

December 25, 2008

ATTN: Secretariat of Intellectual Property Strategy Headquarters,
Cabinet Secretariat

Japan Intellectual Property Association
Hirohiko USUI, President

Regarding Policy Review on Intellectual Property Strategy and Formulation of the Basic Policy for
the Third Period

With regard to the above issues, on which the Secretariat is inviting opinions as of December 1, I would like to submit the JIPA's opinions as follows. I would appreciate your consideration.

From the standpoint of industry, the JIPA pays its deep respect to the Secretariat's past efforts and leadership over the Cabinet Office and related ministries and agencies as well as industry, academia, etc., and also requests the Secretariat's future efforts and guidance toward making Japan an intellectual property-based nation.

The JIPA intends to provide active support and cooperation for the Secretariat's future consideration and measures from the standpoint of industry, and particularly, from the standpoint of intellectual property practice. We would like to continue exchange of opinions without reserve with the aim of achieving a major goal of the strengthening of the international industrial competitiveness of Japan.

Notes

A. Regarding the status of implementation of the intellectual property policy in the last six years and its results

The first period is regarded as a period for developing infrastructure toward making Japan an intellectual property-based nation. Centering on the development of basic systems pertaining to patent examination and intellectual property dispute resolution, enactment of many laws, regulations, guidelines, etc., and development of a system for industry-academia-government cooperation, various measures were formulated, including promotion of industry-academia collaboration, establishment of the Intellectual Property High Court and expediting of patent examination. The Cabinet Office, ministries and agencies as well as industry, academia, etc. implemented these measures. In the second period, toward fully realizing an intellectual society, various measures, which are said to be too many, were formulated in light of the results of the reform in the first period, with the aim of making an intellectual property-based nation work in practice, realizing the

strengthening of international competitiveness with the use of intellectual property, developing a system that corresponds to new problems, and verifying the effectiveness of the system development which has been implemented and making necessary revisions thereto. We believe that results that are satisfactory to the industry were also achieved, including unification of formats for patent application among the JPO, the USPTO and the EPO, proposal of the Anti-Counterfeiting Trade Agreement (ACTA), and construction of a support personnel database of former intellectual property-related employees of large companies for regional companies and SMEs.

In the last six years, the intellectual property policy of Japan has had a large influence in Japan and abroad. In particular, China, South Korea and other countries are planning and implementing their own intellectual property strategies in reference to Japan's intellectual property policy. In addition, the intellectual property policy has been producing actual effects, such as raising of awareness in terms of intellectual property among business managers and contribution to corporate management by intellectual property departments. We thus believe that most of the original goals relating to infrastructure have been achieved.

B. Regarding desirable basic policy for intellectual property strategy for the third period

However, the environment surrounding intellectual property has significantly changed in the last six years. It is surely predicted that intellectual property strategies by industry, academia, etc. in the past, which have been called the intellectual property bubble, must be reviewed once due to transition from the pro-patent era to the era of pro-innovation and open innovation, the rapid rise of China, South Korea, Taiwan and other countries in terms of intellectual property and the worsening of companies' business performance caused by recent rapid financial aggravation on a global scale.

In these circumstances, we believe the following idea should be introduced: Items that should be formulated by the Secretariat in the future in light of the aforementioned results of the first and second periods are not exhaustive measures but mainly are priority measures centered on the strengthening of international industrial competitiveness, which is the starting point of the Intellectual Property Basic Act, and the Cabinet Office, ministries and agencies as well as industry, academia, etc. promote other measures on their own responsibility and with authority.

From such viewpoint, measures for which the JIPA hopes that the Secretariat makes special priority efforts as part of intellectual property strategy for the third period are listed below. We would appreciate your consideration thereof. All of them are high hurdles. Therefore, we would request that the Secretariat formulate measures that serve as a signpost for Japan in the future by taking sufficient time to discuss them with concerted efforts of related sectors of industry, government and academia as well as other intellectuals.

1. Regarding the employee invention system

Disputes between inventors and companies seem to have settled down on the surface due to Article 35 of the revised Patent Act, which came into effect on April 1, 2005. However, according to the results of a questionnaire survey targeting JIPA member companies, many companies said that, despite formulation of new in-house rules based on the revised Act through consultation with employees, there are always troubles in the company, and the Article is not necessarily beneficial to companies' management and R&D activities. Therefore, we believe that it is important to take time to carefully discuss the essence of and desirable way for the employee invention system from the perspective of Japan's industrial policy and strengthening of international industrial competitiveness.

2. Regarding trade secrets

The desirable way of criminal procedure for a person who has divulged trade secrets to a third party, etc. is now being discussed. However, the discussion is hardly making progress in relation to the right to public trial which is guaranteed by the Constitution of Japan. From the standpoint of industry, we would like to request the introduction of a procedure, which is like one that is adopted for the civil procedure, into the criminal procedure at the earliest possible date after sufficient consideration of other countries' legal systems, etc., in order to increase crime deterrent power from the perspective of preventing the outflow of important technologies to overseas.

3. Regarding protection of license contracts

With regard to protection of the vested rights of a party to a license contract in the case where the rights are transferred, etc. to a third party due to bankruptcy, etc. of the other party to the license contract, such rights are now to be protected only where they have been registered with the JPO. However, we would like to request early introduction of a system, which is like one in the United States, etc., whereby parties to a contract are by necessity protected regardless of whether the relevant rights have been registered with the JPO.

4. International harmonization of intellectual property systems

International harmonization of intellectual property systems at an early date is the issue of greatest concern for industry, which consists of users who receives direct influence thereof. Thus, we would like to request continuation and promotion of vigorous negotiations with related countries and regions on the occasion of international negotiations and discussions (multilateral and bilateral) in the future. The JIPA also earnestly promotes consultation with the JPO, etc. for this purpose, and, in the ultimate sense, intends to make efforts to develop a system that is beneficial to the users of the intellectual property systems around the world.

5. Regarding changes in the environment surrounding intellectual property, in particular, response to globalization

Intellectual property also has importance in open innovation, and rights should be respected. However, we think that the appropriate way of exercising rights, including restraint on the

exercise of rights, should be examined in a prompt manner, because the exercise of rights that inhibits innovation, such as patent trolling, outsiders in standardization and third party patents for open source, has become a problem while system designs that could impair companies' incentive for R&D, such as disclosure of source code to information and telecommunication devices in China and establishment of compulsory licenses for environment-related patents in developing countries, are under discussion.

Contact Information:

Hideo Doi, Secretary General

Japan Intellectual Property Association

Asahi Seimei Otemachi Bldg. 18F, 6-4 Otemachi 2-chome,

Chiyoda-ku, Tokyo, 100-0004 JAPAN

Tel.: 03-5205-3432

e-mail: doi@jipa.or.jp