

Chapter 2

Cooperation with Developing Countries and Countermeasures Against Counterfeits

1 Present Status of Cooperation with Developing Countries

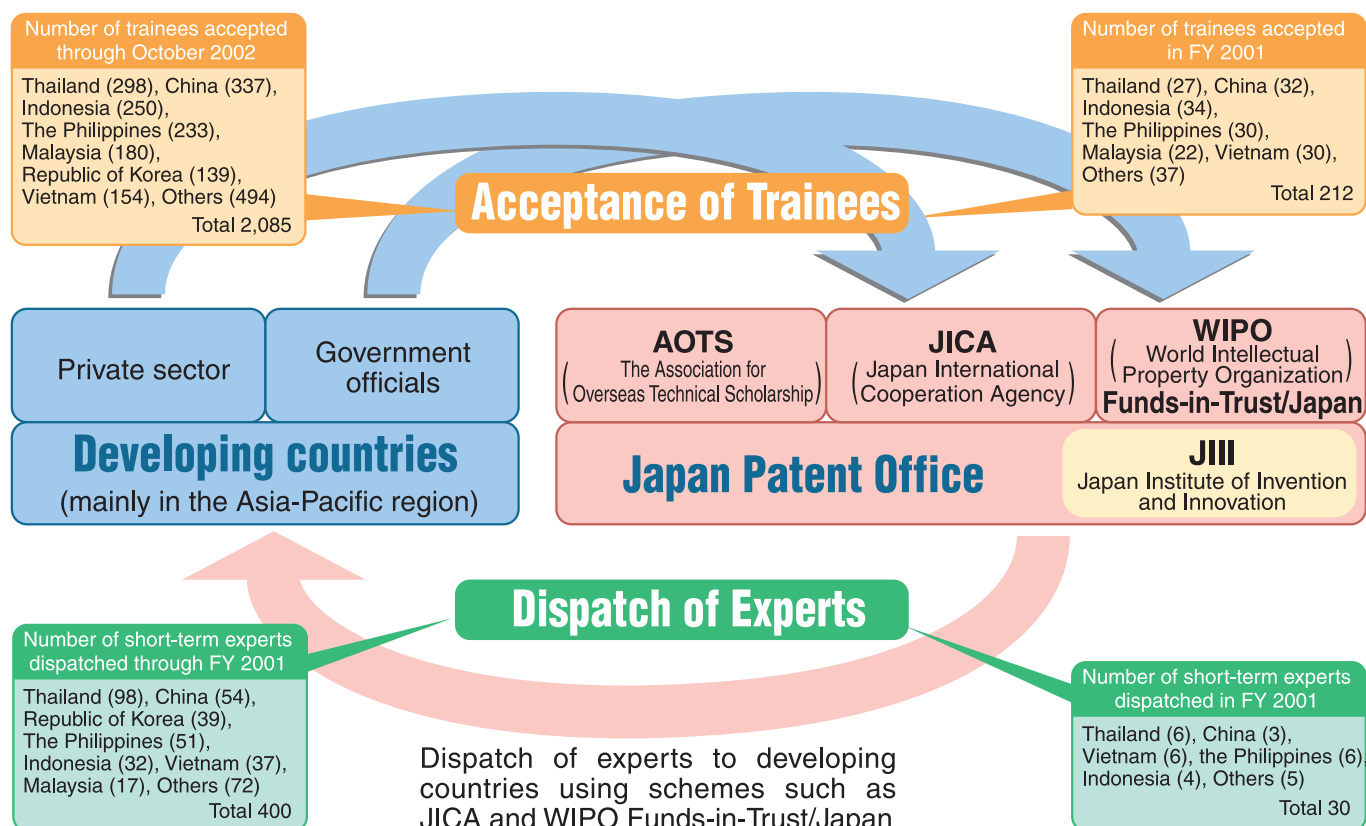
1. Present Situation of Cooperation with Developing Countries

All over the world, R&D and business activities are becoming increasingly global and borderless, and the securing of worldwide IP protection is becoming an extremely important issue. IP protection is a key factor for promoting foreign investment and technology transfer as well as for boosting a nation's industrial development. This brings considerable economic benefits to Asia-Pacific nations. Since developing countries became obliged to implement the WTO/TRIPS Agreement on January 1, 2000, legal systems for IP protection have been enhanced worldwide. In order to protect IPR adequately, it is significant not only to set up an appropriate legal system, but also to upgrade IPR system practices.

Japan considers it critical to ensure an adequate IPR protection system for economic growth of the region and therefore extends cooperation in areas such as human resource development, automation and information processing at IP Offices, and examination and search, particularly to Asia-Pacific countries through various schemes such as the Japan International Cooperation Agency (JICA) program and WIPO Funds-in-Trust/Japan*

*Voluntary contributions for WIPO Funds-in-Trust/Japan

Since 1987, the Japanese government has been providing voluntary contributions to the World Intellectual Property Organization (WIPO) "WIPO Funds-in-Trust/Japan" was established with these voluntary funds and it is used to finance various projects every year for WIPO member countries in the Economic and Social Commission for Asia and Pacific (ESCAP), such as the holding of IP Office conferences or symposia, acceptance of trainees and IPR research students, dispatch of JPO officers and support for automation and modernization of IP Offices.



(1) Human Resource Development Cooperation

(a) Symposia

As part of WIPO Funds-in-Trust/Japan activities, the following principal meetings were held:

● WIPO Asia-Pacific Regional Forum

On September 12 and 13, 2001, the heads of intellectual property Offices and senior officials responsible for intellectual property policy of 24 countries in the Asia-Pacific region gathered in Tokyo for the WIPO Asia-Pacific Regional Forum on the Role of Intellectual Property Offices in the 21st Century. On the final day, the Joint Statement of this forum was adopted.

● WIPO Asian Regional Workshop

In October 2001, the workshop under the theme of "International Protection of Marks" was held in Ho Chi Minh, Viet Nam.

In February 2002, the workshop under the theme of "Use of Information Technology in the Management of Industrial Property Rights for Small and Medium-sized Enterprises (SMEs)" was held in Bangkok, Thailand.

In April 2002, the workshop under the theme of "Technology Management and Commercialization of Inventions and Research Results" was held in Teheran, Iran.

(b) Dispatch of IP Experts

The JPO is dispatching officials to developing countries as experts and seminar instructors specializing in various areas of IPR by utilizing WIPO Funds-in-Trust/Japan and a dispatch scheme of the Japan International Cooperation Agency (JICA). The dispatched experts mainly provide on site instruction on examination practice, computerization, PCT practices and so forth.

(c) Training Programs

In order to support developing countries obligated to implement the TRIPS agreement, between April 1996 and March 2002, Japan received 1419 trainees in both the public and private sectors mainly from 42 countries and one economy in the Asia-Pacific region. Henceforth, Japan will support the establishment of intellectual property rights systems in the least developed countries obliged to implement the WTO/TRIPS in 2006, and will proceed with human resource development activities with the emphasis on enforcement aimed at efficient implementation of laws.

(d) Long-term Fellowships in Intellectual Property Rights

As part of the WIPO Funds-in-Trust/Japan Programs, the JPO invites those in such positions as IPR instructors in developing countries to Japan for approximately four months and provides them a chance to conduct autonomous IPR research activities in the JPO and JIII (Japan Institute of Invention and Innovation). In FY 2001, one long-term fellow each was received from Cambodia, Sri Lanka and Thailand.

In FY 2001, the JPO accepted one long-term trainee each from Indonesia and the Philippines for about six months under an Independent Project.

(e) Enforcement Seminars

The JPO has held enforcement seminars aimed at developing human resources engaged in IP enforcement including customs officers, police officers and court officials, and supporting enlightenment regarding and dissemination of IPR systems in the Asia-Pacific region. The seminar program included basic lectures on IPRs, presentations by participant countries on the present status of enforcement in their respective countries, and information exchanges. In FY 2001 seminars were held in the Republic of Korea (June 2001) and in Singapore (March 2001).

(2) Computerization Cooperation

The JPO implemented a project to establish a patent document search system in the Department of Intellectual Property of Thailand for the 5 years up to June 2000 through technical cooperation under the auspices of the Japan International Cooperation Agency (JICA). The JPO began cooperation by the same method for the establishment of application processing systems from FY 1999 in the Intellectual Property Office of the Philippines and from the FY 2000 in the National Office of Industrial Property of Viet Nam.

(3) Provision of the examination results

In support of promoting substantive examination process for design applications in developing countries, the JPO provides examination results of Japanese design applications (only for registered applications) for the patent office of a target developing country with respect to the design application filed both in Japan and the target country.

As for Thailand, the JPO provided the Department of Intellectual Property of Thailand (DIP) with the examination results for approx. 80 design applications during the period from January to July 2002. As for Vietnam, the JPO also provided the National Office of Industrial Property (NOIP) with such information for 35 design applications during the period from September to November 2002.

2. Construction of the Asian Industrial Property Network (AIPN)

The Asian Industrial Property Network (AIPN) is a system for providing JPO examination-related information with patent Offices in developing countries in the Asia-Pacific region. This network is designed to properly provide examination results concerning corresponding Japanese patent applications with patent Offices in Asia-Pacific developing countries where the modified substantive examination system (see Part II, Chapter 1 [1] 3) is not adopted, and to speed up the process for obtaining rights in such countries through effective use of examination results.

More specifically, efforts will be made to construct a system in which examiners of patent Offices in Asia-Pacific developing countries can access JPO examination-related information including information on patent families in English through the network by entering application numbers of corresponding Japanese patent applications. This system will start in the first half of 2003.

3. Present Situation of APEC Cooperation

(i) APEC/IPEG

Asia Pacific Economic Cooperation (APEC) is a regional forum aiming to deregulate and facilitate trade, investment as well as economic and technical cooperation in the region. There are 21 member countries and regions. In the APEC summit meeting held in Osaka in 1995, intellectual property was taken as one of the 15 priority fields, and the Intellectual Property Rights Experts Group (APEC/IPEG) was established as an expert forum specializing in this field.

(ii) Role of IPEG

IPEG has a role within the entire framework of APEC in promoting deregulation and facilitation of trade and investment from the perspective of intellectual property rights. Furthermore, it is a forum consisting of countries that have nearly achieved the minimum level of IPR protection under the TRIPS Agreement. For these reasons, IPEG enables deeper policy discussion on intellectual property compared to discussion on harmonization of substantive patent laws. In this sense, IPEG also plays the role of coordinating opinions prior to other multi-regional forums (such as WIPO and WTO/TRIPS).

(iii) Japan's Contribution

After chairing and leading the overall activities of IPEG during the three terms since its foundation, Japan turned over the chairmanship to Chinese Taipei (Taiwan) in March 2002. Japan will continue contributing to IPEG by supporting the new presidency and will lead a discussion on various issues in the joint action plan.

In 2002, in response to requests from industry to strengthen IPR enforcement, Japan submitted a proposal to establish "Intellectual Property Service Centers" (provisional name) in APEC countries and regions for the purpose of providing right holders with general information concerning IPR enforcement.

2 Measures Against Counterfeits

1. Present Situation of Counterfeit Damage and Countermeasures in Industry

In recent years, damage due to counterfeits of products manufactured by Japanese companies has been increasing. Along with the development of industrial technology in the Asian region including China, Taiwan and the Republic of Korea, infringement of patent, trademark, and design rights is also increasing. Furthermore, in the midst of economic globalization, counterfeits manufactured mainly in those East Asian countries enter markets in the entire Asian region including Japan, resulting in further increase in counterfeit damage.

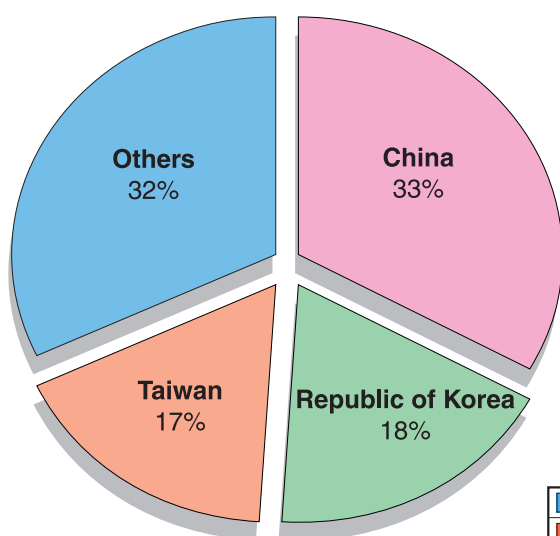
The flood of counterfeits has a negative impact on the activities of Japanese companies, such as loss of potential profits in foreign markets, deterioration of brand image among consumers who have purchased poor-quality counterfeits, and an increase in problems concerning product liability. To deal with this, it is necessary for Japanese companies to actively take countermeasures against counterfeits when undertaking business abroad.

Recently, more companies and industries have been earnestly taking counterfeit measures, e.g. requesting local regulatory authorities to crack down on counterfeits by identifying the manufacturers and distribution channels of counterfeits through vigorous investigation activities. However, such measures require persistent effort, and limitations on human and financial resources sometimes hamper full implementation. It also cannot be denied that there is a limit to the negotiation ability of individual companies and associations with local governments and enforcement authorities.

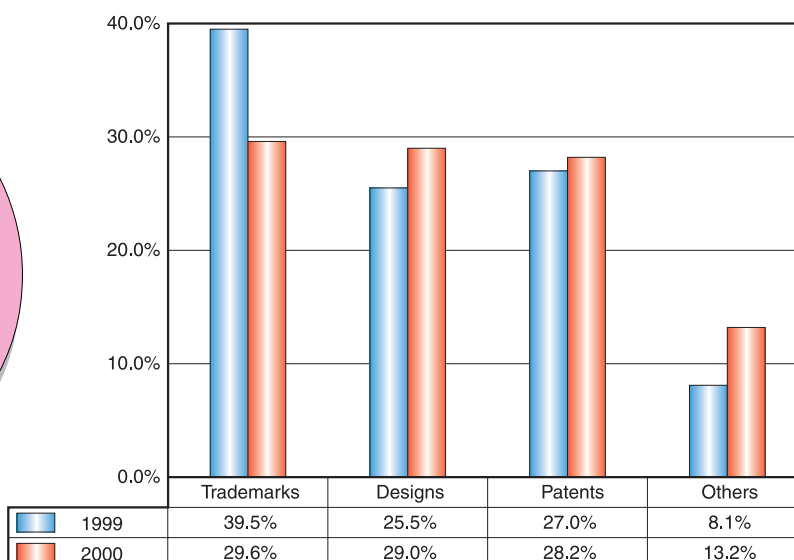
Under these circumstances, the International Intellectual Property Protection Forum (IIPPF)¹ was established in April 2002 with the aim of promoting cross-industry cooperation for Japanese companies to reinforce counterfeit measures in concert with the Japanese government. For the time being, the IIPPF will carry out projects to formulate recommendations from industrial circles regarding counterfeit problems, request governments of infringing countries to reinforce counterfeit measures, carry out information exchange, research and study, and cooperate in human resource development for governments of infringing countries.

Report on FY2001 Survey of Counterfeit Damages

Countries and regions producing counterfeits



Rights Infringed and their Overall Shape



349 Japanese companies suffered damage due to counterfeits produced in China, accounting for the largest share. (China 33%, Republic of Korea 18%, and Taiwan 17%.)

The number of trademark infringements decreased while The share of patent and utility model infringements increased, which indicates an increase in The quality of counterfeits.

¹The IIPPF was established on April 16, 2002, with the participation of about 150 associations and companies. The Chairman is Mr. Yoichi Morishita, Chairman of the Board of Matsushita Electric Industrial Co. Ltd., and the Secretariat is the Japan Institute of Invention and Innovation.

2. JPO Anti-Counterfeiting Efforts

Considering the increasing seriousness of overseas counterfeits, the JPO has been taking various countermeasures.

(i) Collection of Information on Counterfeit Damage

In order to clarify damage suffered by Japanese companies abroad, the JPO carries out an annual Survey of Counterfeit Damages using questionnaires. Through offices of related associations located in Beijing, Shanghai, Hong Kong, Seoul, Bangkok and other cities, the JPO also investigates enforcement and operation aspects of local legal systems. The results of these surveys and investigations are available on the JPO Website.

(ii) Provision of Information and Consultation to Japanese Companies

In 1998, the Counterfeiting Hotline was established within the JPO to give advice to Japanese corporations. The JPO also develops pamphlets addressing individual countries in which counterfeit damages are caused and holds seminars for Japanese companies in these countries in order to provide necessary anti-counterfeiting know-how. Furthermore, the JPO will strengthen support for measures taken by Japanese industry, in cooperation with the International Intellectual Property Protection Forum.

(iii) Approaches toward Infringing Countries

As approaches toward countries and regions including China, the Republic of Korea and Taiwan, where counterfeit damage is serious, the JPO requests the governments of these infringing countries and regions to reinforce their crack down of counterfeits through bilateral negotiations such as meetings of the heads of patent Offices and high-level economic conferences. Also, within multi-regional frameworks such as the WTO Council for TRIPS, the WIPO Advisory Committee on Enforcement of IPR, the IPR Expert Meetings of APEC, and Meeting of the Intellectual Property Offices of the ASEAN+3 Countries, the JPO requests that the governments of infringing countries reinforce anti-counterfeit measures, emphasizing the importance of such measures.

(iv) Support for Infringing Countries

In order to improve the enforcement ability of countries and regions producing counterfeits, the JPO provides support for developing human resources in the local authorities concerned, such as customs and police officers and court officials. The JPO also accepts trainees from other Asian countries every year. In 2001, the JPO invited trainees to seminars in the Republic of Korea and Singapore.

(v) Cooperation with Japanese Enforcement Authorities

With the aim of preventing the production and distribution of counterfeits in Japan, the JPO makes efforts to cooperate with Japanese enforcement authorities such as customs and police by responding to inquiries on infringements from such authorities. With more counterfeits coming into Japan from the Asian region, it will be necessary to continue to reinforce such cooperation in the future.

(vi) Promotion of Public Awareness

In order to prevent innocent consumers from suffering harm due to counterfeits, the JPO provides information on counterfeit distribution. The JPO also stresses the importance of the protection of intellectual property with the aim of preventing consumers from intentionally buying counterfeits. In fiscal year 2001, the JPO opened a site called "Fake Town" on its homepage.

(URL: http://www.jpo.go.jp/shoukai/fake_town/index.html)