedures and proceedings for handling IP disputes as well as to propose some practical recommendations for the future development of the Appeal Board System in Cambodia. As IP administration is different in Cambodia, the study research covered only the Appeal Board System for trademark cases.



Attending Short Course Training Organized by JPO

This four-month period was a mix of tough challenges, experiences, and memories. But it was very much worth it to take this challenge. All the activities, discussion, comments, advice, lessons learnt and knowledge gained from this four-month research have been integrated into a report that is scheduled to be published by the JPO in the New Year 2018. The report has been compiled from different sources of updated data both from primary and secondary data. The collected data has been analysed by using the comparison method between the two systems. The comparison looks in detail into each of the procedures and proceeding of appeals and trials as well as the operation system adopted by the Trial and Appeal Department of JPO and the Department of Intellectual Property. The differences and similarities of both systems have been identified. Upon the analysis and identification of the differences and similarities between both systems, some proper and feasible recommendations have been identified and proposed based on the experiences and best practices of Japan trials and ap-



peals system for the future development of Appeal Board system in Cambodia.

I firmly hope that this report will contribute more or less to the prospective readers in terms of knowledge improvement and information sharing about the IP disputes resolution system especially for readers from countries which are in the initial stage of developing their system, as in Cambodia.



Final Research Report Presentation



Farewell Party

Last but not least, besides the tight schedule of research activities, there are many attractive and beautiful places to visit in Tokyo and other prefectures of Japan. Japan is a really beautiful and very safe country as well as its environment and people, and especially the food is very delicious. During my research period, many attractive places around Tokyo and nearby, activities, friendships were visited, taken part and made, that provide me a lot of memories there.



Summer Dance Festival at Hibiya Park



## Enforceability of Intellectual Property rights in ARIPO Member States



Ms. Rumbidzayi Rosemary Mlambo (Republic of Zimbabwe)

Ms. Rumbidzayi  
Rosemary Mlambo

Intellectual Property rights have gained significant ground over the last two decades being associated with the rapid growth of developing economies in Asia. This growth of the emerging economies results in increased interest by local businesses and foreign investors. In this type of set up IPRs allow for competition to thrive and businesses to prosper, but this can only be possible if the rights are enforceable. Enforcement of IPRs is an important aspect of the functionality of any IP system. It is thus the object of this article to highlight the enforcement activities and legal framework in ARIPO member states.

Questions regards to enforcement of rights in ARIPO member states, or in African countries in general, is whether there is case law and how the courts have judged the cases. This newsletter contains some case summaries of some judgments, and this article will give the general overview of activities that gives evidence to the fact that IP rights are being enforced in the countries highlighted.

Some notable case law with regards to the enforceability of IP titles in ARIPO member states is summarized in the following table:

| Country and Court  | Case Law  |
|--------------------|---|
| Uganda, High Court | Anglo Fabrics (Bolton) Ltd and Ahmed Zziwa v African Queen Ltd  |
| Kenya, IP Tribunal | <ul style="list-style-type: none"> <li>• <i>Adidas AG and Anor VS Pepkor Retail Ltd (trademark) [2002]</i></li> <li>• <i>Chemserve Cleaning Services Ltd v Sanitam Services Ltd (patent) [2013]</i></li> <li>• <i>David Engineering Ltd v Steel Structures Ltd (Industrial design) [2011]</i></li> <li>• <i>Die Bergkelder Beperk versus Vredendal Koöp WY &amp; 2 others (trademark) [2006]</i></li> <li>• <i>Dr. Samson Gwer &amp; 5 others v Kenya Medical Research Institute (KEMRI) &amp; 3others (copyright) [2014]</i></li> <li>• <i>Duplex Engineers (1997) Limited v Jaswinder Singh Sehmi (patents) [2008]</i></li> <li>• <i>Friendship container manufacturers Ltd Vs Yash Plastomet Pvt Ltd (Industrial Design) [2007]</i></li> <li>• <i>General Plastics Limited v SafePak Limited (industrial design) [2013]</i></li> <li>• <i>George Ragui Karanja v Moras group Ltd, Naivas supermarket &amp; Safaricom Ltd (industrial design) [2013]</i></li> <li>• <i>Glenamrk Pharmaceuticals v Les Laboratories (patent) [2011]</i></li> </ul> |



| Country and Court               | Case Law   |
|---------------------------------|--|
| Kenya, IP Tribunal              | <ul style="list-style-type: none"> <li>• <i>London Distillers v Ponu Monu Suppliers (industrial design)</i> [2011]</li> <li>• <i>Steel Structures Limited versus David Engineering limited (industrial design)</i> [2007]</li> <li>• <i>Ukwala Supermarkets &amp; 2 others Versus Paul Mburu Wainaina &amp; Anor (patent)</i> [2005]</li> </ul>  |
| Namibia, Supreme Court          | <ul style="list-style-type: none"> <li>• <i>Elisenheim Property Development Company (Pty) Ltd v Guest Farm Elisenheim &amp; Others Trademark)</i> [2013]</li> <li>• <i>Guido-Dirk Gonschorek &amp; Others v Arndt Asmus (Trademark)</i> [2008]</li> <li>• <i>Mega Power Centre CC t/a Talisman Plant and Tool Hire v Talisman Franchise Operations (PTY) Ltd (Trademarks)</i> [2013]</li> </ul>  |
| Namibia High Court              | <ul style="list-style-type: none"> <li>• <i>Sparletta (Pty) Ltd V Namibia Breweries Ltd (Trademarks)</i> [1991]</li> <li>• <i>The Prosecutor General v Xinping (Trademarks)</i> [2013]</li> </ul>  |
| Mozambique Administrative Court | <ul style="list-style-type: none"> <li>• <i>British American Tobacco, Inc. v IP Office (trademark)</i> [2002]</li> <li>• <i>P. T. Permona v IP Office (trademark)</i> [2010]</li> <li>• <i>FESCOL – Fabrica de Especiarias Confiança, Lda v IP Office (industrial design)</i> [2010]</li> <li>• <i>British American Tobacco, Inc. v IP Office (trademark)</i> [2010]</li> <li>• <i>Irish Distillers Ltd v IP Office (trademark)</i> [2011]</li> <li>• <i>Unilever NV v IP Office (trademark)</i> [2011]</li> <li>• <i>Grand Africa, Lda v IP Office (trademark)</i> [2012]</li> <li>• <i>Unilever NV v IP Office (trademark)</i> [2012]</li> <li>• <i>Skechers, USA, INC. v IP Office (trademark)</i> [2013]</li> <li>• <i>SSC Sociedade Central de Cervejas e Bebidas, SA</i> [2014]</li> <li>• <i>NV Sumatra Tobacco Trading Company (trademark)</i> [2014]</li> </ul> |

In addition to the cited examples above there is also evidence to clearly indicate that ARIPO member states have taken measures to try and deal with counterfeiting. Some Examples of anti-counterfeiting activities that took place are summarized below.

| Date       | Countries | Institutions Involved                                    | Type of Goods                                   | Quantities          | Value         |
|------------|-----------|--|---|---------------------|---------------|
| June 2014  | Kenya     | Not specified  | Oil filters & numerous counterfeit goods seized | Not specified       | Not specified |
| June 2014  | Tanzania  | Fair Competitions Commission, Interpol, Customs & Police | Oil filters                                     | Not specified       | Not specified |
| April 2014 | Ghana     | Techno, Police, local distributors                       | Fake phones                                     | 3,550 phones        | Not specified |
| Feb 2014   | Namibia   | Interpol, Customs, Police                                | Chinatown mails raided                          | 60,000 items seized | Not specified |

| Date           | Countries  | Institutions Involved  | Type of Goods  | Quantities                                | Value                                 |
|----------------|--|--|--|---|---------------------------------------|
| Sept 2013      | Namibia<br>Botswana<br>Zambia                          | Interpol, Customs, Police                                    | Raids conducted in several malls   | 50,000 items seized                       | Not specified                         |
| June 2013      | Namibia  | Interpol, Customs & Police                                   | Counterfeit items  | 100,000                                   | R3 million confiscated from a suspect |
| April 2013     | Kenya  | Kenya Copyright Commission, Kenya Anti-counterfeiting Agency | Footwear   | 7,000                                     | Not specified                         |
| Date           | Operation  | Countries  | Goods Seized   | Quantity                                  | Value                                 |
| October 2013   | Giboia (Interpol)                                      | Angola, Malawi, Swaziland, Tanzania, and Zambia              | Counterfeit medicines  | 100 tonnes                                | USD3.5 million                        |
| September 2013 | Wipeout (Interpol)                                     | Botswana, Kenya Rwanda, Tanzania Uganda, Zambia              | Baby formula   | 1 tonne                                   | USD 5.6 million                       |
|                |  |  | Cosmetics  | 4 tonnes                                  |                                       |
|                |  |  | Televisions, mobile phones, toys, branded gas cylinders illegally filled     |   |                                       |
| September 2013 | Wipe Out (Interpol)                                    | Namibia  | Fake clothing and accessories  | Not specified                             | USD 3.27 million                      |
| September 2013 | Botswana<br>Malawi<br>Namibia<br>Zambia                | Kalahari (Interpol)  | Laptops pirated with Microsoft products, chargers, shavers, fake sports wear | Not specified                             | USD 1.2 million                       |
| March 2012     | Zambia   | Tonse (Interpol)   | Tooth paste, agricultural tools, music & movies                              | 70,000 fake items                         | Not specified                         |
| May 2012       | Kenya<br>Mozambique<br>Namibia<br>Tanzania<br>Zimbabwe | Meerkat (Interpol)   | Cigarette packet<br>Raw tobacco<br>Alcohol                                   | 1.6 million<br>134 tonnes<br>3,000 litres | Not specified                         |



From the table above it can be seen that although there is a popular public opinion on the non-enforceability of IP rights in Africa, and more specifically in the ARIPO region, this is not so. ARIPO and its Member states do enforce IP titles.

## Implementation of the TRIPS agreement in ARIPO Member States

The legal framework for IPRS is an important aspect of enforcement demonstrating how the country has domesticated international legislation and gives an indication that the country will provide for the minimum standards of protection afforded to Member States of that treaty.

It is important to note that most of the ARIPO member states have updated their legislation in line with the TRIPS agreement. Some key features to note, though, with regards to the minimum standards as set out in the TRIPS agreement have some slight differences in the member states. For example, duration of protection of patents is 20 years under the Harare Protocol, and Tanzania and the Gambia have a term of protection of 15 years. With regards to trademarks, the Harare Protocol sets out 10 years for initial registration and all the member states, with the following exceptions, provide for the same, i.e. Tanzania and Uganda have an initial registration of 7 years with renewals for 10 years. Zambia has an initial registration of 7 years with renewals for 14 years.

## Civil, Criminal, Administrative, Provisional and Border Measures in ARIPO Member States

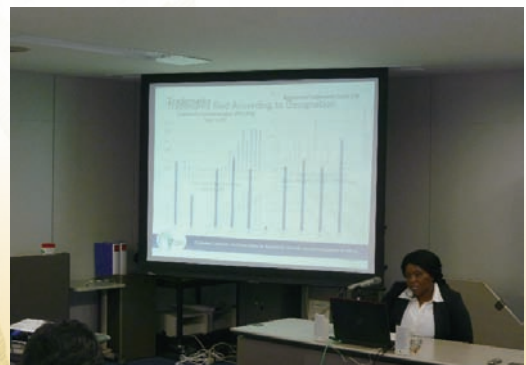
Legislation of ARIPO member states provides for Civil, Administrative, provisional and criminal measures. Average Criminal sanctions are:

- 5 years for Industrial Property
- 3 years for Copyright
- Maximum imposed: 10 years

## Domestication of ARIPO and International Treaties in Member States

16 out of the 18 signatories to the Harare Protocol have domesticated it into their national legislation. 6 out of the 11 member states of the Banjul Protocol have domesticated it. 12 out of 19 member states of ARIPO have domesticated the TRIPS agreement. In contrast, only 6 countries have domesticated the Madrid Protocol.

All in all, the countries have set up institutions that handle IP matters and the courts are making judgments in favor of rights holders.





Mr. Shashidhara C.N. (India)

Mr. Shashidhara C.N.

My name is Shashidhara C.N. and I am working as Deputy Controller of Patents & Designs at the Indian Patent Office, Chennai under the Controller General of Patents, Designs & Trademarks, Mumbai. I find myself fortunate to visit Japan twice when I was least expecting it. The time I spent in Japan is unforgettable for two reasons. First, my knowledge on IPR especially Patents is tremendously enhanced through attending various lectures and also meeting many professionals from the Japan Patent Office as well as others in the field of IPR during my research. My professional skills are greatly enhanced. Second, the unexpected benefit of staying in Japan has exposed me to the rich culture and tradition of Japan and I also gained the friendship of the ever smiling Japanese people. I also gained friends from other country IP offices such as Thailand, the Philippines, Cambodia, Zimbabwe, etc.



With my colleagues, friends from Thailand, Shibuya San & Akai San in 2015

As I begin to think about my experience in Japan, a broad smile appears on my face. It was an experience like none other. I got to witness the beautiful culture and traditions of Japan and it has taught me a lot. When I think of Japan, the first thing that comes to mind is the people of Japan. They are extremely kind and generous. As known to the whole world, the people of Japan are some of the most hardworking people you will ever meet and I got to witness this fact first hand. The amount of dedication and determination that they have can easily make one feel small about oneself. The sheer time and energy they spend enriches the quality of their work. Looking at them work has influenced me and inspired me to work harder. It comes to me as no surprise that Japan is one of the top countries in the world as its people put in so much time and effort to make their country better with each passing day. Punctuality is also a trademark of the Japanese and observing them has made me incorporate a little more discipline in my life. The people of Japan are extremely hospitable. Their hospitality is something that I can never forget. As a vegetarian, food was a bit of a concern for me but the people there are so nice that they helped me out with it. I got to meet some of the nicest souls on the planet during my stay in Japan and I will cherish the moments that we spent together for the rest of my life. Our time spent together was enough to create a bond so tight that these people will remain in my heart forever. Even though I was away from my



family, I always felt at home in Japan. I attended a tea ceremony at Ms. Michiko Hiyama's daughter's school and I found the ceremony very interesting. I also tried my hand a bit at calligraphy and archery in the school festival there. I also viewed the iconic Mount Fuji, from mount Hakone and the view was spectacular. It blew my mind. I can never forget my visit to the world's largest underground flood water diversion facility at Kasukabe. I gained lots of friends from THE JPO and from APIC/JIII. The support and help provided by them and their kindness made me feel at home. I can never forget their kindness, courtesy, hospitality and their disciplined and professional way of working. Just being with them is enough to understand and feel the Japanese culture and tradition.



At Kawagoe school festival with fellow researchers, Yuki San and Mitty San



Tried Calligraphy with the help of Ms. Michiko Hiyama



Learning Japanese Archery



At Kasukabe – World's largest underground flood water diversion facility

I can never forget my experiences with Dr. Yorimasa Suwa during my research. He guided me so smoothly during my research that my initial nervousness disappeared soon. My special



thanks to the research advisors Prof. Mitsuhiro Oi and Prof. Makiko Takahashi who were always ready to help and share their knowledge which shaped my research into a better one. I never imagined that during my research I would interview nine experts in their relevant fields and get exposure to their knowledge and suggestions first hand, and I sincerely thank Dr. Yorimasa Suwa for making it happen. Prof. Masahiro Hashimoto, Mr. Yuzaburo Kanezaki and Mr. Yoshio Nanba, who are highly knowledgeable and have had long stints in various Government agencies, were so courteous and kind in sharing their valuable knowledge. Their suggestions became a vital part of my research. Prof. Kohei Yasuda, CEO of Campus Create Co. Ltd. and Mr. Akimoto of Yokohama Venture Plaza explained during their interview about the challenges for the startups and commercialization of Patents and were very kind to share their experiences. I have no doubt that a discussion with them will boost the confidence to anyone venturing to start a company and commercialize their IPRs. Prof. Atsushi Imaizumi, Prof. Setsuko Hashimoto, Mr. Kajihiro Sakamoto and Mr. Manabu Bonkohara whom I met and interviewed are all running and/or part of successful companies. They are definitely of great inspiration to upcoming startups and to students in Universities aspiring to become entrepreneurs. The amount of knowledge shared by them is simply mind blowing and I am going to cherish the valuable time spent with them for the rest of my life.

All in all, my stay in Japan was beautifully pleasant and has taught me a great deal. I would not think twice to visit Japan again as it is a beautiful country. I could not have asked for a better experience and my memories of Japan will eternally remain in my heart.



Closing ceremony – 2017



At evaluation meeting, with fellow researcher Rico San

## Articles from the former trainees

### Analyzing the differences between Trademark laws of India and Japan



Mr. Abhishek Nangia (India)

Mr. Abhishek Nangia

*(FY2017 JPO/IPR Training Course for IP Protection Lawyers, July 19 – August 4, 2017)*

The JPO/IPR Training Course for IP Protection Lawyers, held from 19<sup>th</sup> July 2017- 4<sup>th</sup> August 2017, was an enriching experience both professionally and personally. The course covered all aspects of the Japanese trademark law, and included visits to the Japan Patent office (JPO) and the Intellectual Property High Court. Furthermore, it provided insight into Japanese culture and food which was quite enjoyable too. This post covers the key differences between the trademark laws of India and Japan.

#### 1. First-to-File vs. First-to-Use system:

Japanese trademark law is based on the first-to-file system. A trademark application filed prior to other applications for identical or similar trademarks will be registered. A unique provision in a first-to-file system that has been adopted by Japan is that of the lottery. Where two or more applications are filed for identical/similar trademarks covering identical or similar goods/services on the same date, only one applicant shall be entitled to trademark registration.

On the contrary, India follows the First-to-Use system, wherein the rights of a prior user of the mark are kept on a higher footing than that of the proprietor of a registered trademark. In other words, the prior user's rights will override those of a subsequent user even though the subsequent user has been granted registration of its trademark.

#### 2. Publication of unexamined applications

After the trademark application has been filed, JPO publishes the contents of unexamined applications in the Official Gazette.

There is no such provision under the Indian Trademarks law. The Trademarks office (TMO) in India scrutinizes the applications filed to check if the filing requirements have been complied with. After being satisfied with the preliminary requirements, the trademark application is then examined for preliminary refusal. The application is examined on the grounds of (i) distinctiveness, and (ii) similarity with the earlier pending/registered marks on the Register. In cases where an examination report is issued by the TMO, the trademark owner is required to file a written response within one month. If the TMO is not convinced by the written submissions, it appoints a show cause hearing giving the opportunity to advance oral

submissions for acceptance of the mark.

### 3. Definition of Trademark

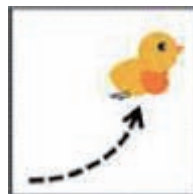
Under Indian trademark law, the definition of a mark includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colors, or any combination thereof. Apart from traditional marks, non-traditional marks such as sound marks, color marks and 3-D marks are also recognized.

India is one of only a few countries in Asia to have opened its doors to the statutory protection of sound marks. TMO granted India's first sound mark registration for Yahoo's three-note yodel in 2008. The application was filed in 2004 with the following description: "The mark consists of the sound of a human voice yodeling the word Yahoo." The TMO has also accepted Intel's application for registration of its sound mark. The ICICI Bank also successfully secured registration for its corporate jingle, and is the first Indian entity to obtain registration for a sound mark– a promising development in the area of trademark law.

In Japan, non-traditional trademarks such as motion marks, hologram marks, color marks (per se) or a combination of color, position marks and sound marks are registrable in addition to the traditional trademarks. Series mark, smell marks, light marks, and taste marks are not registrable in Japan.



Position Mark



Motion Mark

### 4. Establishment of Intellectual Property High Court in Japan

During the training course, I learnt about the establishment of an IP High Court in Tokyo. During our interaction with the judges at the IP high court, I gathered that they have significant expertise in IP law, and lawsuits are adjudicated in 12 to 18 months! The discussions with the sitting judge of the IP high court were both productive and stimulating.

In India, there are no specialized IP Courts. The suits for passing off or infringement can be instituted either in the District Court or the High Court (enjoying Ordinary Original Civil jurisdiction such as the High Court of Delhi, Mumbai, Kolkata and Chennai). The courts in Delhi and Mumbai witness the majority of IP litigation in India. The judges deciding IP lawsuits hear various types of cases such as property, criminal, matrimonial etc. Delays in the courts are common, especially where the matter is vigorously contested by the other side, and it can take several years before a final decision is passed.

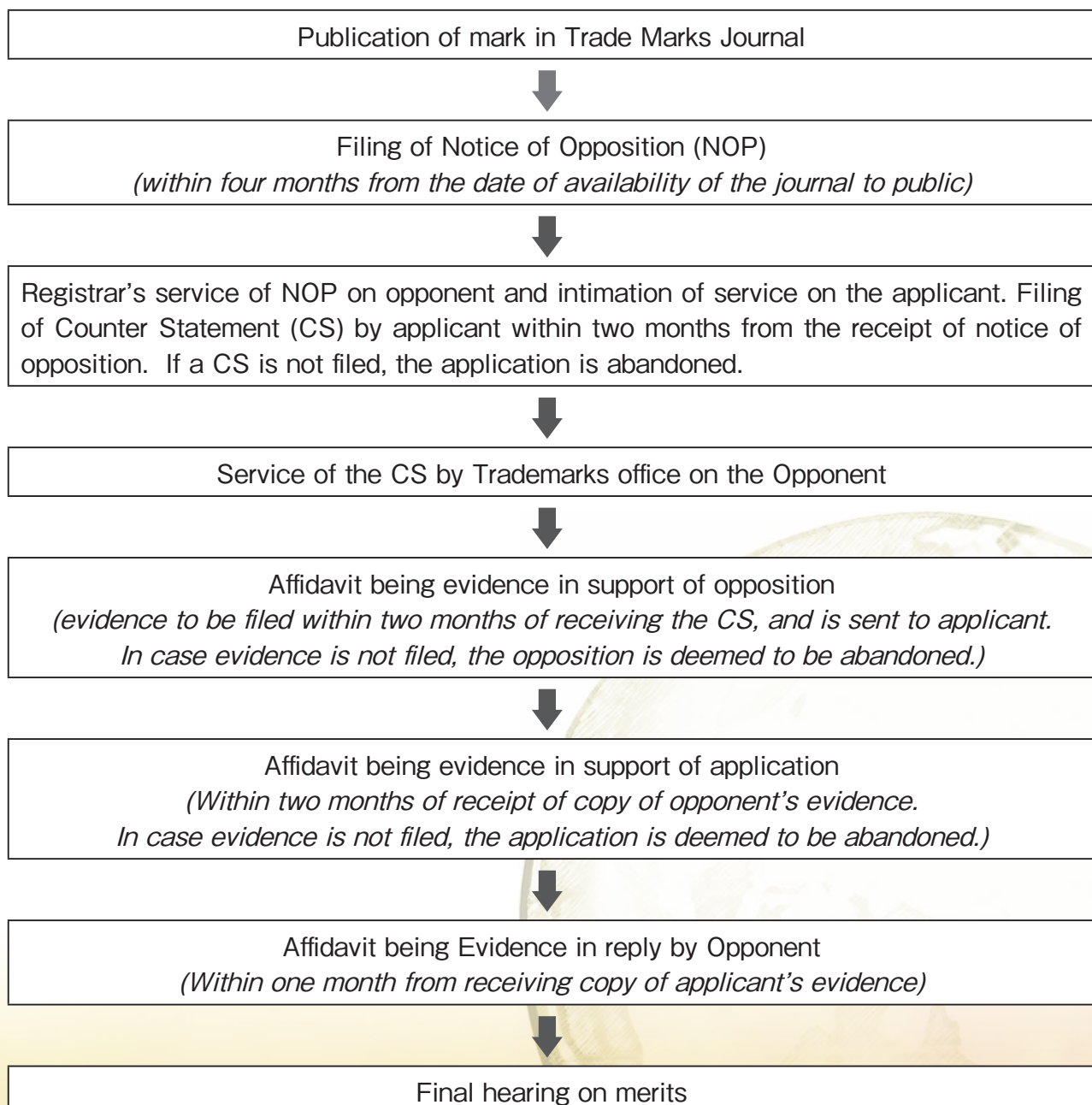


In my view, considering the intricacies of IP law, the establishment of a specialized IP court in India will enhance efficiency by promoting consistency in the decisions passed, and also minimize the chances of erroneous decisions.

## 5. Post Grant opposition system

The trademarks law in Japan has a very unique provision, i.e., filing of the opposition subsequent to grant of registration. Any person or legal entity can file an opposition (along with evidence) within two months from the publication of registration in the Gazette.

In India, an opposition can only be filed when the mark is pending registration. Any person can file an opposition within four months from the date of publication of the mark in the Trade Marks Journal, and evidence is led by parties at a later stage. The steps involved in opposition proceedings are as follows:





Final decision passed by TMO

In contested opposition cases, it takes at least 6-8 years for the issuance of a final decision from the filing of the opposition, due to the huge backlog at various TMO's.

## 6. Appeal of the examiner's refusal decision

An appeal of the decision of rejection/refusal for a trademark application can be filed with the Trial and Appeal Board of JPO. The appeal examination is performed by a collegial body of three or five appeal examiners. No hearing is held. The Trial and Appeal Board hear matters relating to oppositions of trademarks, appeals of the examiner's decision of refusal of registration and the invalidation/cancellation of trademarks. It was impressive to note that the JPO is well-equipped with modern day technology systems, especially inside the trial room.

In India, the Intellectual Property Appellate Board (IPAB) is headquartered in Chennai and has circuit bench sittings at Mumbai, Delhi, Kolkata and Ahmedabad. The IPAB exercises jurisdiction over matters pertaining to trademarks, patents, copyrights and geographical indications. Any aggrieved person can file an appeal with the IPAB against the decision of the Registrar of Trademarks, Controller of Patents, Registrar of Trademarks and Registrar of geographical indications. An appeal is required to be filed within three months from the date of receiving the order. The IPAB also adjudicates petitions for rectification/cancellation of trademarks. The IPAB has recently digitized its records, and parties can now submit, inspect, download certified copy, and view the status of their case on its website at [www.ipabindia.org](http://www.ipabindia.org). The IPAB has passed many notable judgments during the past ten years. However, it has a huge backlog of cases. As per the 2016-2017 IPAB annual report, around 2,300 trademark cases and 400 patent cases are pending disposal at the IPAB.

## 7. Well-known trademarks

The JPO has published a "list of established famous and well-known marks". There is no system to register famous/well-known trademarks in Japan.

In India, it is possible to file a request before the TMO for recording a mark as well-known. This petition is required to be submitted with documentary evidence. It can be filed online only, and the official fee is US \$1500.

In case the trademark is determined as well-known, it will be published in the Trademark Journal and included in the list of well-known marks. The list of well-known marks is available on the website of TMO, and can be accessed here:

<https://ipindiaonline.gov.in/tmrpublicsearch/wellknownmarks.aspx>

The TMO has declared 81 trademarks as 'well known' so far. The recent step taken by TMO to widen its doors in connection with recording well-known marks is noteworthy, and

is a big relief for the brand owners to deal with the infringers (especially when the goods/services are different in nature).

## 8. Cancellation/Invalidation action

In Japan, the term “cancellation trial” is often used to indicate cancellation action against a trademark registration based on non-use. The term “invalidation trial” is used to indicate action against a trademark registration based on a third party’s prior right to a similar mark or lack of distinctiveness. The cancellation/invalidation actions are filed before the JPO Trial Board. Anyone can file cancellation action against a trademark registration based on non-use for three consecutive years or more in Japan. The decision of a cancellation trial based on non-use is passed six months from the filing date in uncontested cases. Invalidation trials can be filed only by persons with legal interest in the trademark registration at issue. The decision in an invalidation or cancellation trial is issued 12 months from the filing date.

In India, trademarks become vulnerable to cancellation on the grounds of non-use if it is proved that the trademark was registered without any *bona fide* intention of use on part of the owner or if the mark has not been used in India for a continuous period of five years up to a date three months immediately preceding the filing of cancellation petition. The relevant date for calculation of five years is the date on which a mark is entered in the register – that is, the date which appears as the sealing date on the registration certificate. Only a ‘person aggrieved’ can institute the rectification/cancellation proceedings. The cancellation action can be filed either before the TMO or IPAB. In case a cancellation action is filed before the IPAB, accompanying evidence is required to be filed at the filing stage.

There is a huge backlog of matters, as it takes at least 5-7 years for disposal of cancellation petitions, and even longer if the petition is filed at the TMO. It is worth mentioning that cancellation actions are adjudicated rather quickly in Japan. The Indian government needs to take immediate steps to reduce the existing time for disposal of cancellation actions.

## 9. Application suggesting connection to a living person

Indian law provides that where an application is made for registration of a trademark which falsely suggests connection with any living person or a person whose death took place within 20 years prior to the application date, the TMO may require the applicant to furnish written consent of such living person or a legal representative of the deceased person.

On the other hand, the provision under the trademarks law in Japan is limited to living persons.

## 10. Other differences

The Japanese trademark law recognizes the concept of defensive marks. Defensive mark registration is based on an individual trademark registration, and can be granted (to the holder of the trademark registration who applies for defensive mark registration) for goods/services which the applicant does not intend to use, provided that the use of the mark in the goods/services by a third party is likely to cause confusion with the applicant’s business. India



had done away with defensive registration provision. Also, a registration fee is required to be paid in Japan after the mark is registered. In India, no such fee is required to be paid.

My experience:

The key takeaways of attending the training course were the swift grant of trademark registrations, the speedy disposal of disputes in Japan, and the establishment of an IP High Court.

Overall, the entire course curriculum was well-designed. The content of power point presentations delivered by lecturers was of high quality. To sum up, the training course was an excellent experience. The memories of this trip will remain etched in my mind forever.



## Trans-Border Reputation and Trademark Law in India Territorial Doctrine vs Universality Doctrine



Ms. Shruti Shah (India)

Ms. Shruti Shah

*(FY2016 JPO/IPR Training Course for IP Trainers, June 15 – June 29, 2016)*

The Supreme Court of India on 14<sup>th</sup> December 2017 gave a landmark judgement in the case of ***Toyota Jidosha Kabushiki Kaisha v Prius Auto Industries Ltd.***

### What was the Dispute?

In the present case, Plaintiff (***Toyota Jidosha Kabushiki Kaisha of Japan***) filed a suit of passing off before the High Court seeking permanent injunction and damages against Defendant (***Prius Auto Industries of India***) alleging use of their trademarks TOYOTA, INNOVA, PRIUS, etc. Plaintiff claimed infringement of their marks TOYOTA and INNOVA, and passing off under mark PRIUS.

The Defendant claimed that being a spare parts manufacturer, it uses the names TOYOTA and INNOVA only to describe that the spare parts are suitable for the vehicle of the Plaintiff. Whereas Defendant claimed honest adoption, prior use in India and registration of the mark PRIUS.

It is pertinent to note here that the Plaintiff's trademark PRIUS was not in use in India and the claims of passing off were based on trans-border reputation and being prior in the world market in adoption of the said trademark.

### What is Trans-Border Reputation?

According to trans-border reputation principle Indian Courts can protect a foreign trademark in India even though such trademark is not in use in India, based on its reputation in foreign lands and knowledge or acknowledgement of the same within people at large in India. Thus, the law on trans-border reputation requires two tests for protection (1) Mark being well-known/having reputation in foreign jurisdictions (2) knowledge of the trademark in domestic jurisdiction due to spill over of its reputation through people traveling or the internet or advertisement or any other means.

India provides highest protection to foreign marks, compared to the laws in other countries.

### Important provisions of law:

The Paris Convention, in Article 6 (1) provides that - The conditions for the filing and registration of trademarks shall be determined in each country of the Union by its domestic legislation.

In Article 6 (3) - A mark duly registered in a country of the Union shall be regarded as independent of marks registered in the other countries of the Union, including the country of origin.

While the above provisions speak about the territorial principle of trademarks rights and country specific protections, below provisions are contrary and affecting the territorial principle by supporting universality principle.

**Article 4 Paris Convention:** Any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed.

**Art. 6bis, Paris Convention** provides that the **member country must protect well-known marks of other member countries.**

Further, Paris Convention is not self-executing and the provisions are subject to the National Laws.

In the case of India, Trademark Law is at par with the international treaties and development and provides highest protection to foreign marks compared to the protection provided by other countries. The Indian system is an open-minded system and keeps evolving not only in law but also in practice and procedures.

Section 154 of the Trademarks Act, 1999 provides special provisions for application for registration by citizens of convention countries and section 155 for reciprocity. Section 154 (4) provides that - "Nothing in this Act shall entitle the proprietor of a trade mark to recover damages for infringement which took place prior to the date of application for registration under this Act."

Thus, for infringement action, prior registration in India is necessary, while under law passing off, a common law remedy, an unregistered foreign mark can be protected in India.

Section 27(2) of the Trademarks Act, 1999 - Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof.

As per the **Trademarks Act, 1999**, section 2(1)(zg), **Well-known trademark** - in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives that the use of such mark in relation to other goods or service would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services."

### **Previous Case Laws:**

The Supreme Court in **Milmet Oftho Industries & Ors vs Allergan Inc** (Appeal (civil) 5791



of 1998 judgment date 7 May, 2004) observed that-The Court has to keep in mind the possibility that with the passage of time, some conflict may occur between the use of the mark by the Applicant in India and the user by the overseas company. The Court must ensure that public interest is in no way imperilled... Companies connected with the medical field keep abreast of the latest developments in medicine and preparations worldwide. Medical literature is freely available in this country. Doctors, medical practitioners and persons connected with the medical field regularly attend medical conferences, symposiums, lectures etc. It must also be remembered that nowadays goods are widely advertised in newspapers, periodicals, magazines and other media which is available in the country. This results in a product acquiring a worldwide reputation...Thus, if a mark in respect of a drug is associated with the Respondents worldwide it would lead to an anomalous situation if an identical mark in respect of a similar drug is allowed to be sold in India. However, one note of caution must be expressed. Multinational corporations, who have no intention of coming to India or introducing their product in India should not be allowed to throttle an Indian Company by not permitting it to sell a product in India, if the Indian Company has genuinely adopted the mark and developed the product and is first in the market. Thus, the ultimate test should be who is first in the market. ... The mere fact that the Respondents have not been using the mark in India would be irrelevant if they were first in the world market." **Thus, the test established for protection was -who is first in the world market.** Which was contradictory to the territorial principle of trademarks.

In **N. R. Dongre vs. Whirlpool Corporation** reported in 1996 PTC (16) 583 (SC), in the case of passing off, based on the equitable principle, Hon'ble Supreme Court had granted the injunction. It was held that the passing off an action was maintainable in law even against the registered owner of the trademark. It was held that the name of "Whirlpool" was associated for long with the Whirlpool Corporation and that its trans-border reputation extended to India. Court relied on International magazines having circulation in India containing advertisements of the products of the Plaintiffs bearing the mark 'WHIRLPOOL'.

Above were the landmark judgments, based on which many foreign companies succeeded to get the benefit of Trans-border reputation and protection even though their products were not being sold in India.

On the contrary, in 2014, the Intellectual Property Appellate Board (IPAB) also opined that big multi-national companies cannot bully small Indian Companies who are prior in the Indian market. In the case of **Jones Investment Co. Inc Vs. Mr. Nagarajan Srinivasan trading as Vishnupriya Hosiery Mills** Decided On: 24.02.2014, IPAB hold that a multinational company cannot claim infringement of a trademark by a local Indian company purely based on international presence, unless they can expressly establish that their presence extends to India or precedes that of the Indian company.

The IPAB held that quantum of sales is absolutely immaterial as long as the Respondent (original applicant company) is able to establish that the registration of its trademark would not cause confusion in the minds of the consumers. Considering that the appellant company did not even have a presence in India, this argument of the appellant was absurd in the first place (as it seemed to imply that your ownership over intellectual property somehow solely depended on profits). The fact that the respondent company had a limited local presence as

opposed to the appellant company's international one (excluding India) only seems to strengthen the case of the respondents, as it goes on to show that the two firms operate in different markets, lowering the prospects of consumer deception.

### **The recent Judgment of 14<sup>th</sup> December 2017:**

The Hon'ble Supreme Court declined any protection to the trademark "Prius" of Toyota Jidosha Kabushiki Kaisha of Japan. However, to understand the case better, we need to examine it from the beginning at Trial Court.

### **THE ORDERS OF TRIAL COURT:**

The Single Judge Bench of the High Court (trial court) relying on earlier judgment of the Hon'ble Supreme Court of India, in the case of **Milmet Oftho Industries (supra)** and **N. R. Dongre vs. Whirlpool Corporation** and other prior cases, had granted permanent injunction in favour of TOYOTA PRIUS with damages of Rs. 10 lakhs. It is pertinent to note that this was a pre-trial order to be followed during the pendency of trial.

The Trial court considered global sales of Prius cars which were increased since its launch in 1997 to 2008, global goodwill, Indian visitors to the Plaintiff's website, exhibitions of cars in India, publication in international magazines and journals, information available in the Britannica dictionary and Wikipedia, etc. The Trial court opined that the global reputation has spill over in India and it is immaterial that Prius cars of the Plaintiff were launched only in 2010 in India. The Trial Court held that the mark PRIUS is well known within meaning of section 2(1)(zg) of the Trademarks Act 1999. The Trial court opined that Registration of mark PRIUS by Defendant is not relevant for passing off action.

### **THE DIVISION BENCH OBSERVATIONS:**

Division Bench of High Court held against the TOYOTA PRIUS.

The Division Bench of the High Court opined that only material prior to the adoption of the mark by Defendant i.e. prior to April 2001 has to be considered to decide if there is spill over of the reputation of the Plaintiff's mark in India. The Division Bench opined that the Trial Court is not correct in considering documents of later dates.

The Division Bench had opined that - Universality Doctrine (which posits that a mark signifies the same source all over the world) has not been accepted by courts. Modern day trade; globalization have brought in multi-channel modes of sale of goods in the market and therefore it is the Territoriality Doctrine (a trade mark being recognized as having a separate existence in each sovereign country) would hold the field. **The Court further held that prior use of the trade mark in one jurisdiction would not ipso facto entitle its owner or user to claim exclusive rights to the said mark in another dominion. It was, therefore, necessary for the plaintiff in the case to establish that its reputation had spilled over into the Indian market prior to April, 2001.** The court opined that the news in Indian newspapers of year 1997 of launch of products in Japan was scanty and insufficient to get the benefit of trans-border reputation.

Further held that the test of possibility/ likelihood of confusion would be valid at the stage of quia timet actions and not at the stage of final adjudication of the suit, particularly when the defendants had used the impugned mark for a long period as in the instant case. The test, therefore, would be one of actual confusion. No evidence was led by the plaintiff to show that any section of the consuming public was misled by the use of the trade mark 'Prius' by the defendants. There was delay on part of TOYOTA in taking action against the defendant. Further, Court observed that Plaintiff had applied for registration of the trade mark, only on 3.12.2009 on proposed to be used basis, followed by the institution of the suit on 21.12.2009. The Division Bench also took the view that the word 'Prius' is publici juris and that the explanation given by the defendants for adopting the said word as their trade mark is logical and acceptable and on the basis of the said concept the Defendant also registered its mark PRIUS -THE NAME YOU CAN TRUST under no 1086682 since 2002 in India.

The Division Bench of the High Court vacated the order (for permanent injunction and damages of 10 lakhs) passed by the Single Judge. The Division Bench permitted use of mark PRIUS to the Defendant subject to the below terms:

1. The Defendant shall be entitled to use the Plaintiff's trademarks TOYOTA, INNOVA etc. only for the purpose of describing that the spare parts are suitable for Plaintiff's vehicle i.e. only for the purpose of identification of spare parts. Defendant shall not use Plaintiff's trademark TOYOTO, INNOVA etc. in prominent fonts i.e. Defendant must use these marks in smaller fonts than its own trademark PRIUS.
2. The defendants would have to replace the words "Genuine Accessories" with "Genuine Accessories of PRIUS Auto Industries Limited;

### **THE FINAL TRIAL:**

The said order governed both the parties during the pendency of the suit as the Plaintiff never challenged the order of the Division Bench. However, Plaintiff had claimed violation of the said order by the Defendant. Thus, the matter remitted back for the trial before the Single Judge, who concluded the Defendant guilty of infringement of trademarks TOYOTA and INNOVA, and passing off of goods under the name of PRIUS, which was though registered by the Defendant in India, Plaintiff was prior in adoption in Japan in 1997 Thus, the Court restrained the Defendant from using the marks TOYOTA and INNOVA except as conditional permission given by the Division Bench and Completely restrained the Defendant from using the mark PRIUS with ten lakhs of Damages.

### **FURTHER APPEALS:**

Both the parties appealed against this order however, the Plaintiff accepted the conditional use for the mark TOYOTA and INNOVA and their main grievance remained the use of the mark PRIUS and the quantum of damages granted by the single judge. The division bench affirmed the judgment given by the Single Bench and aggrieved by the same, the Plaintiff filed present appeal in the Supreme Court. Thus, the main issue before the Supreme Court was of whether there is passing off of the mark PRIUS.



## THE SUPREME COURT'S OBSERVATION:

The Supreme Court, while upholding the Division Bench's judgment, considering the case laws of India and other countries opined that – **"The overwhelming judicial and academic opinion all over the globe, therefore, seems to be in favour of the territoriality principle. We do not see why the same should not apply to this Country."** The Supreme Court opined that launch of a vehicle under the name TOYOTA Prius in Japan in 1997 and its small advertisement in the newspaper in 1997 does not amount to trans-border reputation. The Court opined that in 2001 when the defendant, a partnership firm selling auto- parts, adopted mark PRIUS from the meaning "first attempt" (PRI – US), the internet was not so commonly used among people and hence there cannot be any awareness through the internet. Therefore, evidence of websites, publication in international magazines, Wikipedia, the Britannica dictionary and other information on the internet would not be a safe basis to judge the trans-border reputation. There was no advertisement in India prior to 2001 by the Plaintiff. The court observed that the price of the TOYOTA PRIUS Vehicle being very high it will be known to limited class of people and not to a larger section of the public. The court found importance of the principle of territorial rights in trademarks and considering the Indian company prior in use in India ruled against the Toyota. Further, the court also took note of delay on the part of Toyota in taking action against the defendant.

## ESTABLISHED PRINCIPLE OF PASSING OFF BY PRVIOUS CASE LAWS RELIED ON BY THE COURT IN THIS CASE:

1. The action for passing off which is premised on the rights of prior user generating-goodwill shall be unaffected by any registration provided under the Act.
2. To prove and establish an action of passing off, three ingredients are required to be proved by the plaintiff, i.e., (1) his goodwill, (2) misrepresentation by Defendant and (3) damages/likelihood of damages to its reputation and business due confusion or deception (or its likelihood) created by such misrepresentation.
3. For goodwill, has to be on the date Defendant adopted its mark.
4. If goodwill is not established, no other points (misrepresentation, damage etc.) can be considered.
5. Actual confusion or deception is not necessary to be proved but likelihood of confusion is sufficient. However, in cases where the Defendant is in the market for several years and there was no complaint by the Plaintiff, the non-complaint by Plaintiff or third parties for all those years is effective to prove that there is no chance of confusion or deception.
6. Unreasoned delays could be grounds for not getting the protection.

## EFFECT OF THE CASE:

However, now it will be imperative for foreign companies to get their marks registered in India even when they have no plans to use them in India to get the benefit of infringement action, as based on the new development, it will be difficult to establish passing off under trans-border reputation and to establish trans-border reputation, stronger evidence shall be required to show spill over of reputation (acquired by use in foreign lands) in India.

The registration will help avail easy protection before the Court of Law, for reason, in infringement action, use of the mark by Plaintiff is not compulsory. However, it is also pertinent that if a registered mark is not used for more than 5 years in India, it becomes vulnerable to be removed based on the complaint by any third party. Further, it is also important to keep in mind that in India, a prior user can have rights of passing off against a prior registration holder.



## Current Trends in Copyright Enforcement Litigation



Mr. Oscar M. Manahan

Mr. Oscar M. Manahan (the Philippines)

*(IPR Training Course for APEC Economies based on AOTS/JIII for Management 1, June 1999)*

In Civil Case No. 13-129631, the Regional Trial Court of Manila, Branch 24 sitting as a Special Commercial Court has recently decided last December 8, 2017 that acts of copyright infringement have been committed by a Chinese Company, Fujian New Technology Color Making and Printing Company, Ltd. and three other Philippine defendants against St. Mary's Publishing Corporation (SMPC) and Jerry Vicente S. Catabijan.

### The Court held that:

"In light of the totality of evidence at hand, the Court finds that plaintiffs were able to preponderate their claim of forgery against the Deed of Assignment of Copyright dated 12 March 2010. In view of its invalidity, the Certificates of Copyright Registration dated 18 January 2012 relied upon by defendants Uy, et. al. to prove defendant MITC's copyrights are therefore void.

Accordingly, at the time defendant Fujian authorized defendant MITC to enter into a contract to market and sell the textbooks covered under P.O. dated 7 December 2010 and at the time defendant Allianz sold and/or offered for sale the Subject Textbooks, the copyrights of said books, as well as all the other books mentioned above for which plaintiff SMPC was issued copyright registration certificates, belong to plaintiff SMPC."

Section 177 of the Intellectual Property Code of the Philippines ("IP Code") reads:

SECTION 177. Copyright or Economic Rights. — Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

177.1. Reproduction of the work or substantial portion of the work;

177.2. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;

177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;"

Any person who performs any of the acts mentioned above without obtaining the copyright owner's prior consent renders himself civilly and criminally liable for copyright infringement. Accordingly, defendant Fujian's act of authorizing defendant MITC to enter into a contract to market and sell the textbooks covered under P.O. dated 7 December 2010



and defendant Allianz' act of selling and/or offering for sale the Subject Textbooks constitute copyright infringement. While defendant Fujian is a foreign corporation based in China, its act constitutes copyright infringement pursuant to the Berne Convention for the Protection of Literary and Artistic Works on 1 August 1951, among the members of which is China which became a party to the Convention on 15 October 1992.<sup>274</sup>

In addition, it was established that defendant Allianz also printed, published, and sold copies of textbooks "Development Reading Power Supplements K+12 Compliance Textbooks (Revised Edition)"<sup>275</sup> which is the same as plaintiff SMPC's books except for the copyright page and the cover,<sup>276</sup> further infringing on plaintiffs' copyrights.<sup>277</sup>

The case arose from the printing contract between SMPC and the defendants for the printing of SMPC textbooks in Fujian's factory in China. SMPC issued Authority to Print Textbooks three times to Fujian in September, October and November 2009.

However, Fujian did not deliver the textbooks to SMPC and instead issued to MITC the Authority to Enter into Contract to Market and to sell the textbooks.

Allianz, on the other hand, imported the textbooks from Fujian, China and sold them in the Philippines.

Until this recently decided landmark case, Copyright decisions in the Philippines have remained scant. This landmark case serves as a good model for copyright owners who are pursuing suits against infringers. This ruling addresses the challenge publishers and copyrights owners face as they publicly release books, from the acts of unauthorized copying by others.

It becomes appropriate with this recent Decision to revisit relevant provisions of the Berne Convention namely:

1. Article 2 (1) as amended on September 28, 1979 which include books as an expression of "literary and artistic work";
2. Article 2 (3) and 2 (6);
3. Article 5 Rights Guaranteed (1) and (3);
4. Article 9, Right of Reproduction and Article 12; Emphasis is made on the following -
5. Article 5 (3) Protection in the country of origin is governed by domestic law;
6. Article 9 (1) Authors of literary and artistic work protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form;
7. Article 12 granting exclusive rights of authorizing adaptations, arrangements and other alterations of their works.

### Furthermore:

The Berne Convention deals with the protection of literary and artistic works.

The international agreement is based on three basic principles namely: Principle of National Treatment; Principle of “automatic protection” and Principle of independence of protection.

## Column: Ships



Mr. Takao OGIYA

**Mr. Takao OGIYA**  
Director General of APIC

In May 2017, my wife and I took a trip to the Ogasawara Islands. These Japanese islands lie in the Pacific Ocean at a distance of as many as 1,000 kilometers south of Tokyo. The only way to get there is to take a ship called the Ogasawara Maru, which only departs about once a week. It takes around twenty-four hours to get from Tokyo Bay to the bay of the biggest of the islands, Chichijima. Usually I am quite a busy person, living my life as if I literally run around the office in my job, such a long trip by ship was quite out of the ordinary for me, and I thought the sensation of giving myself up to the gentle flow of time would be quite an irreplaceable experience.

Once, long ago, ships held a special place in my heart. When I entered college, I chose naval architecture as my major. At that time, Japan was truly a front-runner in tanker production, accounting for more than 40% of the global output. For me, ships were a symbol of the strength of Japan as a nation, as a world leader in technology. And so, though my dream at the start of my college career was to design tankers and LNG carriers—and in that capacity be a front-runner myself—by the time I graduated, the industry was in an unprecedented slump and none of the shipbuilding companies were hiring. I had no choice but to change my plans. I took the national civil service examination and that is how I ended up becoming an examiner at the Japan Patent Office. Moreover, the first field I was put into was metalworking, and even subsequently I have never overseen the examination of technology patents directly connected to shipbuilding.

My work had distanced me from ships, but my feelings about them remained unchanged. In particular, I was more than a little bit captivated by the sailboat. For quite some time I hung a huge poster of sailboats on the wall of my room and gazed at it daily. At that time, I still thought longingly of ships. And then 40 years of my working life passed by, and this trip was to be the first extended sea voyage I would ever take.



Figure 1: sailboats



The Ogasawara Maru travels about 1,000 kilometers in close to 24 hours. Despite being quite fast for a passenger ship, I found myself barely bothered by its pitching and rocking. We left shortly after noon and continued for some time in pace with a brown booby, but at long last we found ourselves smack in the middle of the Pacific Ocean heading south in solitude. Later, the sun would vanish into the sea in the west, as the colors of the sky and sea slowly changed.



Figure 2: The Ogasawara Maru



Figure 3: a brown booby

In contrast with the familiar sight of dusk in the city, here there was nothing to obstruct our view. I tried sticking my head out a little from the front of the ship, intentionally avoiding letting any of the ship's equipment enter my field of vision. All my eyes could see were the sun, the sky, the sea, and wispy bits of cloud. The damp salty sea wind blew against the side of my face. And there, I let my imagination go. I discovered the uncanny sense that I was flying, all by myself, smack in the middle of the wide Pacific Ocean. Yes, just like the brown booby we had met a little after noon.

I wondered what a brown booby has in its thoughts as it flies along all alone. Naturally it travels the water's surface looking for fish to catch. But can that be where it ends? Might it not in fact be pondering topics much more philosophical? I believe it is given up entirely to a world of all kinds of deep contemplation, as it abandons its physical frame to Mother Nature: What is truth? What am I? What is the providence?

I decided that I, too, would take the time to ponder this and that. To try out the kind of meditation that I'd forgotten about in the bustle of my everyday life. As I thought about this, and gazed upon the ever-changing colors of the sky and sea in front of me, before long the sun had disappeared from view, and it was no longer possible to distinguish sky from sea.

"It's gotten a bit chilly." My wife's voice returned me to myself and we went back inside the cabin, but I found myself longing to have had more time to meditate. After a little while, the moon became visible from the window of the cabin. It was full. Next I looked upon the moon, as I let my thoughts wander here and there. And it was as if time had agreed to accompany me, passing along at an unhurried pace.

I have a tendency to think there is value in busyness, believing that being busy is good, and even taking pride in not having enough time. However, my sea voyage this time made me realize that this way of thinking is not necessarily correct. It's not the same with things like planes or trains or cars. On a train, the view before your eyes changes with bewildering speed, and you are bombarded by one fresh stimulation after the next. In the case of a plane,

you are subjected the entire time to feelings of tension, bound to a tiny seat and forced into discomfort. And as for a car, you get the disadvantages of both a train and a plane. Either way, you'd be hard-pressed to find any serenity.

The ship offers us a relaxing time and space, welcoming us with great openness, and inviting us to a world of deep contemplation. There is no other mode of transportation like it.

Even today, ships continue to have a special place in my heart.



Figure 4: sunset



## Selection from TOP 100 Japanese Innovations

### “Fish finders”

#### Brief Description

While gaining market recognition, fishfinders underwent technical improvements. In 1950, with the aim of improving the accuracy and usability of ultrasonic recorders, Kiyotaka Furuno developed and adopted a new belt-type recording mechanism (Japanese Utility Model Publication *Jikkosho* No. 26-11467). Conventional fishfinders were either a circular-arc type or a linear reciprocating type, where a pen moved back and forth on a groove specially cut on a roller. A belt-type recorder was designed in such a way that the pen attached to the belt moved at a certain speed in a certain direction to make a record. In comparison with conventional fishfinders, the new type did not easily break down and its cost was lower.

In those days, Furuno Electric Co., Ltd. (hereinafter referred to as “Furuno”) purchased waterway protection devices from Nippon Electric Company, Limited, and modified them to manufacture fishfinders for commercial use. The two-tube amplifiers of a waterway protection device were increased to three and an oscillator hardened by resin was directly installed on the bottom of a ship. To manufacture fishfinders more efficiently, they needed to manufacture them on their own instead of modifying existing products. For this reason, Furuno obtained the right to use patented inventions related to oscillators for fish finders. The patent (No. 109289) for an NA magnetostriction oscillator, a component of a fishfinder, was held jointly by Heiichi Nukiyama, professor at Tohoku University, and Kenji Aoyagi, professor at Osaka University. In the summer of 1950, they both willingly agreed to the use of the patent, allowing Furuno to manufacture fishfinders internally.

Furuno further continued its efforts to promote technological development of fishfinders. Fishfinders were initially used effectively in purse seining. Kiyotaka invented the White Line function (Japanese Patent Publication *Tokkosho* No. 31-3583), which enabled fishfinders to be also used for trawl fishing. The White Line function distinguished a fish school near the seabed by displaying the seabed as white space. In 1956, a fishfinder exclusively for trawl fishing was first launched on the market.

In 1967, searchlight sonar was developed to allow for an extensive search in a horizontal direction instead of a downward direction as with conventional sonar. In 1970, they started the shipment of a scanning sonar system that could instantaneously capture images in a wide range by electronically steering beams. Furuno has since then continued to develop new technologies one after another.

To facilitate the spread of fishfinders, Furuno published “Gyotan shiryo (Dai-ikko) – Furuno-shiki gyoguntanchiki-kiroku-niyoru gyoshu no hanbetsu ni tsuite (Materials on Fishfinders, 1st draft, Differentiation of fish species based on records from the Furuno-style fishfinder)” in October 1952. The materials included fish finding records obtained from fishing boats that were useful to 1) identify fish species, 2) understand the ecology of fish schools, and 3) improve fishing gear. Furuno was successful in increasing the number of users of fishfinders through their simultaneous efforts of providing information as described above and spreading the use of fish finders.

In 1948, when the fishfinder was invented, Kiyotaka did not apply for a patent. This resulted in letting many competitors enter the market of fishfinders. To maintain its first-mover



advantage in the fishfinder market, Furuno applied for and obtained many invention patents and utility model patents from 1951 (Tables 1 and 2). The number of registered invention patents reached 34 and that of registered utility model patents reached 49.

## Background of Innovation

Kiyotaka Furuno, the founder of Furuno Electric Co., Ltd., was born in 1920 as the first boy of 11 children in Minami-arima-cho, Nagasaki Prefecture. In 1937 when he became 16 years old, he graduated from Shimabara Junior High School after completing four years of study there and passed the qualification examination for chief engineer at designated radio counseling offices. In September that year, he started a radio repair shop with financial aid from his parents. He acquired a certificate as an A-grade electrician in 1938 and, in 1939, started to engage mainly in ship electrical work. In those days, due to the shortage of goods, when necessary parts were not available for repair, he handmade them using whatever was available at hand. Partly thanks to the local reputation of his father, who was a teacher, Kiyotaka gradually gained the trust of the community in that area.

Kiyotaka's brother Kiyokata then joined him. There was conscription in those days and it was possible for Kiyotaka to be recruited when he became 20. In order to support his family, he persuaded his brother Kiyokata saying: "If you go to junior high school, it will be too late. Without a successor, it will be impossible to support our younger brothers. I have been devoting all my efforts to this business. Please give up going to junior high school." Kiyokata passed the examination for professional radio engineer in 1941 at the age of 15, the youngest successful applicant in those days. In 1942, he acquired a certificate as an A-grade electrician.

During WWII and in the postwar period, Furuno was engaged in installation and repair of power generators for fish luring lights of fishing boats. While the two brothers were engaged in electric work for fishing boats together, Kiyotaka thought that the fishing industry was the furthest behind in terms of technology.

The idea behind the development of a fishfinder started when Kiyotaka met a boatman. In around 1943, the boatman told Kiyotaka, while he was performing electrical work on a ship, that there was a large school of fish where air bubbles were coming up. In December 1945, immediately after WWII, he started developing a method to find fish by scientifically identify-



Photo provided by Furuno Electric Co., Ltd.  
Furuno Electric Industries, Ltd. located in front of Nagasaki Station in around 1950 (Kiyotaka Furuno in the middle of the front row)

ing the place where air bubbles were emerging.

He considered applying the ultrasonic wave theory in determining the location of fish. He found an echo sounder among the navy's surplus goods and started experiments using it. It took nearly one year for him to complete the development of the first fishfinder by modifying the echo sounder. The first on-site experiment was conducted in April 1947 at Goto-nada in Nagasaki Prefecture. It was confirmed that, while the device was significantly affected by ship engine noise, only if such noise could be removed, would it be possible to detect fish schools using the fishfinder.

After repeated experiments, not only the detection rate of fish schools but also the probability of improving catches of fish was gradually rising. At the same time, however, fishermen raised objections against the use of the fish finder. The reason was that, because conventional fishing had since ancient times depended on fishermen's intuition and experience, if machines could substitute for them, fishermen, particularly chief fishermen, might lose their jobs.

In December 1948, Kiyotaka and Kiyokata established Furuno Electric Industries, Ltd. to launch their full-scale efforts to sell their fishfinder. The price per device was 600000 yen at that time. The fishfinder was improved to a level such that it was able to distinguish between different fish species and differentiate big from small fish schools. Despite the improved performance of the device, immediately after its launch on the market, Furuno received a large number of returned products from customers. This was because fishermen could not use the fishfinder effectively. To make best use of its performance, it was necessary to review the fishing method itself.

In May 1949, an opportunity came for them to verify the effectiveness of fishing using the fish finder. They were able to gain cooperation from Mr. Masuda, the ship-owner of Masutomi-maru at Iwase-ura Fishing Port on the Goto Islands. Masutomi-maru was a fishing boat whose catch was the smallest at the port. They installed Furuno's fishfinder on Masutomi-maru and Kiyokata served as temporary chief fisherman. The result was a great success. They operated 20 days a month and achieved a catch of 33000 boxes. Masutomi-maru was ranked first for three consecutive months at Iwase-ura Fishing Port.

Thanks to this success, the effectiveness of the fishfinder was recognized by other fishermen. In October 1949, all the fishing boats at Iwase-ura were equipped with the fishfinder. In November 1949, while the largest catch of the fleet of Narao, which was not equipped with any fishfinder, was 11000 boxes and the smallest was 500 boxes, the largest catch at Iwase-ura was 33000 boxes and the smallest was 13000 boxes.

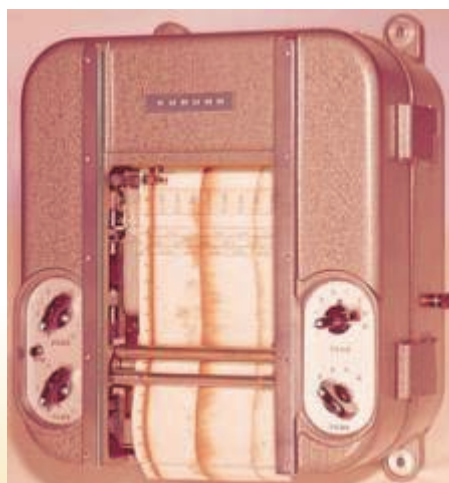


Photo provided by Furuno Electric Co., Ltd.  
Early mass-produced fishfinder F-261 (1950s)

In September 1950, in order to respond to a rapid increase in the demand for fishfinders, Hanshin Electric Industries, Co., Ltd., a plant specializing in fishfinders, was established in Kobe. In March the next year, however, the plant burnt down. Suisan Electric Industries, Co., Ltd. was immediately established as its successor.

In 1952, some young researchers from Aoyagi Laboratory at Osaka University joined the company as temporary employees. In the following years, a cooperative relationship, in terms of human resources and technology, was established between Osaka University and Furuno. According to Furuno, through this relationship, they were able to secure many outstanding researchers. During this period, they started research on and development of wireless devices, in addition to fishfinders. It was also during this period that Furuno expanded its sales area to Hachinohe, where there were large-scale fisheries, in addition to their existing sales channel in the Kyushu region.

In 1953, the company built up its own distribution network for fishfinders. Until then, Furuno Electric Industries, Ltd. was responsible for the sales of fishfinders in the area west of Kobe, and Suisan Electric Industries, Co., Ltd. in the area east of Kobe. The establishment of the new distribution network enabled Suisan Electric Industries to focus on research and production and Furuno Electric Industries on sales and services.

In March 1955, Kiyotaka made the “Sekai no Furuno (World Competitive Furuno)” declaration with the aim of expanding its business globally. Looking back on those days, one of Furuno’s employees said: “To be honest, it did not fit the company’s character. There was no feeling of being “global” at all. Everyone at the office thought that it was just nonsense, like ‘What is he talking about?’” In August the same year, the business of the limited partnership company was transferred to Furuno Electric Co., Ltd. and a unified, in-house production system was established.

The company started to expand its business globally in 1956. Unlike the direct selling method in Japan, they initially adopted an agency distribution system via trading companies mainly in East Asian countries, such as China, North Korea, the Philippines and Taiwan, and European countries, such as Greece and Norway. In 1958, they started exporting to the United States. In 1960, the International Trade Department was established to launch full-scale efforts to increase exports. They opened their European office in Hamburg, Germany, in 1968, followed by a South African office in Cape Town in 1969, a North American office in Manhattan, New York, also in 1969; and, in 1970, the South and Central American office in Callao, Peru, the Spain office in Madrid, the Thailand office in Bangkok, and the Indonesian office in Jakarta. The roles of these overseas offices were to 1) establish a sales base and a system to provide services from scratch; 2) find a partner/distributor to establish a sales channel; 3) enhance the sales base and the system to provide services; and 4) close the office when the distributor became independent.

## Outline of the development of invented technologies

While gaining market recognition, fishfinders underwent technical improvements. In 1950, with the aim of improving the accuracy and usability of ultrasonic recorders, Kiyotaka Furuno developed and adopted a new belt-type recording mechanism (Japanese Utility Model Publication *Jikkosho* No. 26-11467). Conventional fishfinders were either a circular-arc type or a linear reciprocating type, where a pen moved back and forth on a groove specially cut on a roller. A belt-type recorder was designed in such a way that the pen attached to the belt moved at a certain speed in a certain direction to make a record. In comparison with conven-



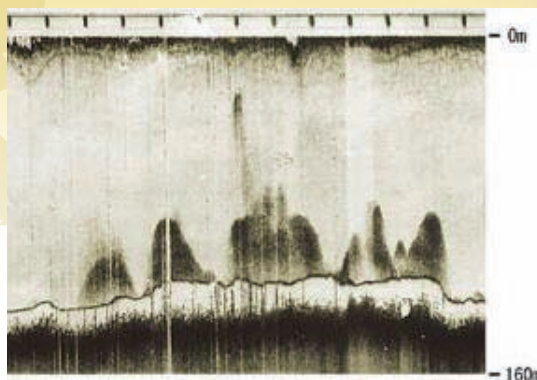


Photo provided by Furuno Electric Co., Ltd.  
Image of a school of bream near the sea bottom (off the coast of Niigata, 1950s)

tional fishfinders, the new type did not easily break down and its cost was lower.

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patents and utility model patents from 1951 (Tables 1 and 2). The number of registered invention patents reached 34 and that of registered utility model patents reached 49.

Table 1: Registered patents of Kiyotaka Furuno (Kokoku (publications) 1952-1954)

| Year of publication | Name of invention (Publicaiton No.)   |
|---------------------|---|
| 1952                | Fish finder echo sounder and obstacle detector using shock ultrasonic waves or shock high-frequency waves (Japanese Patent Publication Tokkosho No. 27-5241)  |
| 1953                | Fish finding method (Japanese Patent Publication Tokkosho No. 28-1183)<br>Magnetic display-type fish finder (Japanese Patent Publication Tokkosho No. 28-1184), Sparkling sound wave and ultrasonic generator for fish finders and echo sounders (Japanese Patent Publication Tokkosho No. 28-3570)<br>Resonant sound wave division recording device (Japanese Patent Publication Tokkosho No. 29-7534) |
| 1954                | Recorder of fish schools and water temperatures (Japanese Patent Publication Tokkosho No. 29-7533)<br>Panoramic acoustic measurement method to detect submerged objects (Japanese Patent Publication Tokkosho No. 29-7535)  |

Source: Furuno Electric Co., Ltd. Furuno 60 nen-shi – Chie to sozo no monogatari: For the next stage (Furuno's 60-year history - Story of wisdom and creation: For the next stage), Furuno Electric Co., Ltd.; 2008.

Table 2: Registered utility model patents of Kiyotaka Furuno (Kokoku (publications) 1951-1954)

| Year of publication | Name of invention (Publicaiton No.)  |
|---------------------|--|
| 1951                | Recorder for detecting the seabed and fish schools (Japanese Utility Model Publication Jikkosho No. 26-11467)  |
| 1952                | Horizontality retaining device for sonic and ultrasonic echo sounder transducers (Japanese Utility Model Publication Jikkosho No. 27-2167)<br>Simultaneous switching device for oscillating and receiving sound waves (Japanese Utility Model Publication Jikkosho No. 27-5260)<br>Belt-type zero latitude line recorder (Japanese Utility Model Publication Jikkosho No. 27-5261)<br>Depth recorder (Japanese Utility Model Publication Jikkosho No. 27-5972)<br>Belt-type minute/hour line recorder (Japanese Utility Model Publication Jikkosho No. 27-8231)<br>Selector switch between oscillation and receipt of sound waves (Japanese Utility Model Publication Jikkosho No. 27-7377)<br>Belt-type simultaneous recorder of zero latitude lines and minute/hour lines (Japanese Utility Model Publication Jikkosho No. 27-8282)<br>Structure of a recording device for the echo of sound waves (Japanese Utility Model Publication Jikkosho No. 27-9070)<br>Recording device for fish finders (Japanese Utility Model Publication Jikkosho No. 27-10165) |
| 1953                | Sparkling electrode device for ultrasonic generation (Japanese Utility Model Publication Jikkosho No. 28-5404)<br>Oscillator holding device for ultrasonic fish finders (Japanese Utility Model Publication Jikkosho No. 28-5478)<br>Fish luring light (Japanese Utility Model Publication Jikkosho No. 28-5665)<br>Multiple resonant sound wave recorder (Japanese Utility Model Publication Jikkosho No. 28-10177)<br>Recording device for fish finders (Japanese Utility Model Publication Jikkosho No. 28-8572)<br>Holding device for barium titanate oscillators (Japanese Utility Model Publication Jikkosho No. 28-8016)  |
| 1954                | Recorder of submerged objects (Japanese Utility Model Publication Jikkosho No. 29-6564)<br>Recorder of the seabed and fish schools (Japanese Utility Model Publication Jikkosho No. 29-14186)  |

Source: Furuno Electric Co., Ltd. Furuno 60 nen-shi – Chie to sozo no monogatari: For the next stage (Furuno's 60-year history - Story of wisdom and creation: For the next stage), Furuno Electric Co., Ltd.; 2008.

(Descriptions in the text)

\* For names of companies and products, each company's brand names or registered trademarks are used.

\* Names of people are shown without title.

## Major awards received

(Furuno Electric Co., Ltd.)

- 1971-2013: National Marine Electronics Association Award (National Marine Electronics Association)
- 2014: the 7th Denki no Ishizue (Basis of Electricity) Award (The Institute of Electrical Engineers of Japan)

(Kiyotaka Furuno)

- 1961: National Invention Award "Invention Prize" (Japan Institute of Invention and Innovation)
- 1965: Director General of the Science and Technology Agency Award
- 1976: Award from the Minister of Transport, etc.

(Kiyokata Furuno)

- 1982: Award from the Minister of Transport, etc.

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- Iwabori, Y. Gyogo no kagaku-ka ni ikiru Furuno (Furuno applying science to marine fisheries), Furuno Electric Co., Ltd.; 1978
- Furuno Electric Co., Ltd. Furuno 60 nen-shi - Chie to sozo no monogatari: For the next stage (Furuno's 60-year history - Story of wisdom and creation: For the next stage), Furuno Electric Co., Ltd.; 2008.
- Furuno Electric Co., Ltd. Kigyo Dayori: "Size ga wakaru" gyogun tanchiki no kaihatsu ni miru sangaku no renkei (Company Newsletter: Industry-academia cooperation in the development of fish finders that can determine sizes). Nippon Suisan Gakkaishi (Journal of the Japanese Society of Fisheries Science) Vol. 74 No. 5; 2008. 982-983
- Furuno Electric Co., Ltd. Nobiyuku Furuno (Growing Furuno). Furuno Electric Co., Ltd.; 1968.
- Fujiwara, J. Gyotan no soseiki narabini genzai madeno gijyutsu no hensen (The initial stage of fish finders and change in technology up to the present). Journal of the Acoustical Society of Japan Vo. 43 No. 9. 706-707



## Happenings in Japan (Four-Frame Cartoon)



## Editors' Note



Hello, it's Mitty.

Our selection in this issue from the “Top 100 Japanese Innovations” is the fish finders. Japan consumes more fish than any other country in the world. In order for the fish to be consumed, there needs to be a supply, and the fish finders found its origins when a method was sought to increase that supply as efficiently as possible. It might be hard to see the wisdom that goes into what the work of intellectual property brings to us, but at heart it is always about consideration for how to make people's daily lives better. I believe it is about thinking optimistically about how to make things that are more convenient, improved, and ready for tomorrow. When I realize that things that I take for granted exist because of the consideration of those who came before me, it makes me cherish them and fills me with gratitude. I feel lucky to be able to have a job that involves working with the wonderful rights governing such intellectual property. When someone realizes a lack that calls for an invention—that is when the seed of an idea has been planted; when they start to give it a shape—that is the first sprouting; the patent application is the invention's flowering, while its final registration and coming into use for the benefit of the world may be called the bearing of the fruit. The fruits of intellectual property rights may be found everywhere you look, and they will surely only increase into the future. I hope all of you continue to play a more and more active role in this field, and I hope that the consideration of people's needs that springs from the work of intellectual property rights is spread till we find it here, there, and everywhere. The Japanese year starts in April and ends the following March, so this marks our final edition for 2017. Thank you for reading this year, and we look forward to meeting you again in the new year.



Hello! It's Hiroko.

Have you ever visited the Tsukiji Fish Market in Tokyo? It's one of the world's largest wholesale fish markets, handling over 2000 tons of marine products a day. Originally established in the land reclaimed from the Tokyo Bay in the Edo period, the market has now developed into one of the major tourist attractions in Tokyo, despite having been once destroyed in the Great Kanto Earthquake of 1923.

We take it for granted that we can eat fresh sashimi (raw fish) and sushi every day. However, it is largely the result of a groundbreaking freezing technology, the “Cells Alive System” (CAS) that was developed in recent years. Thanks to the CAS, the food cells are hardly damaged, maintaining their original flavor, texture and color.

With the aging of the Tsukiji facilities, the Tokyo Metropolitan Government has decided to relocate them to a new site, Toyosu in October 2018. If you have a chance to visit Tokyo before October 2018, why don't you get up early to watch the famous tuna auction and eat a fresh sushi breakfast at the Tsukiji Market?

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