

Proposal of Green Technology Package Program
(Executive Summary)

Japan Intellectual Property Association (JIPA)
Green Technology Package Program Task-force

Under the UN Framework Convention on Climate Change (UNFCCC), the Developed Countries (the countries and other parties referred to as the “the developed country Parties and other developed Parties included in Annex II” in the UNFCCC) assume an obligation to encourage transferring to the Developing Countries (the countries referred to as the “developing country Party” in the UNFCCC) environmental technologies with a view to disseminate such the technologies in the Developing Countries. Some of the Developing Countries, however, assert that the transfer of the environmental technology has not facilitated very well and how to promote the environmental technology transfer now becomes an important issue in the context of negotiations in Conferences of the Parties of the UNFCCC (COP).

The Clean Development Mechanism (CDM) is one of mechanisms established under the Kyoto Protocol to promote technical assistances and financial aids by the Developed Countries to the Developing Countries. As of December, 2009, approximately 1,900 projects have been registered as CDM project. In addition to the framework of the CDM, many other types of assistances are currently being provided. For example, implementations of model business operations including establishing infrastructures and backing up efforts in planning projects for greenhouse gas reduction are being provided by the Developed Countries including Japan. With respect to intellectual properties, which are related to the technologies deemed necessary to be used in such technical assistances, tends to be handled based on individual judgment of each owner (such as company) of such the intellectual properties. Consequently, in case that an entity in the Developing Countries desire a license of such the intellectual properties, a license agreement(s) is supposed to be entered into between the owner of the technology (Licensor) and the party who receives the technology (Licensee). In such license negotiations, we often come across some challenges to deal with such as difficulty of contract negotiation itself, concerns against Licensee’s capability of paying license fees and certainty of fulfillment of contract obligations by the Licensee. Also, in order that Licensee may implement the licensed technologies, certain technological capabilities are required on the side of the Licensee, therefore, it is a tendency that the Licensee further requests technical assistances and supports from the Licensor for implementation of the licensed technology. Furthermore, some of the Developing Countries claim that the ownership of the intellectual property rights related to the environmental technologies by the Developed Countries obstructs dissemination of the environmental technologies in the Developing Countries. With such claims, some of the Developing Countries assert opening access to the intellectual properties owned by the Developing Countries.

To remedy this situation, we have studied possibilities of establishing a new

framework which enables to promote the technology transfer to the Developing Countries, that is, the new framework which may (i) secure both the Developed Countries and the Developing Countries in each role of providing and receiving the environmental technologies, and (ii) smoothen various transactions pertaining to such environmental technologies transfer, and summarize one of such studied schemes as a proposal of “Green Technology Package Program (GTPP)” as described below.

It often is difficult for the Developing Countries to investigate possibilities of introduction of the environmental technologies without expertise information concerning licenses, such as details of the technology, information on the technology owner, differences between the licensed technology and other similar technologies, availability and effectiveness of the technology in the Licensee’s country, the terms and the conditions of the license and availability of related technical assistances. However, the owners of the technologies in the Developed Countries normally manage each owner’s technology independently. Therefore, those desired information on the technologies can be said that it often is hidden in this information society. In order for the Developing Countries to find the right information, the framework in which a neutral third party selects and presents information on available and useful environmental technologies owned by the Developed Countries to the Developing Countries may be valid and functional.

Currently, we can name the following initiatives, which all can be referred to in the web sites, those may be of help in selecting and referring series of patented technologies owned by companies in Japan and other Developed Countries which are available for licensing to third parties:

- a) Eco-Patent Commons led by “World Business Council for Sustainable Development (WBCSD)”;
- and
- b) Patent Licensing Database by an Independent Administrative Institute of Japan called “National Center for Industrial Property Information and Training (INPIT)”.

Also, the following two initiatives can be referred to as references to collected environmental technologies:

- c) Japanese State-of-the-art Alliance for Smart Energy Products & Technologies 2009-2010 by “Japanese Business Alliance for Smart Energy Worldwide (JASE-W)”;
- and
- d) Global Warming Countermeasures Japanese Technologies for Energy Savings / GHG Emissions Reduction 2008 Revised Edition by an Independent Administrative Institute of Japan called “New Energy and Industrial Technology Development Organization (NEDO)”.

However, there seems no initiative thereof in which clearly shows how to transfer and prevail such introduced the technologies in the Developing Countries. For example, in case of the Eco-Patent Commons and the Patent Licensing Database referred above, only patents are listed to view as the subjects of licenses. As mentioned in the preceding paragraph, implementing patented technologies requires a certain level of technological capability and therefore it can be expected that a very limited number of the parties in the Developing Countries can implement the licensed technology on their own. Thus, it seems difficult to use the patent lists themselves as tools for facilitating the subject technologies in the Development Countries. Also, for the other initiatives referred above, it may be presumed that the environmental technologies will be provided by means of supplying products and services using such technologies and it can hardly be said that these initiatives function as tools for facilitating technology transfer in a sense of licensing of intellectual properties. Further, from the Licensee's point of view, it is very difficult to judge which products and technologies are most suitable since there were no comparison made under the unified standard among the products and the technologies which may have been created for the same purposes.

Therefore, we expect GTPP to undertake a role of the following features to facilitate technology transfer and disseminate the technology in the Developing Countries:

- 1) In order for the Licensee to understand benefits of the use of the technology, GTPP is to present on a web site database such information, concerning available environmental technologies as features of each technology, applied patents, comparison with other technologies, the terms and conditions of provision of the technologies and examples of model agreements (Note: Licensor may, at its own discretion, determine the scope of its information provided on a database and may require a separate confidential agreement for the provision of certain information thereof.);
- 2) To design schemes which enable to provide, to the extent agreeable by the Licensor, necessary patents, know how, services and materials as a package in accordance with Licensee's capability. As mentioned above, patent license may not be sufficient for the Licensee to implement subject the environmental technologies. Thus, this scheme is based upon an assumption that it may facilitate utilization and dissemination of the subject technology in the subject region of the Developing Countries by licensing not merely patents but also relevant know how as well as by providing technical assistances, consulting services oriented to develop a successful business case, parts and materials not easily obtainable and supports in building the infrastructure for business operations;
- 3) To take a role of a coordinator or an advisor between the Licensor and the

Licensee of the technologies from an independent and a fair position to bridging negotiations or to give advice with a view to proceed negotiations for licensing or other business transactions;

4) For both the Licensor and the Licensee with regard to the technology transfers under the GTPP, to assist in (i) utilizations of the CDM for businesses operated under the license, (ii) acquisition of carbon credit by government from the Licensor and application of tax benefit to the Licensor in return therefor (iii) availing various environmental related funds or Official Development Assistance (ODA), all in order to resolve common concerns in business transactions such as negotiations, financial needs and payment fulfillments. These are expected to be of a great help to realize more efficient and secured technology transfers and technical assistances;

5) For the technology transfers under GTPP, to assist in applying for exemption of license restrictions to governments or competent authorities of each Licensee country; and

6) To seek for a social institute(s) or arrangement(s) useful for the technology transfer such as an insurance system for infringement of the intellectual properties, etc. as well as to facilitate use of such the social institute(s) or arrangement(s) in the Developing Countries.

Operation of these proposed schemes should be conducted by an organization(s) which can guarantee fairness and authority. For example, a subsidiary organization to the UNFCCC or World Intellectual Property Organization (WIPO) may be suitable. As to the issue of payment fulfillment, since supplying services by these organizations for free of charge basis may confronts some limitations, schemes such as to supplement service fees to these organizations by some portions of the license fees due payable by the Licensee may be worth considering.

It should be emphasized that the environmental technologies shall be utilized not only by the Developed Countries but also by the Developing Countries where we could expect greater effects in reduction of global greenhouse gas. These technologies may contribute more markedly in the worldwide efforts towards establishment of the low-carbon society as a part of global warming countermeasures. Moreover, in case that the technologies and know how, which were created and utilized at one time by the Developed Countries, including Japan, are to be utilized again in the Developing Countries as business operations, we may be able to further achieve positive effects in the global economy . As for small and medium sized business enterprises, even if they have technologies available for transferring to the Developing Countries, they may have difficulty to transfer the technologies by themselves due to their limited experiences in effective business negotiations with the Developing Countries or any other reasons. However, we believe that the proposed GTPP scheme hereof can be of a great help to

these small and medium sized businesses in making their technology transfers possible.

During our study by this Task-force, we focused on both the two points shown below with regard to the environmental technology transfers in which the intellectual properties are to be licensed:

- i) Possibilities of expanding business opportunities through the technology transfer by means of a package supply of patents, know how, services and/or parts and materials as necessary for the Developing Countries but to the extent that is allowable by the developed Countries; and
- ii) Suitable measures which should be commonly contributable to the Developing Countries and the Developed Countries.

At this present stage, the GTPP proposal hereof is one of the proposals to the new framework to be established and does not reflect the policies and strategies on technology transfers of each member company of JIPA. Though, JIPA intends to further investigate to realize efficient measures for the technology transfers in the near future for the benefit of the parties which are interested especially in the environmental technology transfers with reflecting views and feedbacks from JIPA member companies as well as and from outside parties. We expect that this proposal can be contributory to continuous investigations in the future.