April 3, 2008

To: Secretariat of Intellectual Property Strategy Headquarters,
Cabinet Secretariat

Japan Intellectual Property Association
Hirohiko USUI, President

Regarding the Review of the "Intellectual Property Strategic Program 2007"

With regard to the above issue, on which you are inviting opinions, I would like to express the JIPA's opinions as follows, with a view to the formulation of the "Intellectual Property Strategic Program 2008."

The JIPA has the utmost respect for the past activities of the Secretariat and the Intellectual Property Strategy Headquarters, and would like to request your continued efforts and guidance with a view to strengthening international industrial competitiveness.

The JIPA intends to provide active support for the formulation of the "Intellectual Property Strategic Program 2008." Therefore, we would appreciate it if you would arrange opportunities for explanation and exchanges of opinion in a timely fashion.

Notes

1. General Statements

In Japan, intellectual property strategy has been promoted at the initiative of the Secretariat since the policy speech given by former Prime Minister Koizumi in February 2002. Fiscal 2008 marks the third year of Phase II, which is aimed at working toward coping with new tasks while striving to improve the effectiveness of the reforms carried out in Phase I. We think that it is important first to follow up on the implementation status of the various measures formulated in the past, including in the "Intellectual Property Strategic Program 2007," and promptly review what needs to be reviewed (correcting the course thereof) based on that follow-up. In particular, we consider it useful to highlight successful examples of exploitation of intellectual property – which is considered to constitute an important part of the intellectual property cycle – and publicize them in Japan and overseas.

The "Intellectual Property Strategic Program 2007" summarizes the measures that are considered particularly important from among those that should be worked on, in the List of Priority Measures. Thereby, each measure is well-defined in terms of the form. However, in formulating the "Intellectual Property Strategic Program 2008," we think that it is necessary to concretely define each effort and also to individually evaluate, follow up and correct the courses of those

measures formulated in the past that require careful efforts from a medium- and long-term standpoint (e.g. industry-academia-government cooperation).

Next, with regard to measures that should be newly incorporated in the "Intellectual Property Strategic Program 2008," we consider that it is important to draw them up with a defined order of priority (measures that should be worked on at an early date, measures that should be worked on after steady discussions, etc.) in consideration of international balance, while reflecting the opinions of industrial circles.

Moreover, in making Japan an intellectual property-based nation, we think that it is important to determine which measures should be worked on by the public sector, which should be worked on by the private sector and which should be worked on through cooperation between the public and private sectors, and to basically give the private sector independence over those measures that must be worked on mainly by it, from the perspective of strengthening international industrial competitiveness.

2. Specifics

Listed below are the matters that the JIPA would like to ask you to focus on and prioritize. We appreciate your consideration.

I. Creation of Intellectual Property

(1) Intellectual Property Strategy at Universities

・Universities have come to have a heightened awareness of intellectual property rights due to their conversion into independent administrative agencies. However, it is important in terms of appropriate intellectual property management at universities to strengthen collaboration between the intellectual property headquarters and technology licensing organization (TLO) at each university, or to integrate the two as needed, and these matters should be promoted more actively. In addition, we would like to ask you to establish an appropriate evaluation system for these organizations (including evaluation from an economical perspective) and to review it accordingly.

Moreover, given the importance of enhancing awareness of intellectual property (reform of awareness) among the researchers who create inventions – the basis of the intellectual creation cycle – and providing intellectual property education to such researchers, we would like to ask you to continue to provide appropriate guidelines to universities in the future and urge them to voluntarily put such guidelines into practice. The First University Intellectual Property Headquarters Development Project came to a close at the end of March this year. However, we would like to ask you to review the actual circumstances at the relevant universities and consider the development of an appropriate financial base by the government, so as to prevent activities

at universities from shrinking.

On the other hand, we would like to ask you to thoroughly inform universities that it is important, in terms of relationships with companies, to aim to achieve mutual understanding about proper industry-academia collaboration, the essence thereof, research purposes for individual themes and dissemination of the results in individual industry-academia collaboration cases, and to aim to obtain rights that are valuable to industrial circles with respect to the results of basic research. In particular, in obtaining rights for research results obtained at universities, we think that discussions should be held on consolidating efforts to create a mechanism to actively incorporate the opinions of industrial circles (for example, gaining cooperation in obtaining rights based on assumed commercialization through concluding a confidentiality contract with a company that is interested in the relevant research results). Hereby, for exceptional research results, companies may subsidize the costs of filing foreign patent applications in some cases. This also seems desirable from the perspective of global intellectual property strategy. Inventions for which applications were filed without a view to commercialization are not only less likely to be exploited even if rights are obtained, but also are not considered beneficial from the perspective of strengthening international industrial competitiveness.

Incidentally, it is gratifying that flexible joint/contract (funded) research contracts are being concluded with increasing frequency with companies based on the results of consultation. On the other hand, stalled contract negotiations are also occasionally seen. To avoid any loss of opportunity for industry-academia collaboration due to such stalling, we hope that universities will aim to thoroughly ensure that the persons concerned take actions from the standpoint of achieving total optimization of joint research (industry-academia collaboration), with an aim to securing further flexibility in concluding contracts.

(2) Building Infrastructure for Technical Information that Serves as a Basis for Creation of Innovation

・It is impossible for one company to develop infrastructure that enables all engineers and researchers to seamlessly search and refer to patent information both from Japan and abroad, technical information other than patent information (including papers and books), information concerning prosecution history, and so on. Therefore, we would like to request consideration toward the early realization of such an infrastructure, from the perspective of promoting innovation and performing prior art searches.

In consideration of the importance of industry-academia collaboration, it is probably also necessary to dramatically enhance the use of the enormous amount of patent information in scientific and technological research conducted at universities and national research institutes.

In addition, the active use of the community's power should also be examined as an attempt to complement access to technical information, which will increase and proliferate further in the future (for example, in addition to the Community Patent Review, a mechanism to enable easier use of open source software itself as prior art in patent examinations).

On the other hand, with regard to the handling of non-patent documents – including allowing outside access to the JPO's database of non-patent documents, which involves the issue of copyright – we hope for an early solution through consultation and coordination with the Agency for Cultural Affairs and other relevant authorities, from the perspective of reducing unnecessary applications thanks to the results of searches of these prior art documents.

(3) Strategic Coordination between Patent Information and Science and Technology Policy

・Survey on Technical Trends in Patent Filing: At present, the JPO conducts survey and analysis regarding patent filing and technical trends in patent filing in eight priority fields, not only for Japanese applications but also for applications filed with patent offices in major countries and regions including the United States and the EU, and publishes the results. Although we consider such results as useful information, they seem to be only partially used. We guess that this is because the content of the survey and analysis is not necessarily based on the needs of industrial circles, etc. Such survey and analysis will serve as a useful reference when Japanese companies plan global business strategies. In addition, it is considered useful to analyze differences in the process of patent filing due to differences in the intellectual property protection systems in each country and region when considering formulation of policies (including legal revisions) in Japan to strengthen global industrial competitiveness. Therefore, we hope that the survey will be implemented while sufficiently incorporating the opinions of industrial circles, etc. in terms of the technical fields subject to the survey, the content of the survey and the method of analysis.

In addition, information about the strategies that overseas global companies use when filing applications and maintaining and exploiting rights – not only for patents but also for designs and trademarks – is also probably beneficial for Japanese companies.

II. Protection of Intellectual Property

(1) Further Promotion of Expeditious Examination

・ In recent years, there have been more and more cases of Japanese applicants filing applications in non-English-speaking countries and regions, including China and South Korea. On these occasions, the need to translate application documents into the languages used in the relevant countries and regions within a very limited time is a particular problem. In particular, in countries like China, it is difficult to make amendments based on the original Japanese applications even after translation errors have been discovered. Therefore, many companies have

difficulty in terms of obtaining appropriate rights.

For this reason, the JIPA has been taking various opportunities to request such countries and regions to allow applications to be filed in Japanese. However, we have no choice but to tone down our request, given that Japan does not allow applications from such countries and regions to be filed in their own languages. On the other hand, the number of applications filed in Japan from overseas has been increasing year after year. We thus consider it necessary to give consideration to overseas applicants from the perspective of globalization.

Consequently, we think that it is necessary to consider early ratification of or accession to the Patent Law Treaty (PLT), which stipulates that “The description will be able to be filed in any language.”

(2) International Work Sharing and Development of an Examination System that Meets Various User Needs

・Work sharing among the patent offices of countries and regions is expected to bring advantages for applicants – namely, reducing the workload and cost expended on obtaining rights in each country and region. Therefore, we think that it should be promoted as a step toward achieving substantive harmonization in the future.

On the other hand, although it is necessary to coordinate the timing of examinations at the patent offices of each country and region when sharing work among them, as we have explained in the past, the time at which applicants want to obtain rights differs for individual patents, depending on the technical field to which the invention belongs and the stage of research and development at which it was created.

Therefore, rather than measures for the early examination of all applications, we think that it is necessary to examine measures based on the perspective of shortening the period from the time when an applicant indicates his/her intention to obtain a right to the start of the examination and to the first action.

In the United States, it is possible for applicants to delay the obtainment of rights at will by filing a continuation application, etc. However, in Japan, time constraints on divisional applications have become increasingly strict. We consider it necessary to hold discussions with this in mind.

・In addition, with a view to achieving expeditious and efficient examinations and reducing the workloads on applicants, consideration should be given to making multiple applications that fall under different examination departments at the JPO but are technically related to each other, and applications that are not on the list of applications for which examination has been initiated but are technically closely related, subject to package examination (that is, lump examination of relevant applications).

(3) Promotion of Work Sharing – Toward Making the "Virtual World Patent Office" a Reality –

・ From the perspective of promoting global work sharing, applicants are asked to cooperate in filing requests for examination for Japanese applications, which become the basis for foreign applications, within two years. However, as mentioned in the previous section, the time when applicants want to obtain rights actually differs for individual applications. Therefore, it is unclear to what extent applicants will cooperate. In addition, this measure does not seem to be appropriate from the perspective of user-friendliness.

For example, we think that it is better for Japan to consult and coordinate with other countries and regions to establish a mechanism in which examination at a second office will not be started unless the first office transmits its examination results, from the perspective of promoting work sharing and of meeting the expectations of applicants who want to obtain rights at a different time with respect to each application. Therefore, we would like to ask for consideration on this point.

・ In addition, as part of infrastructure-building to support work sharing, it is also important to increase the accuracy of machine translation under the initiative of the JPO. Moreover, we would like to ask for consideration on making machine translation available to the public, from the perspective of reducing the costs for applicants to obtain rights.

・ Furthermore, as users, we would very much like to request progress in cooperation between the trilateral patent offices (JPO, USPTO and EPO) and the reform of systems aiming to achieve a sustainable world patent system.

However, many frameworks for work sharing in patent examination are now suggested, in addition to the Patent Prosecution Highway. These frameworks differ from each other in terms of the requirements for application and the examination process, and their effects are also different. Suggestions of several frameworks should be welcomed as this increases the options for applicants who are users. However, on the other hand, if many possible routes are offered, this may prove cumbersome for users.

Therefore, we would like to request discussions on work sharing that are not only in line with the purpose of achieving a sustainable world patent system in the future, but also give consideration to user-friendliness.

(4) Work Sharing between the Public and Private Sectors

・ The Community Patent Review is on a trial run in the United States. It has hopes pinned on it as a system that uses the wisdom of the open community for patent examination.

On the other hand, in Japan, the information provision system is an example of a system that

uses the wisdom of third parties for patent examination. However, we think that it is necessary to review the information provision system (e.g. Internet-based information provision, where the problem is the method of screening information) and consider concurrent use of the Community Patent Review and the information provision system, giving careful consideration to the advantages and disadvantages of these systems.

(5) Promoting the Harmonization of Systems and Discussions at the WIPO and among Developed Countries

- Past history tells that it is not easy to harmonize systems, due to the level of industrialization and political considerations of each country or region. Therefore, we think that it is fundamentally important to work on harmonization based on the idea that it should be promoted from what can be harmonized on respective levels, such as the bilateral level, JPO-USPTO-EPO level, developed country level, JPO-USPTO-EPO-SIPO-KIPO level, and WIPO level.

  In fact, the trilateral patent offices (JPO, USPTO and EPO) are making efforts to unify the formats of patent applications based on suggestions from industrial circles. We also look toward the trilateral patent offices' efforts to achieve "One Search, One Examination," and are willing to make specific suggestions on the industrial circles' side. In addition, we would like to ask for active efforts to expand these systems to other countries and regions.
- We would also like to request the future unification of criteria for judging inventive steps, etc. among the trilateral patent offices and the realization of mutual use of examination results and mutual recognition, as well as the elimination of variations in examinations at the trilateral patent offices (JPO, USPTO and EPO), through promoting the comparative study concerning examination practice (inventive step) that has been started by the trilateral patent offices.
- On the other hand, we would like to request promotion of coordination and consultation with those concerned so as to achieve the early conclusion of the Substantive Patent Law Treaty (including the requirements for patent registration), which is currently under discussion at the meeting of developed countries on harmonization of patent systems (Group B+ meeting), with an aim to substantively harmonize patent systems.
- Furthermore, we would also like to request coordination and consultation with those concerned toward early achievement of the unification of formats for descriptions of patents and the mutual use of examination results, based on the "APEC Cooperation Initiative on Patent Acquisition Procedures" agreed in September 2007.

(6) Examination Cooperation for Asian and African Countries

- From the perspective of making efficient use of human resources and more efficient examinations, the JIPA has taken various opportunities in the past to request ASEAN countries

to establish unified patent/design/trademark offices for ASEAN, like the EPO and OHIM in Europe. It is necessary to consider the provision of support by the public and private sectors for the early establishment of such offices.

For that purpose, it is also important that Japan, China and South Korea cooperate toward developing and unifying the intellectual property systems in these countries and regions.

- In addition to the above, we think that expansion of the trilateral cooperation between Japan, the United States and Europe into five-party cooperation, by adding China and South Korea, should be promoted. We also hope for the promotion of collaboration between Japan, China and South Korea in Asia, which is being promoted by the JPO.

Out of Japan, the United States and Europe, Europe has developed into a huge market. Regarding patents, the translation issue has gradually been solved thanks to the London Agreement coming into force, and attempts for further improvements are also ongoing. Therefore, Europe is becoming easy to use for companies from around the world. In addition, the United States has a huge market, called the North American Market. On the other hand, Japan by itself pales in comparison to the other two in terms of market size. If Japan's market comes to include East and Southeast Asia, it will be able to compete with the other two. However, translation and examination with respect to each country are necessary to obtain patents, and this is said to be inconvenient for applicants.

Consequently, in the long term, it will be necessary to hold discussions with a view to establishing a uniform patent system in East and Southeast Asia.

(7) Watching for Revisions of the Laws and Examination Guidelines, etc. of Each Country

In the United States, revisions of the patent law and examination guidelines were proposed two years ago, and draft revisions to the patent law have been under deliberation in Congress since last year. In China, revisions to the Patent Law are ongoing, and the Implementing Regulations, Examination Guidelines, Trademark Law and Law for Countering Unfair Competition are also scheduled to be revised. Therefore, revisions to these laws and the examination guidelines may impose an excessive burden on foreign applicants. In addition, in some cases, these revisions may endanger the establishment of intellectual property rights peculiar to Japan and put the brakes on companies' globalization.

Therefore, it is necessary to establish a system to watch not only the legal revisions in each country but also revisions to examination guidelines, etc. through public-private cooperation, to respond and study such revisions instantaneously and to transmit opinions thereon, basically at the government's expense.

(8) Desirable Review of the Patent System and Its Operation

・ We think that we could make the level of judgment consistent on the applicant side, patent attorney/lawyer side and the JPO side and enhance predictability, through past two-year considerations and discussions at the meetings to consider inventive step held by the JPO, Japan Patent Attorneys Association, JIPA and other persons concerned.

Therefore, we hope that such meetings will continue to be held in the future. In addition, some people say that the criteria for judgment differ between the court and the JPO. However, such meetings will be more beneficial from the perspective of stability and predictability of rights if the people connected to court procedures participate in them. Therefore, we would like to ask for your forward-looking consideration. We also propose holding meetings to consider other requirements for patentability – specifically, support requirements, new matters, unity, etc. – until new court decisions that should be examined in terms of inventive step are accumulated.

(9) Measures against Counterfeits and Pirated Copies

As one of the cooperative members of the International Intellectual Property Protection Forum (IIPPF), the JIPA serves in particular as the organizer of activities to cope with China, and is promoting activities to improve the country's intellectual property system and its operation and to strengthen regulation against counterfeits and pirated copies in China, through cooperation with government officials, etc. We intend to continue promoting such cooperation in the future.

However, damage from counterfeits and pirated copies is expanding to other countries and regions. Therefore, we hope that the related offices, ministries and agencies will promote proactive actions under the strong leadership of the Secretariat, with the aim of achieving the early adoption of the Treaty on the Non-proliferation of Counterfeit and Pirated Goods, in collaboration with other countries and in cooperation with international organizations such as the World Customs Organization (WCO) and International Criminal Police Organization (Interpol).

(10) Strengthening the Intellectual Property System in the Field of Life Science

Dramatic innovations in technologies with industrial applications are ongoing in the field of life science, and are expanding not only to technology "hardware," such as products produced using chemical substances and biotechnology, but also to the research, development and use of technology "software" in which existing substances and basic technology are applied. Advanced medical technology, the expression of new effects of medicine and new uses of foods and cosmetics are positioned as typical results of intellectual production in the field of life science.

This trend is recognized in countries where advanced science and technology have been making significant progress. It is also necessary to clarify the location of such technology

"software" and, together with companies, to consider the ideal form of protection of intellectual property in Japan, as a leading country with advanced science and technology.

(11) Strengthening Protection of Trade Secrets

(11-1) Preserving Confidentiality of Trade Secrets in Criminal Proceedings

Trade secrets are protected under the Unfair Competition Prevention Act. However, requirements and procedures for the suspension of public trial in civil proceedings were developed through legal revisions in 2004, and the protective order system was introduced. Protection by civil remedies was thereby strengthened.

On the other hand, with regard to criminal remedies, the strengthening of protection of trade secrets was further promoted through the review of criminal penalties and other measures. However, the reality is that companies whose trade secrets have been infringed must hesitate about filing complaints against the offenders, even where they have come to know the offenders. This is because they face a serious dilemma, namely that even if they file criminal complaints against the offenders, they will have to bring the offenders to justice in public trials (trade secrets will not be trade secrets any more and will lose their proprietary nature in one fell swoop if they are disclosed in judicial proceedings).

Therefore, we think that some sort of institutional arrangements are necessary to ensure that the relevant trade secrets are kept confidential and unknown to the public even after going through criminal proceedings, though such arrangements would have to surmount the hurdle presented by constitutional issues.

(11-2) Time Limit for Filing a Complaint

In addition, the time limit for filing a complaint is stipulated under the Code of Criminal Procedure as "six months from the date on which the complainant came to know the offender." Since information of a highly proprietary nature is disclosed in the judicial proceedings, damaged companies have no other choice but to hesitate about filing complaints.

Strengthening criminal penalties originally has a deterrent effect to prevent the occurrence of offences. However, such an effect is not expected at all under the current system. Given the current situation, where extremely valuable information is flowing out of Japan, we think it is necessary to consider taking measures at an early date, such as enacting a law to eliminate the time limit for filing a complaint at the very least.

III. Exploitation of Intellectual Property

(1) Expansion of Intellectual Property-Related Business

- We believe that both the public and private sectors should continue to make strong efforts to promote the exploitation and distribution of valuable intellectual property that will lead to the

strengthening of international industrial competitiveness. However, the emergence of patent trolls can bring the opposite effect.

For this reason, discussions with a view to increasing the number of sound and fair leaders are desired. As one example, the introduction of a system to register patentees' intentions to grant licenses to third parties – something that is recognized in the United Kingdom, etc. (License of Right) – should be considered to promote the sound and fair exploitation and distribution of patents.

- In addition, we think that the system to protect licenses of intellectual property rights, which is important in promoting the exploitation and distribution of intellectual property, should be actively reviewed. Recently, the restructuring of business operations has been being actively promoted as the industrial structure changes. Consequently, distribution of intellectual property is accelerating. However, it is difficult to achieve sufficient protection of licensees using the current registration-based protection system, despite the expected realization of a system to protect licenses that can flexibly respond to such situations.

  Therefore, we would like to ask for discussions with an eye to protection of licenses that is not based on registration (e.g. a system that allows actions to be taken based on a contract).

(2) Clarification of License Policy

- The idea of patent royalties differs between cases where the aim is business monopoly and cases where the aim is to exploit a patent for business based on an open policy. In addition, royalties differ depending on the relevant technical field. In cases at which the open policy is aimed, we think that it is generally desirable to foster an awareness of reasonable royalties.

  However, there are other cases too, and licensors and courts, etc. are not bound by such awareness of reasonable royalties. On the contrary, such awareness may work against technical advancement and industrial development. Thus, we think that careful consideration is required.

(3) Abuse of Patent Rights / Patent Troll Issue

- Nowadays, the exercise of rights by patentees, called "patent trolls," is at issue in the United States. Many Japanese companies have been sued in the United States, and there have been increasing numbers of cases in which they have had to pay a large amount of royalties. Some patent trolls have begun to exercise their rights against Japanese companies on the basis of patent rights they obtained in Japan. Therefore, such activities are predicted to spread to Japan in a short time.

  Patent trolls exercise their rights for the sole purpose of acquiring a large amount of licensing revenue. They not only have an adverse effect on companies' business activities, but also cause product prices to rise, meaning that their influence on consumers is also a concern.

We would like to request continued consideration on the patent troll issue and early suggestions of some measures.

Specifically, please hold discussions taking the following viewpoints into account.

- Restriction on the amount of damages (e.g. restriction on the application of the “entire market value” that is included in the proposed revision of the patent law in the United States)
- Application of abuse of rights (e.g. clarifying the idea of application of the abuse of right doctrine, which is presented in the “Rules for E-Commerce and Trade of Information Property” published by the Ministry of Economy, Trade and Industry, with regard to patent rights for technologies other than software)
- Restriction on injunctions (e.g. restriction on injunctions in cases where a patent is not being worked by the patentee)
- Limitation of liability for infringement (whether there is the obligation to predict and to avoid predictable damages with regard to patented technologies that are black boxes)

(4) Intellectual Property Strategies of SMEs and in Local Areas

- Needless to say, it is important nowadays for SMEs to think of global intellectual property strategies, including obtaining rights with a view to launching business on a global scale. Consequently, the national and local governments should actively subsidize the costs required to file and exploit rights in other countries and regions (repayment after success based on the subsidy system, etc.). In this regard, it is, of course, important to establish examination and evaluation systems for subsidizing such costs from the perspective of creating business.

On the other hand, we can understand that SMEs and venture companies have difficulty in creating and exploiting intellectual property due to financial and human problems. Therefore, amidst the retirement of many baby boomers, we think that it is helpful to build a database of former employees of large companies who are willing to provide support for these operations at an early date and utilize such people, as one of the measures to support SMEs and venture companies. The JIPA is willing to actively cooperate in preparing such a database.

In addition to the above, we believe that it is helpful to establish a network for supporting SMEs, which is made up of former employees specializing in intellectual property, patent attorneys, SME consultants, lawyers and so on. Thus, we would like to ask for financial support from the national and local governments to establish such a network. However, if SMEs and venture companies are excessively protected, it will cause an imbalance in the entire industrial world and lead to unfairness. Therefore, we would like to request that various measures be promoted in consideration of this point.

(5) Patent Commons Promoting Open Innovation

・ “Patent Commons” is a mechanism under which right holders allow a wide range of third parties to work their patented inventions without royalties under certain conditions while maintaining their patent rights. It can be an infrastructure that promotes innovation through taking a different approach to patent pools, etc.

Policies for supporting such Patent Commons (for example, measures to reduce or exempt patent fees for patents that have been placed into a Patent Commons) should also be examined.

(6) Expansion of the Protective Order System

With regard to infringement lawsuits for patent rights, etc., the protective order system was established in relation to the submission of trade secret-related materials, etc. to the court. An infrastructure that enables the parties concerned to submit sources of evidence, etc. without anxiety was thereby developed. However, since there is no such system for lawsuits for employees’ inventions, in particular, the parties concerned cannot help hesitating to submit materials to prove the degree of their contribution to the invention subject to the lawsuit, various materials pertaining to product costs, etc. that are necessary to calculate values, and materials concerning the content of contracts, etc. concluded with third parties. Therefore, in some cases, the court cannot carry out sufficient and fact-based proceedings.

For this reason, we would like to request consideration on the prompt introduction of a protective order system for lawsuits for employee inventions.

(7) Strengthening of International Standardization Activities

(7-1) Regarding International Standardization

We believe that it is important for the government to strengthen support measures for promoting voluntary activities in industrial circles under the International Standardization Comprehensive Strategy. Although industrial circles are sending their representatives to international conferences and taking other actions for the international standardization of Japan’s technologies, developing and securing (employment) such human resources depends on the efforts of each company, and there is naturally a limit to such efforts.

It is important to promote this issue based on public-private collaboration. Therefore, we would like to request the strong and prompt promotion of various measures, including development of relevant human resources (creation of human resources development programs, selection of lecturers, provision of training grounds, etc.), under the medium- and long-term strategy.

(7-2) Regarding Intellectual Property Rights Relating to Technologies Adopted as International Standards

In order that the technology adopted as a standard is widely used, it is important that the intellectual property rights pertaining to that technology are licensed under reasonable and non-discriminatory (RAND) terms. However, we think that it is important, as a prerequisite for international standardization, that the intellectual property rights pertaining to technologies that are adopted as standards are appropriately protected. The following problems exist: (i) intellectual property rights that Japanese companies have obtained are being used overseas without concluding contracts and (ii) though a contract has been concluded, royalties are being unpaid or underreported, thereby causing damages to national interests.

Therefore, we believe that it is a prerequisite for international standardization that the government strongly works on other countries so that the intellectual property rights which Japanese companies have obtained are protected overseas in an appropriate manner. Consequently, we would like to ask for measures on this point.

IV. Efforts to Create Culture with the Use of Content

(1) Drastic Reviews on Desirable Legal Systems that Correspond to the Age of Digitization and Networking

・ Various businesses using content have come into existence due to the rapid progress of digitization and networking, and modes of using content are diversifying. However, it cannot necessarily be said that the current Copyright Act is responding to these changes sufficiently. As a result, there is a risk that the Copyright Act inhibits the creation, use and distribution of content in some cases. For example, even if someone plans to employ new services using digital/networking technology, in quite a lot of cases he/she hesitates in or gives up trying to realize such services, as it is impossible to address concerns over infringement under the current Japanese copyright system. This may become a factor that allows other countries to take the lead, since it is easier to start up new businesses in countries with a relatively flexible copyright system, like the United States. In addition, if talented human resources flow out of Japan because they get disgusted with the stalemate in the legal system here, it will cause a hollowing out of industry and may lead to the deterioration of Japan's international competitiveness.

In individual and concrete terms, we would like to request discussions regarding temporary fixing at the time of use of equipment and in the communication process, problems arising when using content through services via networks – as represented by search engines – and other issues, with an aim to clarifying their positions under the Copyright Act and developing relevant legal systems.

In particular, there have been requests for more timely reviews of provisions restricting rights, in response to technical advances and social changes. It is no longer possible to respond to such advances and changes using only the existing provisions restricting rights, which list relevant

cases in a limited fashion.

We would like to request more fundamental and comprehensive discussions on a desirable copyright system that corresponds to the age of digitization and networking, including the introduction of general provisions restricting rights to the extent that ordinary use of works is not prevented and the interests of right holders are not unjustly damaged.

(2) Balanced Consideration from the Perspective of Promoting Distribution of Content

・ Vitalization of the content creation cycle and development of content businesses can be achieved only through promoting the exploitation of content, although it is also important to secure incentives for creation. That is, we would like to ask that discussions are advanced on the basic premise that it is not only necessary to strengthen the protection of content on a unilateral basis, but that a sense of balance (that is, considering measures to promote the exploitation of content) is required.

For example, if an inexpensive and convenient environment for using music content, etc. is developed, such content will be widely distributed. Consequently, right holders can establish a business model that enables them to collect compensation for use of the content.

We would very much like to ask for consideration with a view to a desirable copyright system on the premise of licensing that corresponds to the new age, based on the digitization of content, networking and "broadbandization" of content distribution and diversification of media – including the fusion of broadcasting and communications – and from the standpoint of making the conventional prohibition on reproduction a principle.

(3) Development of Legal Systems, Contract Rules and Systems to Promote Distribution of Content

・ We would like to ask content producers/creators, distributors, manufacturers, etc. – including individuals and bodies involved in the content business – to cooperatively examine the creation of a beneficial win-win mechanism with regard to designing legal systems, contract rules and developing a system for the appropriate distribution of content, while maintaining the viewpoint mentioned in (2) above and giving more than enough consideration to the interests/convenience of people, particularly consumers.

(4) Consideration of a Grand Design for Strengthening Industrial Competitiveness

The theme of "content business development" is taken up in particular as one of the "priority policy issues" in the Intellectual Property Strategic Program, which lists many measures and matters to be considered with regard to a desirable intellectual property policy. However, rather than measures oriented toward ensuring immediate profits and protecting the vested interests of

a specific industry from a short-term perspective, we would like to request measures that are clearly conscious of the meaning of the government's intensive implementation of policies in the field of content business. In other words, we would like to ask for the drawing of a "grand design" to strengthen Japan's international industrial competitiveness, enhancing the value of the Japan brand in the international community and ensuring the interests of the public, including promoting employment, for a long period of time. Therefore, we would like to request that measures are taken which are conscious/aware of this point.

In addition, in "content business development," it is particularly important to promote the development of games and animations, etc. – for which Japan is now an international competitor – as digital content. However, we would like to request future efforts for the promotion of business and creation of content that can be transmitted to the world, through the enhancing of Japanese culture (for example, software technology that can serve as a global information infrastructure, educational content that nurtures the knowledge of future generations and cultural content that enriches human life).

In that sense, we would like to ask that measures are taken based on the need to develop an environment for using digital content and a relevant legal environment in line with the users' point of view and from the perspective of technical advancement and internationalization.

V. Developing Human Resources and Improving Public Awareness

(1) Comprehensive Strategy for the Development of Intellectual Property-Related Human Resources

(1-1) Development of Intellectual Property-Related Human Resources by the Entire Public and Private Sectors

・ Essentially, human resources development is to be carried out in a step-by-step fashion and with a clear goal, and its effects cannot be obtained in a short time. However, there is nothing to say against exploiting the existing know-how for developing human resources at companies, the Japan Patent Attorneys Association, the JIPA, etc. in developing human resources at SMEs, venture companies, universities, etc. Thus, the JIPA is willing to offer cooperation.

Incidentally, the national government, the National Center for Industrial Property Information and Training, local governments, etc. should actively promote whatever human resources development cannot be conducted by the private sector or existing organizations, while entrusting the private sector or existing organizations with human resources development that they can implement by themselves.

(1-2) Support for Companies' Efforts to Develop Global-Level Intellectual Property-Related Human Resources

・ At present, Japanese companies remain at the stage where they make efforts to develop talented human resources who take charge of intellectual property departments through overseas training and experience in intellectual property practices overseas. However, it is said that China and India are enthusiastic about the seminars for company executives that are held at the WIPO. Therefore, it is time to work on developing human resources who can plan and perform intellectual property strategies at the managerial level through industry-academia-government collaboration.

Private companies and the JIPA will also start relevant efforts, and we would like to ask for the government's support and cooperation.

(1-3) Support for Human Resources Development for Working People

・ We would like to ask for the establishment of more evening law schools and professional schools, etc. where working people can learn, and for improvement of the relevant environment, as well as reforms of the entrance examination system for law schools and the national bar examination system to make these systems accessible to people who have graduated in the fields of science and technology.

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