

# Part 3

## Conditions of Intellectual Property Activities in Japan

# Chapter 1

## Intellectual Property Strategy and Industrial Competitiveness

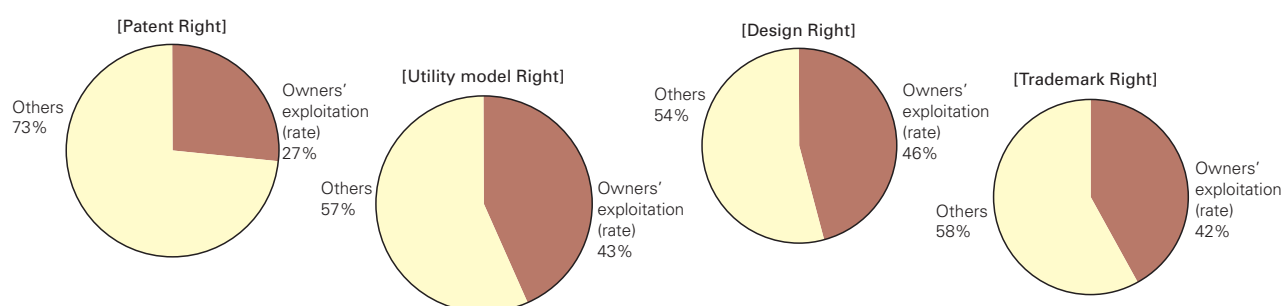
### 1. Intellectual Property Strategy Shown in Statistics

It is important to understand the actual conditions of intellectual property activities in enterprises, etc. upon planning and drawing the Intellectual Property Policy. The survey on Intellectual Property Activities<sup>11</sup> started in 2002 to investigate the actual conditions of intellectual property activities in enterprises, etc. with the objective to obtain fundamental information that would allow prompt and precise measures for various intellectual property activities correspond to "the Development of Intellectual Property Related Statistics" provided in the Intellectual Property Policy Outline.

#### (1) Conditions of Exploitation of Industrial Property Rights

The ratio of the number of the industrial property rights exploited by owner in Japan in FY2001 was around 30% for patents and 40 to 50% for utility models, designs and trademarks. The ratio of the number of design rights exploited by owners is the highest.

[Industrial Property Exploitations in Japan (FY2001)]

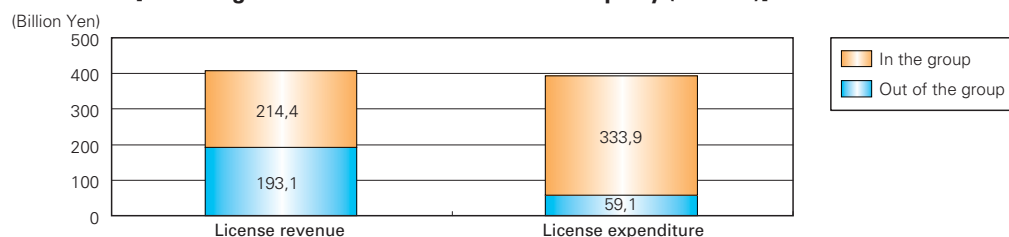


#### (2) Licensing Balance

##### (i) Licensing Balance Related to Industrial Property

A comparison of the licensing balance related to industrial property rights with foreign countries in FY2001 indicates the slight surplus with revenue of 407.5 billion yen and expenditure of 392.9 billion yen. However, if the transactions with affiliated companies are excluded, revenue was 214.4 billion yen and expenditure was 333.9 billion yen, resulting in a deficit.

[Licensing Balance Related to Industrial Property (FY2001)]



<sup>11</sup>Survey on Intellectual Property Activities investigation is an approved statistical survey as stipulated in the Statistical Reports Coordination Law the survey to prepare the approved statistical survey No. 23115), and the subjects were the following corporations, individuals and public institutes in Japan that have filed applications in 2000. (i) Census survey for those that have filed more than 2 patent applications, more than 1 applications for utility model registration more than 3 applications for design or more than 2 applications for trademark registration, and (ii) sample survey by 1/100 for those who filed application in 2000 except the aforementioned. The JPO sent 16,093 questionnaires and recovered 6,616. The recovery rate was 41.1%

The breakdown of the licensing balance by category of industrial property rights shows the surplus for patent rights with revenue of 356.6 billion yen and expenditure of 321.5 billion yen, the surplus for utility model rights with revenue of 1.1 billion yen and expenditure of 84 million yen, the surplus for design rights with revenue of 1 billion yen and expenditure of 127 million yen, and the deficit for the trademark rights with revenue of 48.7 billion yen and expenditure of 71.2 billion yen.

**[Licensing Balance by Category of Industrial Property Rights : Overseas (FY2001)]**

	Revenues (Million Yen)	Expenditure (Million Yen)	Balance (Million Yen)
Patent	356,635	321,522	35,113
Utility model	1,068	84	984
Design	1,040	127	913
Trademark	48,735	71,179	-22,444
<b>Industrial Property (Rights)</b>	<b>407,478</b>	<b>392,912</b>	<b>14,566</b>

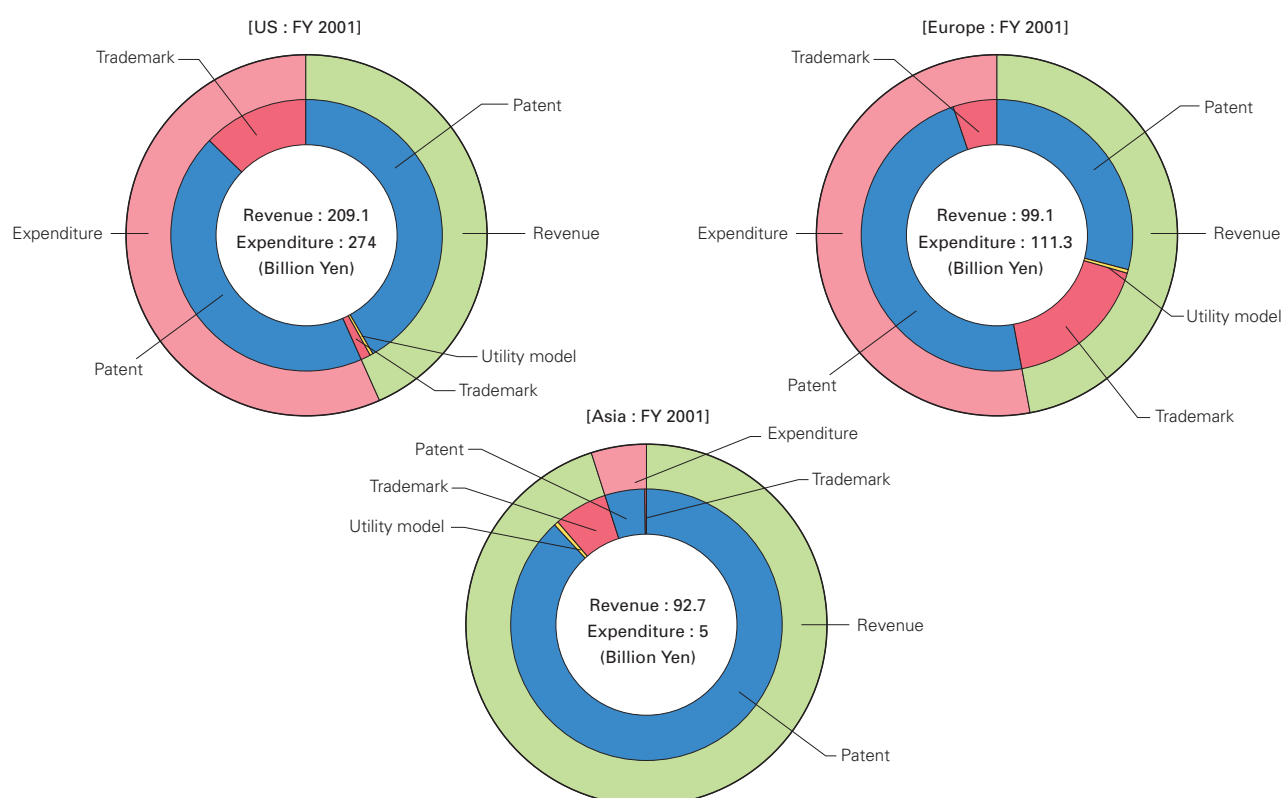
## (ii) Licensing Balance by Country

A comparison of the licensing balance related to the industrial property for FY2001 by country, indicates the deficit with the United States with revenue of 209.1 billion yen and expenditure of 274 billion yen, the deficit with Europe with revenue of 99.1 billion yen and expenditure of 111.3 billion yen and the surplus with Asia with revenue of 92.7 billion yen and expenditure of 5 billion yen.

The licensing balance for the United States shows that expenditure was excess around 6.5 billion yen. Most of the revenue and the expenditure arise from patent rights.

The licensing balance for Europe shows that expenditure was excess around 12.1 billion yen. The ratio of trademark rights in revenue for Europe is higher than for other areas.

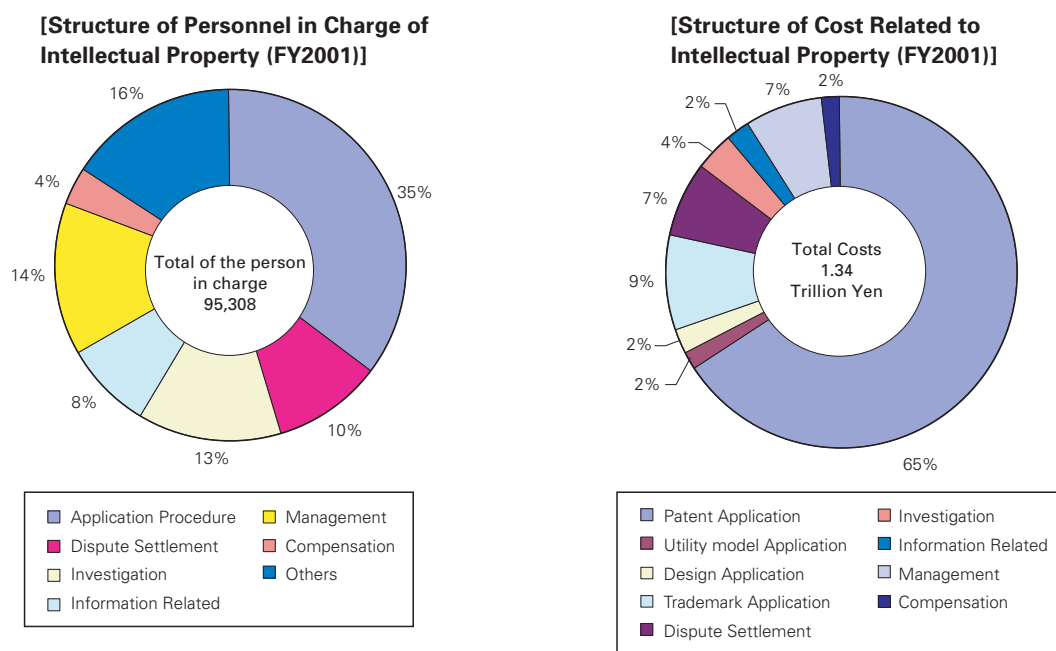
The licensing balance for Asia shows that revenue was overwhelming excess around 87.7 billion yen. The patent licensing covers most of the revenue and the expenditure although there is some from trademark rights licensing.



### (3) Systems and Cost for Intellectual Property Activities

The total number of personnel in charge of intellectual property in the Japanese enterprises, etc. is around 100,000 in FY2001. The number of those engaged in the application procedures is the largest, occupying about one-third of the total. The smallest number is those engaged in the compensation operations, around 4% of the total.

The total cost related to intellectual property for Japanese enterprises, etc. in Japan and foreign countries is about 1.34 trillion yen (840 billion yen in Japan and 504 billion yen in foreign countries), and 78% of the cost was spent on the application procedures. On the other hand, they didn't spend so much on the dispute settlements, investigation, information, management and compensation operations. Most of the cost for application procedures went to applications for patents, occupying 65% of the total cost related to intellectual property.



<The contents of the operations are as follows>

- Application Procedures :

Application related operations such as excavation inventions, evaluation of invention registries, request for preparation of specifications, preparation of specifications, specification checks, and application procedure etc., and interim processing operation such as request for examination, and response to the reason(s) for refusal (preparation of arguments and amendments), etc., operations such as registration, oppositions, trial procedures, inquiries for requirement of duration of rights, pension payment procedure, etc.

- Dispute Settlement :

Operations related to lawsuits, licensing, expert testimonies and contract management

- Investigation :

Operations related to prior art search when applying, requesting for examination and registration, etc. and investigation on dispute related matters

- Information Related :

Operations related to data acquisition such as the patent information system that supports the intellectual property activities of the company

- Management :

Operation for control and administration, planning, education and training, committee activity, support for related companies and association, etc.

- Compensation :

Operations related to preparation or selection for compensation standard, etc.

#### (4) Conditions of Infringement of Intellectual Property<sup>12</sup>

With regard to cases that Japanese enterprises conduct warnings and lawsuits in Japan based on the rights in Japan, the number of warnings concerning patents was 1,306 and the number of lawsuits was 134. Those related to patent rights amount to about half of the cases concerning industrial property. The number of warnings is 10 times larger than that of lawsuits.

On the other hand, warnings and lawsuits by Japanese enterprises based on the rights in foreign countries mostly concerned trademarks. The cases which Japanese enterprises were sued mostly concerned patents for both in and out of Japan.

**[The Numbers of Warnings and Lawsuits by Category of Industrial Property Rights (FY2001)]**

	Suing				Being sued			
	Domestic		Overseas		Domestic		Overseas	
	warnings	lawsuits	warnings	lawsuits	warnings	lawsuits	warnings	lawsuits
Patent Rights	1,306	134	202	47	986	140	391	73
Utility model Rights	191	28	18	7	104	19	10	0
Design Rights	305	31	67	6	95	15	8	2
Trademark Rights	753	64	583	96	200	45	29	14
<b>Total</b>	<b>2,555</b>	<b>257</b>	<b>870</b>	<b>156</b>	<b>1,385</b>	<b>219</b>	<b>438</b>	<b>89</b>

Most of the cases which Japanese enterprises were sued by foreign enterprises arose from American enterprises (68 cases), and the suits filed by foreign enterprises occupy around 70% of the total. Those related to patent rights amount to 59, 90% of the total.

Most of the lawsuits filed by Japanese enterprises are against Asian enterprises (90 cases), which is more than half of the number of lawsuits against foreign enterprises. The largest number of cases concerns trademark rights at 66 cases, 70% of the total.

Upon comparison of the cases of suing and being sued by foreign enterprises, the number of cases of being sued is larger in the United States and the number of cases of suing is larger in Asia. The number of cases of suing is slightly larger in Europe.

**[The Number of Lawsuits by Opponent's Nationality (FY2001)]**

Opponent's Nationality		Domestic enterprises	American enterprises	European enterprises	Asian enterprises	Others	Total
Suing	Patent Rights	132	19	1	13	0	181
	Utility model Rights	29	1	1	4	0	35
	Design Rights	29	1	0	7	0	37
	Trademark Rights	60	15	16	66	3	160
	<b>Total</b>	<b>250</b>	<b>36</b>	<b>34</b>	<b>90</b>	<b>3</b>	<b>413</b>
Being sued	Patent Rights	139	59	11	2	2	213
	Utility model Rights	19	0	0	0	0	19
	Design Rights	15	0	1	0	1	17
	Trademark Rights	35	9	9	5	1	59
	<b>Total</b>	<b>208</b>	<b>68</b>	<b>21</b>	<b>7</b>	<b>4</b>	<b>308</b>

<sup>12</sup>Since the number of cases for lawsuits and warning concerning "Conditions of infringement intellectual property was obtained from the recovered 6,616 samples, it does not necessarily agree with the number of lawsuits announced by the Supreme Court.

