



## Part 4

# International Trends and Issues

# International Trends and Issues on Industrial Property System

## 1. International Trends and Issues on the Patent System

### (1) Cooperation with Foreign Countries

#### 1) Trilateral Patent Cooperation

The Trilateral Patent Offices (JPO, USPTO, EPO), which cover over 80% of the entire number of PCT applications filed, conduct cooperative activities to resolve common issues. These activities started in 1983, and 2005 marks the 23<sup>rd</sup> year since the beginning.

The 22<sup>nd</sup> Trilateral Meeting was held in the United States between November 15 and 19, 2004, where the following issues were discussed.

#### 1. Promotion of Mutual Exploitation of Search Results

In order to cooperate in the issue of increasing examination workloads, the Trilateral Offices are working together to promote mutual exploitation of search results regarding patent applications that are redundantly filed in each patent office, and have been working on the project of mutual exploitation of search results as of January 2003.

##### (1) General Overview of the Project on Mutual Exploitation of Search Results

1) Results confirmed that the exploitation of search results from other offices is effective in enhancing examination quality and in alleviating examination workload. In particular, the EPO and USPTO pointed out the difficulty to search Japanese patent documents and expressed their expectation toward easier exploitation of search results from the JPO.

2) The Trilateral Patent Offices all agreed on the principle that in order for the patent office of the second country where an application was filed (second office) can exploit the search results, the search results of the patent office of the first country where the application was filed (first office) should be submitted in a timely manner. In particular, there was a strong request that the JPO's results of the initial examinations would be available to other offices in a timely manner.

3) The EPO and USPTO showed an understanding of the accelerated examination system and activities toward the promotion of the dissemination of PCT in Japan, and expressed their expectation toward further strengthening of activities.

##### (2) Future Plans

#### 1) Consideration of the "Concept of the Patent Prosecution Highway"

Discuss among the Trilateral Offices, based on the JPO's proposal, about the "Concept of the Patent Prosecution Highway" which enables applicants to easily file a request for an accelerated examination at the second office and obtain a patent at an early stage at the second office, in the case where a patent has been granted for that application at the first office.

#### 2) Consideration of a new institutional framework that is appropriate for the exploitation of search results

Discuss about a new international institutional framework that is appropriate for the exploitation of the first office's search results, on the premise of dissolution of the provision on linguistic discrimination as stipulated in the Hilmer Rule<sup>1</sup> and under Section 102 (e) U.S. Patent Law.

#### 3) Trilateral Examiners' Meeting

In order to promote mutual exploitation of search results for each technical field, a Trilateral Examiners' Meeting regarding 4 fields took place at the JPO in April 2005.

#### 4) Strategic Working Group

In order to focus on various issues regarding mutual exploitation of search results, the EPO held a "Trilateral Strategic Working Group" in March 2005, and the USPTO held it in September 2005.

<sup>1</sup> Under current U.S. law, U.S. patent may be used as prior art for both novelty and obviousness purposes, upon the grant of the patent, with the prior art effect being retroactive only to the earliest effective filing date in the United States, and not to the foreign filing date. This is commonly known as the Hilmer rule.

2. Discussion Toward the Development of the Dossier Access System and its Maximal Effective Exploitation

The Trilateral Patent Offices are striving to build a dossier access system where each office has access to the other offices' examination documents (dossier), with the purpose to reduce the procedure workload of applicants, and to reduce the search / examination workload of applications that are shared by all offices.

(1) Machine Translation of Dossier Information

The JPO announced it began the operation of its Advanced Industrial Property Network (AIPN) as of October 2004, which is a system where examination documents registered in Japan are machine-translated and provided to the examiners of other offices. The USPTO and EPO confirmed that they would be providing the JPO with feedback in order to increase the accuracy of machine translation.

The EPO has announced it has started the development of machine translation systems that would translate from German into English, French into English, etc.

The Trilateral Patent Offices will be further cooperating through information exchanges, etc. on the subject of improving accuracy of machine translations.

(2) Reduction of the Workload for Procedures Related to the Obligation to Disclose Information in the United States

The JPO and USPTO have agreed to cooperate in the promotion of the development of both of their dossier access system functions which are necessary to reduce the workload for procedures related to the obligation of applicants to disclose information in the United States. In addition, rules pertaining to the input of dossier information of other offices will be considered as well.

(3) Electronic Exchanges of Priority Documents

Discussions are ongoing regarding the reduction of the applicant's workload related to the submission of priority documents through electronic exchanges of these priority documents using the dossier access system. Necessary technical standards for data transfers were discussed, with the aim to establish technical standards at the Trilateral Experts' Meeting held in May 2005.

3. System Harmonization

The Trilateral Patent Offices reaffirmed the importance of harmonizing the patent systems at an early stage, and will continue their discussions based on the Trilateral Agreement Package which includes narrowing down the discussion items of the Substantive Patent Law Treaty under discussion at the WIPO.

4. Others

(1) Considerations Regarding WIPO and PCT Services

The Trilateral Offices recognized the necessity for further efficacy of WIPO's PCT services and will thus continue to exchange opinions.

(2) Information Dissemination Policies

In response to the letter sent by private business associations in Japan, the United States, and Europe to commissioners of the Trilateral Patent Offices regarding the Internet services of the Trilateral Patent Offices, the Trilateral Patent Offices agreed on the following points and decided to post these policies on the Trilateral website: 1) To continue to use the Internet as an information dissemination tool and 2) To continue to communicate with private businesses.

(3) Establishment of the Emerging Technologies Working Group

The Emerging Technologies Working Group was established to discuss about policies for appropriate examinations regarding newly emerging technologies such as nanotechnology.

## 2. International Trends and Issues on the Design Registration System

### (1) Examiners' Meetings with Foreign Intellectual Property Offices

#### a. JPO-KIPO Industrial Design Examiners Meeting

With the aim for mutual understanding of the design registration systems in Japan and Korea, and for exchange of information regarding examination methods, etc., the 1st JPO-KIPO Industrial Design Examiners Meeting was held in 2001, and since then the meeting is held once a year in either Tokyo or Daejeon. In 2004, the 4th JPO-KIPO Industrial Design Examiners Meeting was held in Daejeon, and both offices discussed a search method, judgment of similarity in each office, the revision of Korean design registration system and the status after the revision of the Japanese Design Classification.

#### b. JPO-OHIM Design Examiners' Meeting

With the launch of the registration service at the Office for Harmonization in the Internal Market (OHIM) as of April 1, 2003, the 1st JPO-OHIM Design Examiners Meeting was held in Tokyo in order to exchange information about design registration system. Further cooperation between the both offices through such meetings is expected.

### (2) International Conferences on Design

In May 2004, the "International Conference on Design" that was cooperation program co-hosted by WIPO, the Ministry of Productive Activities of Italy, and the City of Venice, in order to discuss the importance of international protection of industrial designs between various national patent offices, international governmental organizations, and non-governmental organizations, etc. was held in Venice, at which the JPO participated to exchange opinions on international issues regarding protection of industrial designs and on the future possibility of international protection of industrial designs (in the 21<sup>st</sup> century).

## 3. International Trends and Issues on the Trademark System

### (1) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

#### 1) Trends in International Trademark Applications

##### a. Applications for International Registration (filed from Japan to overseas)

In addition to the accession of Korea, the United States, and other nations in 2003, the EC also joined in 2004, which resulted in a sharp increase in the number of applications with a 183% increase over the previous year. The number is expected to continue to rise in 2005 and the countries mainly designated are China, the United States, and Korea among others.

[Number of Applications for International Registration per Month]

Number of applications per month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Number of applications in 2005	56	51	90										197
Number of designated contracting parties	646	558	824										2,028
Number of applications in 2004	38	45	62	73	53	73	53	48	72	79	58	80	734
Number of designated contracting parties	268	384	619	935	438	693	485	461	608	424	454	748	6,517
Number of applications in 2003	16	33	28	38	38	48	25	24	57	23	31	41	402
Number of designated contracting parties	147	362	316	347	469	283	292	301	427	228	316	361	3,849
Number of applications in 2002	14	17	17	15	18	32	18	20	24	14	19	29	237
Number of designated contracting parties	122	268	198	90	172	207	174	194	195	87	304	366	2,377
Number of applications in 2001	15	24	23	16	27	25	35	30	14	21	22	28	280
Number of designated contracting parties	175	348	359	200	253	239	295	382	207	360	279	162	3,259
Number of applications in 2000	-	-	12	14	14	27	19	16	19	21	23	22	187
Number of designated contracting parties	-	-	122	95	73	277	118	177	217	206	176	373	1,834

## b. Applications for International Trademark Registration (filed to Japan from overseas)

Although the number of applications was stable until 2003, it showed a never-before-seen rise in 2004, with a 134% increase over the previous year. The main countries of origin have until now been Germany, France, Italy, and Switzerland, but in 2004, the number of registrations originating from the United States drastically increased, gradually catching up to the current main countries of origin. The number of applications is expected to continue to rise in 2005 and in terms of the main countries of application, the United States have reached 2nd place next to Germany.

[Applications for International Trademark Registration per Month]

Number of applications per month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2005	400	493	828										1,721
2004	469	588	447	664	496	528	688	569	568	689	624	830	7,160
2003	367	421	454	428	476	341	616	452	383	518	439	439	5,334
2002	421	439	431	393	487	402	410	442	419	540	442	443	5,269
2001	287	458	597	465	469	352	547	696	388	375	568	506	5,708
2000	-	-	0	62	127	280	210	364	357	363	384	428	2,575

**(2) Trilateral Trademark Cooperation**

Aiming at improving the system and the practice of the trademark registration system, the Trilateral Offices (JPO, USPTO, and OHIM) have exchanged opinions and information. The first Trademark Trilateral Cooperation Meeting was held in May 2001 in Arlington, USA, and the Meeting has since then been held once every year.

At the 4<sup>th</sup> Trademark Trilateral Cooperation Meeting held in May 2004, opinions and information were exchanged regarding new developments, electronic processing and the Madrid Protocol in each office. In addition, the following results were obtained from the discussion on the projects which the offices have addressed since the second Meeting. Regarding the Trilateral Identification Manual Project, the offices have agreed to accept a list of about 7,000 identifications of goods and services (English, all classes), which the Trilateral Offices could accept, and in December 2004, a list of acceptable goods and services (the Trilateral list) was posted on the JPO website. With respect to IT issues, the offices agreed that further discussions on the Trademark Trilateral Website were to be conducted in preparation for the next Meeting and exchanged information on the standard for the data exchange of trademark information.

# Cooperation with Developing Countries and Measures Against Counterfeits

## 1. Cooperation with Asian Countries

With economic growth and globalization of corporate activities in China and other Asian countries, mutual dependency between Japan and the Asian countries is ever more deepening. Under circumstances where the dependency of the Japanese enterprises on overseas markets has generally grown, the ratios of the Asian nations have especially increased. It is apparent that Asian nations are important as they will bring significant business opportunities for the Japanese enterprises as the production bases and sales markets.

The levels of protection of intellectual property in Asian countries, however, are not sufficient compared to advanced countries such as Europe and the United States. While the obligation to execute the TRIPS Agreement became effective in developed countries in January 2000, which allowed a minimum legal system to be established in the Asian countries, its operation system remains fragile and delays in examinations along with floods of counterfeit products are seen on a daily basis. In addition, there are increasing concerns that cases of patent infringement against the Japanese enterprises will rise as a result of development of industrial technologies in countries such as China and Korea. It is essential to improve the level of protection of intellectual property in these Asian countries and to reduce the costs incurred in the acquisition and licensing of the rights in order to maintain economic growth in the Asian regions and to thoroughly utilize the business opportunities of the Japanese enterprises in Asia.

Therefore, the JPO is promoting vigorous cooperative activities with intellectual property agencies in Asian countries. The JPO endeavors to effectively exploit multilateral, bilateral and other various frameworks to request introduction and reinforcement of execution of a system that will improve the level of the protection of intellectual property in the Asian countries, and provides support for the education of human resources and development of information technology to assist the establishment of a system required to realize these goals. It is necessary to continue actively promote the reinforcement of cooperation with the intellectual agencies in the Asian countries since it will contribute to strengthening of the Japanese presence in the multilateral, bilateral and other frameworks.

Japan has been vigorously promoting the Economic Partnership Agreement (EPA) and Free Trade Agreement (FTA) with many Asian countries with the aim to realize economic union in Asia. When these movements progress, they will become necessary not only to improve the level of protection in Asian countries in the field of intellectual property but to conduct cooperative activities to harmonize the system in each country, and the JPO should be the driving force for such activities based on the experience in the Trilateral Cooperation among Japan, Europe and the United States.

### (1) The Economic Partnership Agreement (EPA) and Free Trade Agreement (FTA)

The agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership (JSEPA), the first FTA for Japan, came into force on November 30, 2002. This agreement contains a chapter on intellectual property, which provides: 1) applicants who have applied for a patent for the same invention to Japan and Singapore may acquire a patent in Singapore through a simple procedure and at a reasonable fee, if they submit the information on the patent examination results in Japan, and their English translation to the Intellectual Property Office of Singapore (effective as of August 2002), and 2) the SurfIP, intellectual property information search portal of the Intellectual Property Office of Singapore, and the database of the Intellectual Property Digital Library (IPDL) of the JPO, will be linked.

The Japan-Mexico EPA, for which negotiations began in November 2002, was signed on September 17, 2004 and became effective as of April 1, 2005. In relation to intellectual property, it is stipulated that both countries will ensure protection regarding protection of geographical indication on distilled alcoholic beverages defined in the section on "Trade of Goods" in the TRIPS Agreement. In addition, when signing the Agreement, it was confirmed in a joint statement between both leaders that necessary actions were taken by both Governments to eradicate counterfeit products and pirated goods infringing intellectual property rights and that the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks contributes to effective and global protection of trademarks. The Government of Mexico reaffirmed its willingness to undertake every effort to ratify the Protocol.

The EPA with the Philippines (JPEPA) for which negotiations officially began in February 2004, the EPA with Malaysia (JMEPA) for which negotiations officially began in January 2004 and the EPA with Thailand (JTEPA) for which negotiations officially began in February 2004 reached agreement in principle in November 2004, May 2005 and September 2005 respectively. The provisions of the agreements are currently undergoing adjustments.

Japan is currently negotiating to sign an agreement with Korea and Indonesia and is requesting them to introduce

rules that exceed the levels of the TRIPS Agreement. In addition, Japan has also begun negotiating to sign an agreement with ASEAN and is planning to negotiate on issues related to the field of intellectual property as well.

## **(2) Asia-Pacific Economic Cooperation (APEC) and Intellectual Property Rights Experts Group (IPEG)**

APEC, whose members consist of 21 countries and regions of the Asia-Pacific region, is a regional forum aiming for liberation and facilitation of trade and investment as well as economic and technical cooperation. At the APEC Economic Leaders' Meeting in Osaka held in 1995, intellectual property was adopted as one of the 15 priority areas concerning liberation and facilitation of trade and investment, and IPEG was established as an expert forum specializing in this area. IPEG has continued activities in accordance with the new Collective Action Plan (CAP) formulated in 2001 to reflect the full implementation of the TRIPS Agreement in order to promote liberation and facilitation of trades and investment.

In terms of concrete activities, IPEG holds, in addition to two periodical meetings every year, symposiums and seminars sponsored jointly by the public and private sectors. In the 21<sup>st</sup> IPEG Meeting held in August 2005, the JPO gave presentations on developments of the Dossier Access System and its efforts to simplify the application procedure. Meanwhile, Japan presented a follow-up of the Comprehensive Strategy on IPR and IPR Policy Progress Mapping, and on pro of the establishment of the IPR Service Center.

At the APEC Meeting of Ministers Responsible for Trade held in June 2005, in addition to reconfirming the important contribution to effective protection of IPR and the strengthening of its enforcement, specific measures against piracy and counterfeit goods were promoted. In addition, there was an agreement to the APEC Anti Counterfeiting and Piracy Initiative, and officials were instructed to intensify their work in the coming months to develop the guidelines called for in the initiative as concrete deliverables for the November Annual Ministers Meeting.

## **2. Cooperation in Developing Nations**

Improvement of the trade and investment environment in developing countries through reinforcement of protection of intellectual property will not only reduce business costs for Japanese enterprises engaged in businesses in those countries but also contribute to continuous growth of the world economy through the development of developing countries themselves with the increase of direct investments. The JPO has thus provided vigorous support for the education of human resources and information technology to reinforce protection of intellectual property in developing countries mostly in Asia.

With the obligation to execute the TRIPS Agreement having become effective for developing countries as of January 2000, a minimum of improvements seem to have been made to the legal systems in the developing countries. However, it is important to extend assistance to developing countries focusing on further improvements to their legal systems as well as operation systems which remain fragile. Because the levels of protection of intellectual property and the conditions of trade and investment by Japan are significantly different for each developing country, it is essential to draw detailed plans that meet the conditions of each country.

### **(1) Cooperation in the Development of Human Resources**

#### **1) Dispatch of experts**

The JPO dispatches experts and seminar instructors specialized in various areas of intellectual property rights to developing countries through WIPO Funds-in-Trust/Japan<sup>1</sup> and Japan International Cooperation Agency (JICA). The dispatched experts mainly provide on-site instructions regarding examination practices, computerization, and so forth.

#### **2) Acceptance of trainees**

The JPO received a total of 2,074 government and civilian trainees from 42 countries and 1 area in the Asia-Pacific Region during the period from April 1996 to March 2005. The JPO is also focusing on the management of the alumni associations of the trainees, which significantly contribute to the structuring of human networks between Japan and developing countries.

<sup>1</sup> Since 1987, the Japanese Government has been providing voluntary contributions to the 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 Intellectual Property (IP) office conferences or symposiums, acceptance of trainees and Intellectual Property Rights (IPR) research students, dispatch of JPO officers and support for automation and modernization of IP Offices.



# Amendments of the Intellectual Property-Related Laws

## 3) Acceptance of long-term trainees (intellectual property fellowship)

The JPO invites those who are taking or who will be taking leadership in intellectual property in the developing countries to Japan for six months as part of the WIPO Funds-in-Trust/Japan operations to offer an opportunity for self-initiated studies on intellectual property. The JPO received one long-term trainee from Indonesia and another from the Bangladesh in FY 2004. The JPO also receives long-term trainees for six months independently and received one trainee from China (SIPO) in FY 2004.

## 4) Forums, Symposiums, etc.

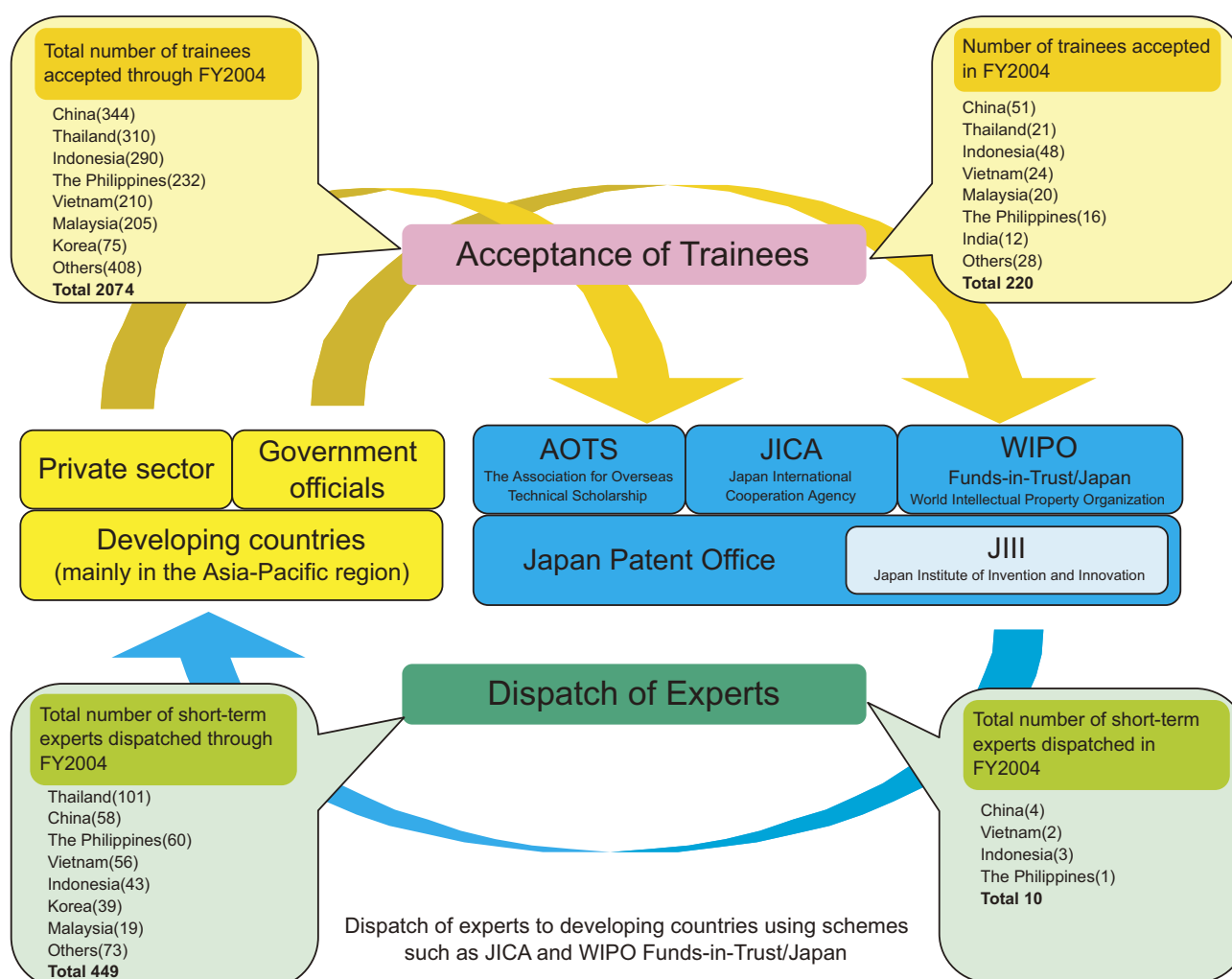
The achievements of the major meetings managed by the WIPO Funds-in-Trust/Japan are as follows:

### ○ WIPO Asia and the Pacific Regional Workshop

The workshop in December 2004 was held in Beijing (China) to discuss the theme of "Intellectual Property (IP) for Managers and Staff of Small and Medium-Sized Enterprises (SMEs) and SME Support Institutions", which was also held as a trilateral cooperation project of patent offices of Japan, China, and Korea, and 22 countries participated in the workshop.

### ○ WIPO Asia and the Pacific Regional Workshop

The workshop in December 2004 was held in Islamabad (Pakistan) to discuss the theme of "Economic Importance of Trademarks and the Madrid System", where 16 countries participated.





## **(2) Cooperation in Information Technology**

The JPO dispatched officials as long-term experts in order to engage in the JICA technical cooperation project from June 1995 to June 2000 (5 years) to the Department of Intellectual Property, Ministry of Commerce of Thailand. This project aimed to structure the patent document search system through human resources development.

The JPO dispatched long-term experts through the same scheme to the Intellectual Property Office of the Philippines from May 1999 to May 2003 (4 years). This project aimed to structure the administrative procedures through human resources development.

Follow-up cooperation for the above project has been conducted since November 2004, and the JPO dispatched short-term experts.

The JPO was engaged in the structuring of the administrative processing system with the same scheme from April 2000 to June 2004 (4 years and 3 months) for the National Office of Intellectual Property in Vietnam. Based on the results, the JPO has been cooperating in building search systems and information systems as of January 2005, for which the JPO dispatched 2 long-term experts for the development of human resources.

In Malaysia, under a JICA development study scheme, the JPO dispatched the study teams and assisted in establishing a design application processing system and support the Intellectual Property Corporation of Malaysia (IPCM) in enhancing further modernization of industrial property administrative procedures from July 2002 to February 2005.

In Indonesia, under a JICA development study scheme, the JPO have been supporting the system development on the intellectual property rights administration through the utilization of communication technology in the Directorate General of Intellectual Property Rights (DGIPR) since June 2005.

Furthermore, under a JICA Industrial Property Rights Administration Project, the JPO provides assistance in the establishment of systems to protect intellectual property rights through JICA long-term experts.

## **(3) Cooperation in Examinations**

### **1) Cooperation in design examinations**

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

The cooperation in examination between the JPO and the Department of Intellectual Property of Thailand (DIP) started in January 2002 and between the JPO and the National Office of Intellectual Property of Vietnam (NOIP) in September 2002.

### **2) Structuring Advanced Industrial Property Network (AIPN)**

The AIPN is a system that offers information related to examinations in Japan to the intellectual property offices of the developing countries in the Asian Region. It offers the results of examinations in Japan concerning the relevant patent applications to the intellectual property offices in the developing countries in the Asian Region that do not have the modified substantive examination system as well, and aims to accelerate the granting of rights at those intellectual property offices through effective exploitation of such examination results.

Specifically, the JPO has structured the information offering system from which the examiners in the intellectual property offices in the developing countries in the Asia-Pacific Region can access online application process information, cited document information, information related to examinations of claims after granting a patent, patent family information, etc. of Japan in the English language. As of April 2005, AIPN is available in 15 countries and organizations.

# Amendments of the Intellectual Property-Related Laws

## 3. Measures against Counterfeits

### (1) Present Situation of Damages caused by Counterfeits and Countermeasures in the Industrial World

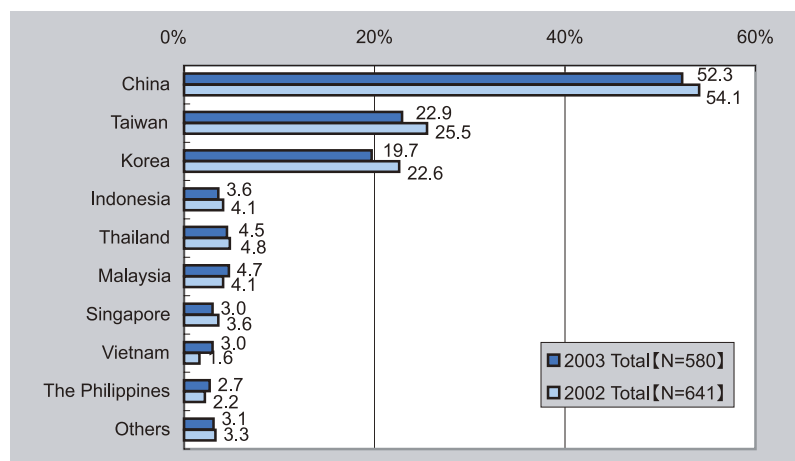
In recent years, damages caused by counterfeits in foreign markets have been increasing. Along with the development of industrial technology in the Asian region including China, Taiwan and the Republic of Korea, infringements of not only the trademark and design rights but even infringements of the patent rights are increasing. Furthermore, in the midst of economic globalization, counterfeits manufactured mainly in those East Asian countries/regions enter markets in the entire Asia including Japan, Europe and North America, resulting in further increases in damage caused by counterfeiting.

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, an increase in problems concerning product liability and others. To deal with this, it is necessary for Japanese companies to actively take measures against counterfeits when undertaking business abroad.

Recently, more companies and industries have been earnestly taking anti-counterfeiting measures, e.g. requesting local regulatory authorities to crack down on counterfeits after 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) was established in April 2002 with the aim of promoting cross-industry cooperation for Japanese companies to reinforce anti-counterfeiting measures in concert with the Japanese government, and undertook projects such as "requests the governments of the countries where IPR infringement was serious to reinforce anti-counterfeiting measures", "information exchange and survey research", and "cooperation in human resource development for the countries where IPR infringement was serious".

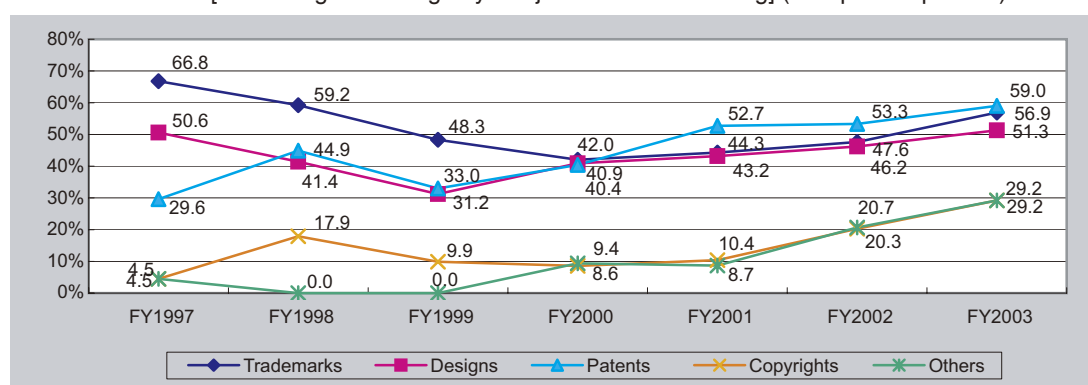
Table 1 [Asian Production Countries/Regions of Counterfeit Products] (Multiple Responses)



(Note)

"N" stands for "total number of companies damaged by counterfeiting"

Table 2 [Chronological Change by Subjects of Counterfeiting] (Multiple Responses)



- In FY2003, of the 641 companies which were damaged by counterfeiting, 52.3% responded that the counterfeits were manufactured in China (multiple responses), followed by Taiwan (22.9%) and Korea (19.7%). (Table 1)
- In FY2003, the majority of the companies damaged by counterfeiting reported counterfeiting to be related to patent/utility model rights (59.0%), trademark rights (56.9%) and design rights (51.3%). Since FY2001 the percentage of the damaged companies has been increasing in the case of all subjects of counterfeiting. (Table 2)

(Source) "FY2004 Survey Report on Losses Caused by Counterfeiting"

## (2) JPO's Efforts toward Issues of Counterfeits

Considering the increasing seriousness of counterfeits in foreign markets, the JPO has been taking various countermeasures.

### 1) Collection and Provision of Information

In order to understand the situation surrounding damages suffered by Japanese companies in foreign markets, the JPO carries out an annual survey on losses caused by counterfeiting using questionnaires. The results are published in the "Survey Report on Losses Caused by Counterfeiting". In addition, the JPO provides "Manuals on Measures against Counterfeits" which include useful information regarding measures against counterfeits in the countries/regions where counterfeiting are frequent, and "Collections of Case Examples / Court Precedents of Intellectual Property Right Infringements" which include case examples and court precedents of intellectual property right infringements with comments. Furthermore, the JPO holds seminars that target Japanese companies in and outside Japan in order to provide information necessary to fight against counterfeits.

### 2) Consultation Services

The JPO offers consultation services regarding counterfeits (industrial property right infringements) and strives to provide the know-how necessary for measures against counterfeits.

### 3) Cooperation with the Industrial World

The JPO offers support for efforts in the industrial world by intensifying cooperation with the International Intellectual Property Protection Forum (See (1)).

### 4) Approaches toward the Countries/Regions where Counterfeiting are Serious

In terms of approach toward countries and regions including China, the Republic of Korea and Taiwan, where damage caused by counterfeiting is serious, the JPO requests the governments of these 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, in multilateral meeting such as the WTO TRIPS Council, the WIPO Advisory Committee on Enforcement, APEC and others, the JPO emphasizes the importance of anti-counterfeiting measures.

In particular, the IIPPF and the Japanese Government jointly dispatched a mission to the central and local governments in China 3 times so far to request a reinforcement of their crack down of counterfeits. During the third mission, in addition to requesting for development of legal systems and improvement of their operation, the mission offered cooperation through seminars, training and the other for increasingly efficient and effective enforcement.

### 5) Support for the Countries/Regions where Counterfeiting are Serious

In order to improve the effectiveness of enforcement in the countries and regions where damage caused by

## Efforts in the Entire Government

counterfeiting is serious, the JPO provides support in the development of human resources in the local authorities concerned, such as customs and police officers and court officials. The JPO accepts enforcement authorities' officers in Asian countries as trainees every year, and also holds local seminars.

### 6) Strengthening of Cooperation with National Regulatory Authorities and Countermeasures at the Border

With the aim of preventing the production and distribution of counterfeits within Japan, the JPO makes efforts to cooperate with Japanese enforcement authorities such as customs and police by responding to inquiries concerning infringements from such authorities.

In regard to anti-counterfeiting measures at the border, the Customs Tariff Law was revised in April 2003 to introduce the system for holders of patent, utility model, and design rights in addition to holders of trademark rights to apply to the customs for suspending import of goods suspected of infringing the rights. Under the revised law, a system was introduced for the applicant for import suspension to require customs to seek the technical opinion concerning patent, utility model and design rights from JPO Commissioner.

In addition, in the April 2004 Customs Tariff Law revision, a system was established in which a right holder and an importer suspected of infringement were notified of each other's names and addresses at the commencement of identification procedure, which determines whether goods infringed intellectual property rights for the purpose of accelerating and increasing accuracy of identification. In the April 2005 Customs Tariff Law revision, a new system was introduced where, in consideration of patent right and other industrial property rights infringements that are difficult to judge from their appearance alone, examining (including disassembling) the sample of goods suspected of infringing patent rights and other industrial property rights in identification procedures can be requested.

With more counterfeits coming into Japan from the East Asian countries/regions, it will be necessary to continue to reinforce such cooperation in the future.

### 7) Raising Awareness among Consumers

Through booklets and Internet contents, the JPO disseminates information on current status in distribution of counterfeits in order to prevent bona fide consumers from suffering from counterfeits, while the JPO stresses the importance of the protection of intellectual property rights with the aim of preventing consumers from intentionally buying counterfeits. Furthermore, the JPO organizes "Anti-Counterfeits Campaigns" through posters, commercial and others as enlightenment activity.

## (3) Participation in the "China-EU-Japan IP Seminar" on Counterfeit Issues

The "Japan-EU Joint Initiatives for the Enforcement of Intellectual Property Rights in Asia" was agreed upon at the EU Summit Meeting held in June 2004, in October of the same year, the "China-EU-Japan IP Seminar" was held in Beijing, with the purpose of discussing the current situation of issues on counterfeits and piracy in China and future measures.

During this seminar, symposiums and panel discussions on a protection of industrial designs were held. The JPO and representatives of Japanese industries attended at the seminar, mainly referred to the current situation of issues surrounding counterfeits of industrial designs and unfair trading in Japan.