

May 26, 2008

ATTN: Secretariat of the R&D and Standardization Strategy Committee

Dear Sirs and Madams,

### **Comments on the Draft ICT R&D and Standardization Strategy**

The Japan Intellectual Property Association (JIPA) is a non-profit, non-governmental, intellectual property-related voluntary organization, which counts over 900 Japanese companies as regular members. In order to contribute to improving the business management of its member companies, the JIPA helps members work with each other to increase their knowledge and understanding of intellectual property (IP) in general, as well as conduct studies in the IP field, and makes various recommendations to Japanese and overseas government agencies and other organizations.

In response to your invitation for public comments on the “Draft ICT R&D and Standardization Strategy to Enhance Japan’s International Competitiveness” (hereinafter referred to as the “Strategy”), the JIPA hereby submits its opinions as follows. We ask you to give sufficient consideration to these matters.

As the JIPA intends to actively support the formulation of this strategy, we would greatly appreciate your providing timely opportunities for explanations and exchanges of opinions.

Sincerely yours,

Hirohiko Usui  
President  
Japan Intellectual Property Association

#### **1. International Standardization Strategy: Overall**

We highly value the national-level initiative to formulate and promote an international standardization strategy dedicated to the ICT field – characterized by its diverse technology and the active and global-wide R&D of new technology – from a wide range of viewpoints, including the strengthening of domestic international standardization systems, securing of standardization experts, promotion of international collaborations and securing of interconnectivity, formulation of an ICT intellectual property strategy, provision of support for international standardization activities, and dissemination and raising of public awareness of international standardization activities.

## **2. Collaborations Between Industry, Academia and Government**

The Strategy mentions the importance of collaborations between industry, academia and government, and recommends promoting more effective and efficient R&D. We have no objection to the importance of collaborations between industry, academia and government, but we ask the Committee to consider a policy on the handling of licenses in such collaborations, so as to achieve modes of collaboration that bring advantages (and do not bring disadvantages) to the participating companies. In particular, we expect the government to demonstrate leadership to prevent problems upon the conclusion of contracts (including deadlocks in provisions on intellectual property, such as attribution of R&D results and non-exploitation compensation), which have been occurring in general collaborations between industry, academia and government, and allow companies to actively participate in such collaborations.

In addition, we expect that the efforts of universities to deepen their involvement in standardization activities and accumulate expert knowledge will boost the number of their joint standardization projects with companies and stimulate collaborations between industry and academia.

## **3. Part II Chapter 3 Formulation of a Strategy to Strengthen ICT Intellectual Property**

### **- 3.1 Situation Surrounding Intellectual Property**

#### **3.1.1 Characteristics and Problems of Intellectual Property in the ICT Field**

##### **(2) Intellectual Property Problems Related to Standardization (pp. 163-164)**

A new type of intellectual property owners has emerged, who use intellectual property rights that are not necessarily valid in a speculative manner and try to acquire extortionate license fees from those exploiting the intellectual property in question (such owners often do not directly engage in the manufacture and supply of products, and are referred to as IP-centric companies or patent trolls). We ask the Committee to discuss, in cooperation with related ministries and agencies, whether or not it is reasonable to allow such intellectual property owners to exercise the right to demand an injunction, which is originally granted as an incentive for the creation of inventions, etc., in the same manner as other intellectual property owners, and whether or not such exercise of a right is favorable for achieving innovation in society.

Specifically, we ask for re-consideration of the right to demand an injunction and consideration on the application of the principle of abuse of rights – in other words, the introduction of a system or measure where an injunction against an infringing act is determined individually based on certain objective standards (such as the four-factor test indicated in the eBay judgment in the United States).

##### **(3) Problems Related to Transfer of Patents or Other Intellectual Property to**

#### **Other Companies (p. 164)**

In addition to the discussions held at international standardization organizations, we ask the Committee to discuss the protection and use of sublicenses related to patent pools. The Patent System Subcommittee in the Intellectual Property Policy Committee of the Industrial Structure Council has indicated that it will continue to examine how sublicenses should be protected by giving the cases of patent pools as an example. Since such problems that occur after transfer may be prevented by adopting a system where intellectual property owners can duly assert against third parties based on contracts, rather than based on registration as under the current system, we ask the Committee to consider this matter in cooperation with the related ministries and agencies.

#### **- 3.2 Intellectual Property Strengthening Strategy**

##### **3.2.3 Development of Rules for Strengthening Intellectual Property**

##### **(3) Further Development of IPR Policies of Standardization Organizations and Forums (p. 169)**

As a measure to establish the patent pools set forth in the previous section more expeditiously, we ask that consideration be given to formulating a patent policy to confirm in advance the intention of a patentee who has selected RAND terms to participate in a patent pool, if established.

##### **(4) Handling of Software in State-Commissioned Research (p. 170)**

The Strategy states that “with regard to software developed in the State’s R&D project, etc. that can be used in a shared manner in the future, it is necessary to examine measures and necessary institutional matters for using such software effectively, by also taking into account the possibility of making the software open-source.” However, we consider it desirable to make use of such software by also taking into account the corporate strategy of the company that undertook the commissioned research, in light of the purport of having the results of commissioned research used by the private sector.

#### **3.2.4.**

##### **(1) Cooperation Between Japan, China and South Korea Toward the Inclusion of Intellectual Property in International Standards (p. 170)**

We support the idea of cooperation between Japan, China and South Korea to counter European and U.S. companies, but it will be desirable that Japan takes the initiative in such cooperation.

#### **4. Chapter 9 Stronger Cooperation in Asia-Pacific Region (pp. 224-)**

In the section entitled “Current Status of Japan’s International

Competitiveness in the ICT Field,” in “Introduction” on p. 1 of the Strategy, the current status that “Japan’s international competitiveness has declined considerably in recent years amidst the globalization of society and the economy, the sharp growth of Asian countries, and the intensification of international competition” is analyzed.

We believe that Japan can increase its international competitiveness by not only strengthening cooperation with Asian countries, as indicated in Chapter 9, but also by boosting its declining competitiveness against Asian countries. Therefore, we think that a strategy for boosting Japan’s declining competitiveness against Asian countries should also be considered.

#### **5. Chapter 10 Establishment of the ICT Standardization/Intellectual Property Center (pp. 233-)**

We think the establishment of the ICT Standardization/Intellectual Property Center as a central organization supporting the standardization activities of companies and universities is extremely significant for promoting Japan’s standardization activities. We strongly insist that the Center be one that is easy to use from the users’ standpoint. Although the Strategy is dedicated to ICT, we ask that the Committee cooperate more closely with other related ministries, agencies and organizations (such as the Japanese Industrial Standards Committee) to allow users to carry out standardization activities efficiently.

The Strategy states that “it will be appropriate that the participants jointly own the results obtained through the Center’s activities, in principle, unless there are special reasons to do otherwise (p. 238).” However, as the Center’s mission is considered to be to promote the standardization activities of Japan as a whole, we ask that the Committee also consider publishing such results for non-participants.

#### Contact Information:

Hideo Doi

Secretary General

Japan Intellectual Property Association

Asahi Seimei Otemachi Bldg. 18F, 6-1 Otemachi 2-chome,

Chiyoda-ku, Tokyo, 100-0004 JAPAN

TEL: 03-5205-3432