JAPAN INTELLECTUAL PROPERTY ASSOCIATION

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The Honorable Simon Power, MP
Minister of Commerce
Parliament Buildings
Wellington, New Zealand

Dear Minister

We, the Japan Intellectual Property Association, are a private user organization established in Japan in 1938 for the purpose of promoting intellectual property protection, with about 900 major Japanese companies as members. We support the governmental work to improve intellectual property protection. When appropriate opportunities arise, we offer our opinions on the intellectual property systems of other countries and make recommendations for more effective implementation of the systems. (http://www.jipa.or.jp/english/index.html)

Having learned that the Patents Bill 2008 has been under discussion in your country, we would like to offer our opinions on the Bill as follows. Your consideration would be greatly appreciated.

Opinions on the Patents Bill 2008

It is incontrovertible that software has played an important role in such recent phenomena as the technological innovation in computer and networking technology and the global development of the Information Communication Technology (ICT) industry. However, Clause 15 (3A) of the Patents Bill 2008, which has been under discussion in your country, specifies that software is not a patentable invention.[1]

On the other hand, Article 27 of the WTO TRIPS Agreement, to which your country has been a signatory, stipulates "patents shall be available for any inventions, whether

products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application." In this respect, the Patents Bill 2008, which finds software-related inventions unpatentable, contradicts the TRIPS Agreement.

As an organization that represents private companies conducting business in an increasingly globalized world economy, we have great interest in promoting international harmonization of intellectual property laws. We are concerned that the Patents Bill, which contradicts the TRIPS Agreement, could have a negative effect on your country in terms of corporate investment and future industrial development.

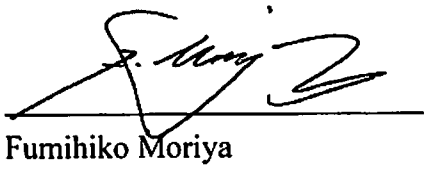
We are mindful that the provision of patent protection to software-related inventions has raised various issues with respect to the scope of patent protection for such inventions. For example, in Europe, the U.S., and Japan, where software-related inventions are broadly protected under their respective patent systems, those issues include the following: the issue of the examination guidelines and patent specification requirements for software-related inventions, the issue related to the argument that patent protection should not be provided to pure business methods and abstract ideas that could hinder the healthy development of the ICT industry, the issue of patentability of software that is marketed as software-embedded products and software that is marketed and reproduced through a computer network, and the issue of open source software. Regarding most of these issues concerning software-related inventions, it is our understanding that the general tone of discussion is not to deny the patentability of software but to determine the appropriate scope of patent protection that should be provided to software-related inventions in individual cases so as to promote the development of the ICT industry.

Meanwhile, software is found to be patentable under the current Patents Act 1953 of New Zealand. Having analyzed how Clause 15 (3A) of the Patents Bill 2008 has been established, we are under the impression that significant considerations were given to the opinions from a certain circle of software developers in spite that the patent system is an important industrial policy.

We do not fully understand why it is viewed necessary to revise the Patents Act in such a way that is not in line with the TRIPS Agreement and to limit the scope of patent protection. Such unnecessary limitation should not be imposed because the patent system should be utilized to promote the development of your ICT industry, which has great potential for continuous growth.

We would be very grateful if you could consider deleting Clause 15 (3A) of the Patents Bill 2008, which defines software as unpatentable, establishing a patent law that will pave the way for the coming age of ICT industry in your country, and thereby providing patent protection to software-related inventions under specific and stable rules.

Sincerely yours,



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Copy to:
Mr. Andrew Jackson
Deputy Secretary of the Competition, Trade and Investment Branch
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i http://legislation.co.nz/bill/government/2008/0235/latest/DLM2843000.html?search=ts_bill_Patents_resel&p=1