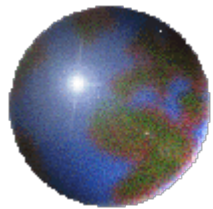


世界統一特許に向けた JIPAの国際活動

世界特許制度調和の現状と課題



JIPA 三極活動の経緯と活動趣旨

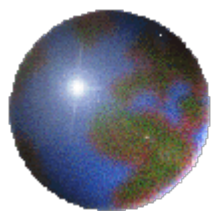
三極ユーザ会議での活動



【資料】

2005年2月22日

第4回JIPA知財シンポジウム



世界特許制度調和の 現状と課題

WIPO/SCP及びPCTリフォーム



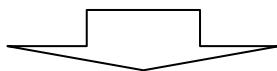
国際第2委員長
内藤 浩樹



世界における特許出願の現状

知財保護制度の
国際的な展開

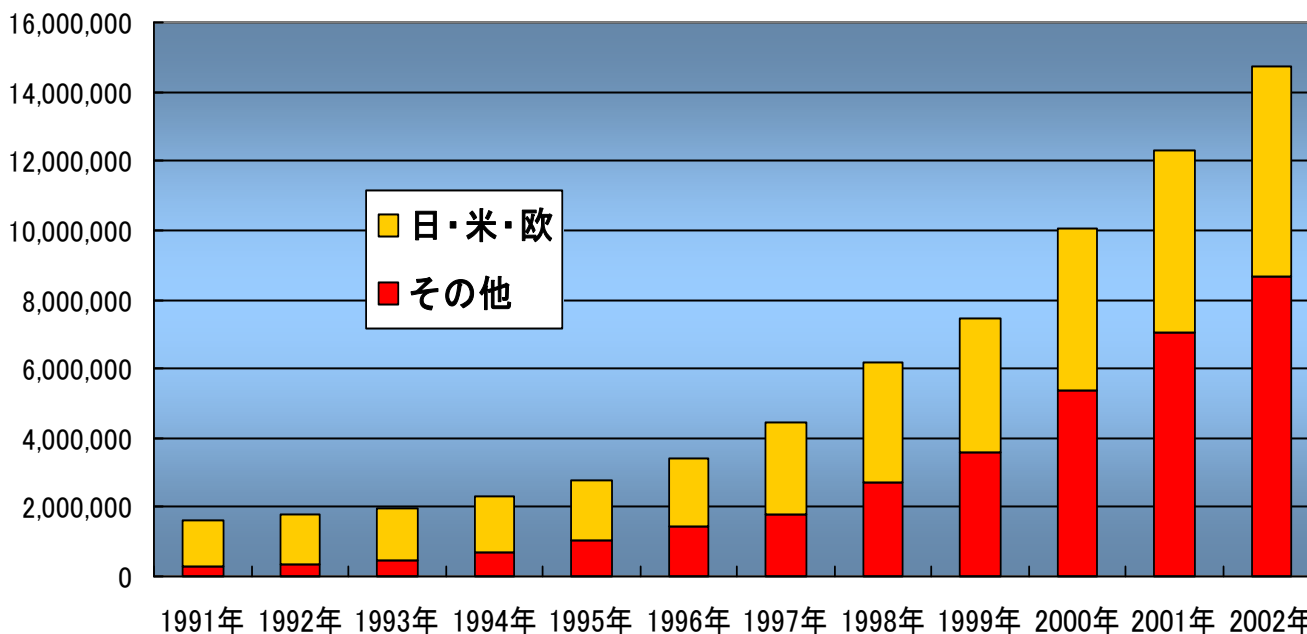
⇒ 世界的な特許出願件数の急増



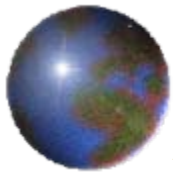
特許庁 審査能力の限界

出願人 コスト負担の急増

全世界の出願件数



国家レベルのみの取組では限界有 ⇒ 国際的な取組が必要



特許制度調和に関する条約の進捗動向



方式面の調和 → 特許法条約(PLT)

2000年条約採択

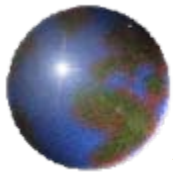
本年4月28日発効

実体面の調和 → 実体特許法条約(SPLT)

加盟国で条約案を議論

出願インフラ → 特許協力条約(PCT)

調和を具現化する方式統一条約として
順次改正(2004年全指定制度導入)



PCT制度改正の動向

出願インフラとして的大幅改正はほぼ終了

→PLTおよび、実体面の調和を含めた制度へ改正中

(過去)

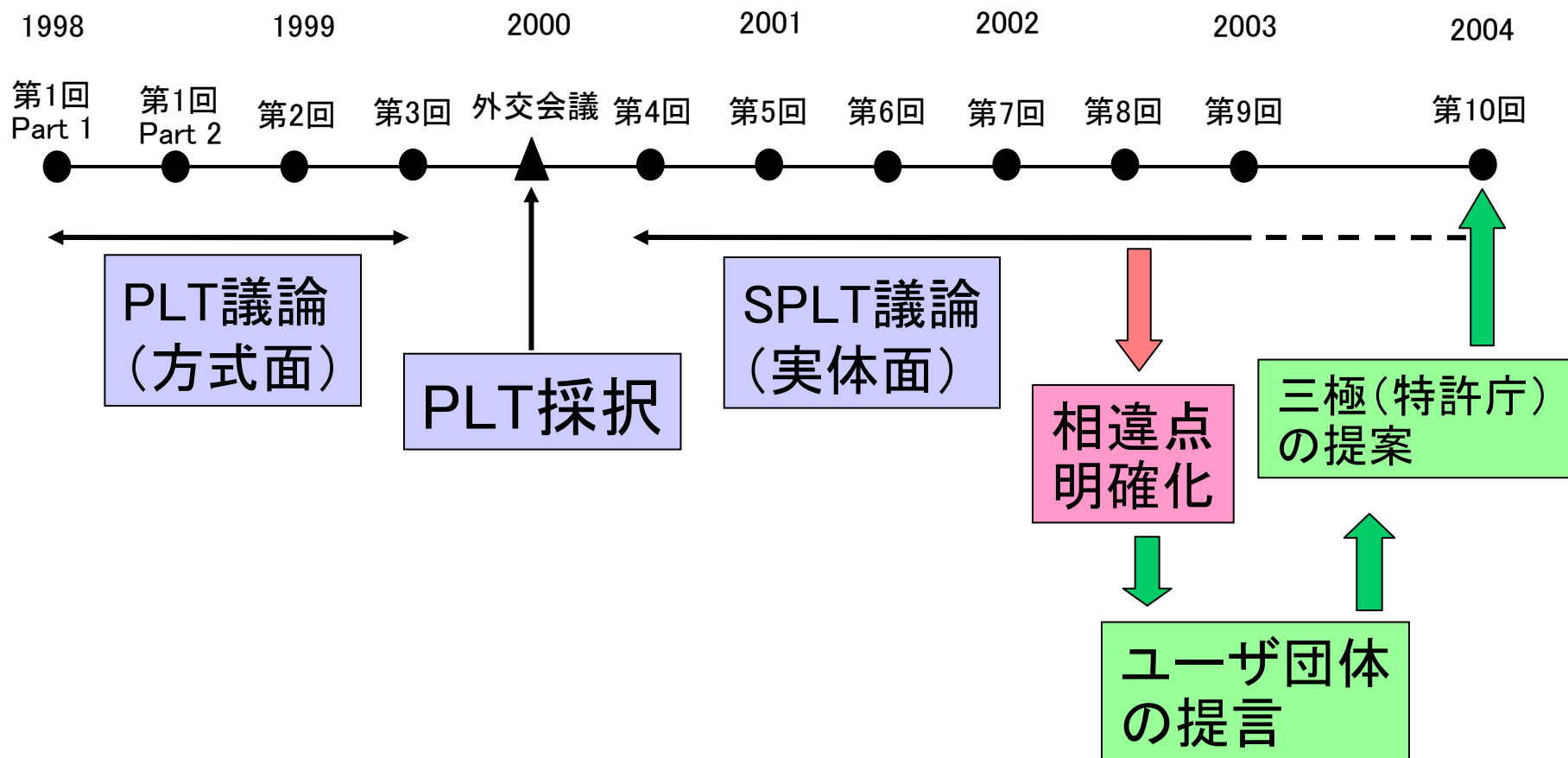
- ・国内移行期限の改正(2002年4月1日施行)
- ・全指定制度の導入(2004年1月1日施行)
- ・拡大国際調査・国際予備審査制度の導入(2004年1月1日施行)

(現在)

- ・特許法条約(PLT)の規定内容の導入
- ・国際段階の審査充実による国内段階における重複審査の排除
- ・方式手続の簡素化・ストリームライン化



特許制度調和に向けてのSCP会合の進捗動向

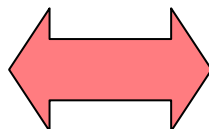




三極間の相違点

欧州、日本

- a. 先願主義のもとでの調和を原則とすべき
- b. グレースピリオドは例外的な場合のための限定的な内容にすべき
- c. 保護対象を技術分野に限定すべき
- d. 産業的な利用可能性を要件にすべき



米国

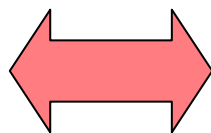
- A. 先願主義移行についての議論は、他の項目についての議論が進んでから
- B. 国際的な広範囲のグレースピリオドが必要
- C. 全ての新規で有用な発明を保護対象にすべき
- D. 製造・利用可能であれば十分



発展途上国と先進国との間の相違点

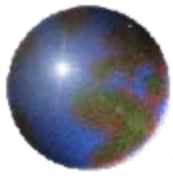
発展途上国

- SPLTが、各国の、伝統知識・遺伝資源保護等の国際的義務を果たし、もしくは、公衆の利益を向上させる権利を制限するものでないことを明確にすべき



先進国

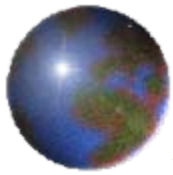
- 反対(SPLTの目的に反する、SPLTの範囲外)
- 伝統知識、遺伝資源等の保護については別の国際会合で議論すべき



ユーザ団体の提言

優先項目に議論を特化し、早期調和を目指すべき

1. *AIPPI 宣言* (2003/10/27)
2. *NGO Roundtable* (2003/11/10-11)
3. *FICPI 宣言* (2004/2/3)
4. *IPO-AIPLA 提言* (2004/2/25)
5. **三極ユーザ団体** (UNICE, AIPLA, IPO, **JIPA**) **宣言**
(2004/5/5)



ユーザ団体の提言(1)

1. AIPPI 宣言 (2003/10/27)

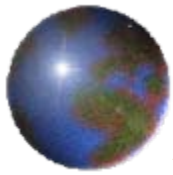
- ・ SPLT 1とSPLT 2に分け、現段階では、例外、共同発明、補正・訂正、有用性、拒絶・取消理由 等を除いたSPLT 1について議論すべき

2. NGO Roundtable (2003/11/10-11)

- ・ 4項目(先願主義、グレースピリウド、従来技術、先願の従来技術としての扱い)に限定して議論すべき

3. FICPI 宣言 (2004/2/3)

- ・ 縮小パッケージ(先願主義、グレースピリウド、従来技術)について調和を推進すべき



ユーザ団体の提言(2)

4. IPO-AIPLA 提言 (2004/2/25)

- ・ まず、縮小パッケージ(先願主義、国際グレースピリオド、従来技術、先願の従来技術としての扱い)について三極ユーザ間の調和を図るべき

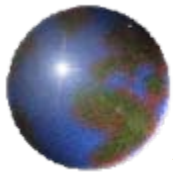
5. 三極ユーザ団体 (UNICE, AIPLA, IPO, JIPA) 宣言 (2004/5/5)

- ・ 縮小パッケージ(先願主義、先願主義のための国際グレースピリオド、従来技術、先願の従来技術としての扱い)に集中すべき



三極の共同提案(SCP/10/9)

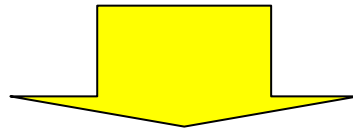
1. ユーザ団体の提言を受け、三極特許庁間で協議
2. 実体面の調和により、出願人と庁の業務を削減し、コスト削減と特許品質の向上を実現することが三極共通の目標
3. 全ての項目について議論するのではなく、適切な項目のパッケージについて議論し、早期の合意を目指すべき
4. 最初のパッケージとして以下を提案
 - ・ 従来技術
 - ・ グレースピリオド(先願主義とリンク)
 - ・ 新規性
 - ・ 進歩性／非自明性
5. 2006年前半の外交会議採択を目指す(ユーザに対して、早期合意に向けたSCPメンバーの意志を示す)



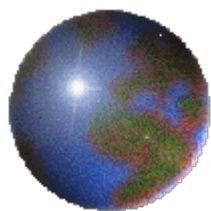
世界特許制度調和に向けての課題

広範囲な論議を早期にまとめるためには、
三極が協力して制度調和案を提示することが重要

途上国の利害、実態を考慮した包括的な議論の必要性



次回、SCP及びPCTリフォーム会合は本年5月に予定



JIPA 三極活動の経緯と 活動趣旨

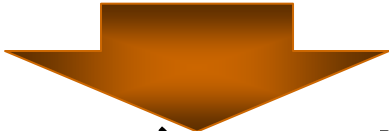


特許第1委員長
西尾信彦

.



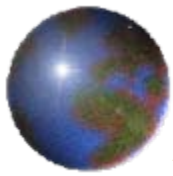
80年代、90年代の知財協会活動

- 訪米団、訪欧団を隔年派遣
 - ・各国の法制度/実務の調査検討
 - ・各国の制度改定動向の調査
 - ・各国の判例動向の調査
- 
- ・日本ユーザーの立場から意見発信



訪米団・訪欧団活動の成果

- ❖ 三極特許庁（JPO／USPTO／EPO）
夫々と情報交換が容易となった。
- ❖ 米国知財団体（IPO／AIPLA）及び欧州団体（UNICE）の知財グループと太いパイプを構築することができた。



他極ユーザメンバ

✦ UNICE

欧州(EU)の産業界による団体
法改正に向けたEU議会への影響力
(EPOは法改正提案権限無)

✦ IPO

米国産業界知財部門の団体

✦ AIPLA(米国知財法曹)

US議会への影響力



2000年代の知財協会活動

- ❖ 単に意見交換するのみでなく、ユーザーの立場から、知財政策に積極的に関与すべきである。
- ❖ 三極のユーザー団体が、「パテントコスト削減」の観点で、共同して三極特許庁へ働きかけるようにしたい。



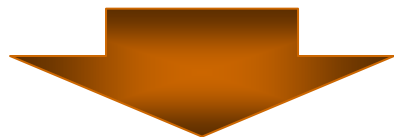
三極ユーザー会議の提案

- ❖ 2002年度の訪米団、訪欧団において、日本知財協会から「三極ユーザー会議」の設立を提案。
- ❖ 第1回 2003年 at ニース
- ❖ 第2回 2004年 at 東京
- ❖ 第3回 2004年 at ボストン
- ❖ 第4回 2005年4月 at ブリュッセル(予定)



グローバルコストリダクションの提案(2001)

低価格、低パワーで、
広い地域での特許保護

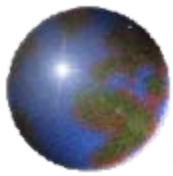


同じ様式
同じ審査(公知例調査含む)
同じ権利
同じ発行

4 Same

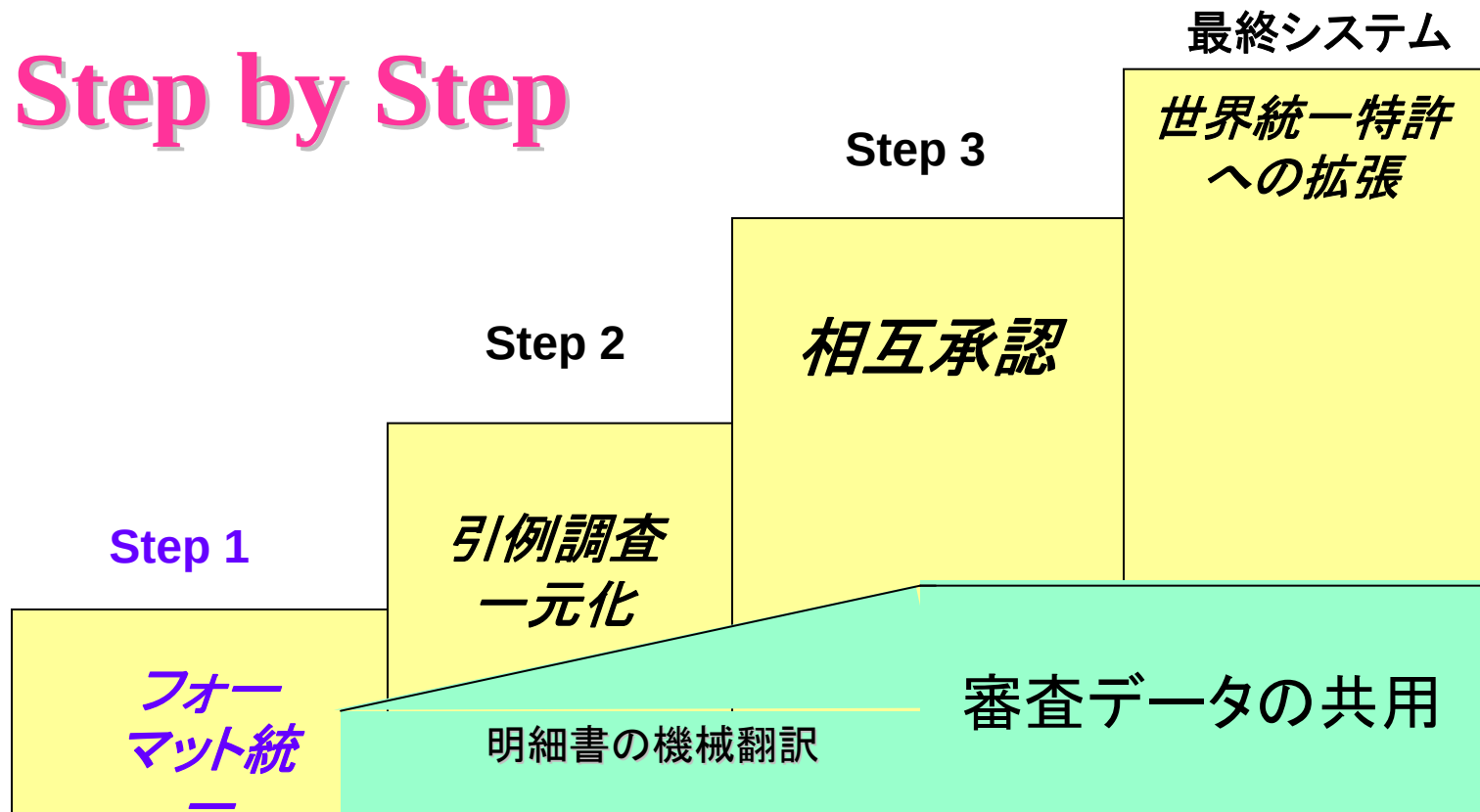
JIPA





第1段階は *same format*

Step by Step

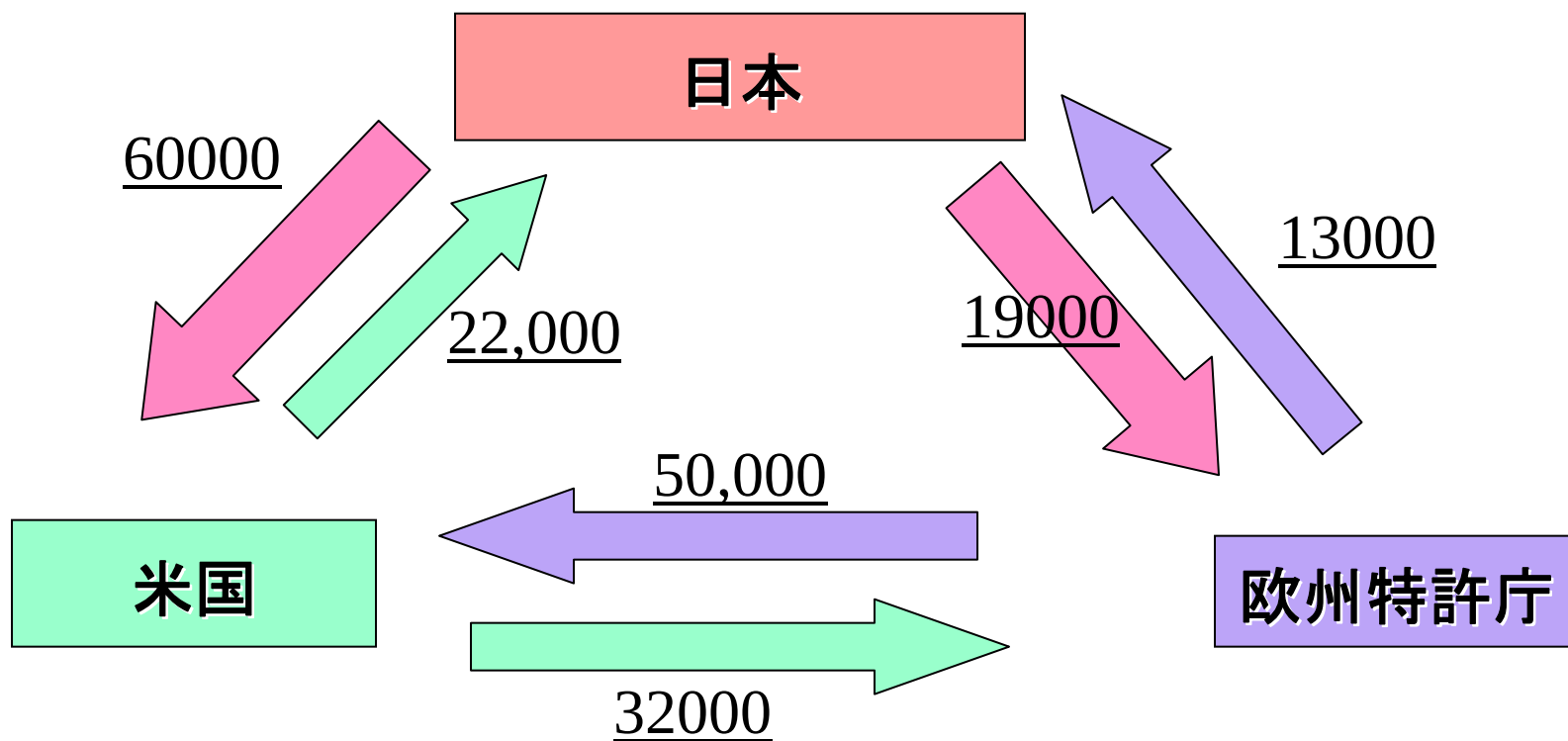


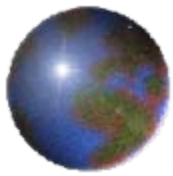


各極間出願状況

● 約 **20万件/年**の出願を各国様式変換中

2003年

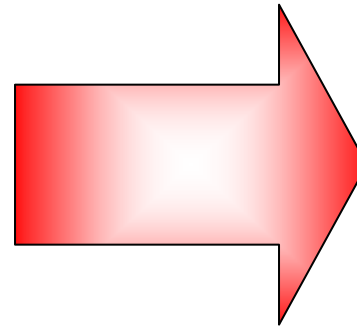




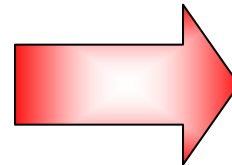
統一効果

❊ 各国移行時
変換明細書作成
明細書⇒クレーム調整
図面 ⇒ 不要
発明者/関係者検収
(Declaration作成)
⇒ 不要/削減可

翻訳



大幅
削減



機械翻訳活用等
費用削減可

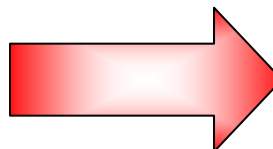


様式統一効果

✪ 年千件の企業で年数億の費用抑制

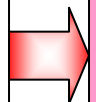
日⇒米・欧 (PCT込み) **77,358件** (庁年次報告)

作成工数削減
明細書・図面
検収工数

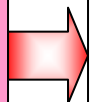


30万円/件

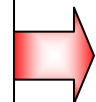
翻訳代



機械
翻訳



検収



10万円/件

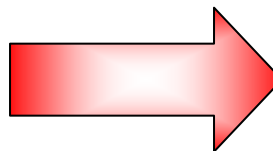
Save!! 約 300億円/年 (千件企業で約4億円)



サーチの共用

● 約**130億円** (千件企業 **2億円**) 年経費抑制

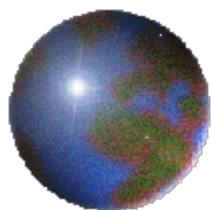
ストレート登録増加
OAは他理由



約**55億円**
約**75億円**

庁)審査滞貨解消し迅速登録可

出願人) 権利期間の担保
発明者工数投与抑制



三極ユーザ`会議での活動

Same Specification Format

国際第1委員長
碓氷裕彦



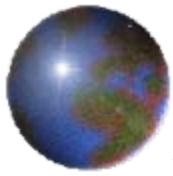
第2回 東京会議でのJIPA提案

PCTフォーマットに統合する事を提案

The base should be the *PCT format*.

This format were agreed at the stage of PLT,
WIPO.

US and JP not ratify, yet.



第3回 ボストン会議でのJIPA提案

Patent Cost Reduction

(for Same Format)

Trilateral Users Meeting 2004 Fall
In Boston, U.S.





JP

US

EP

PCT

Claims (separate document)...**Claims.****Claims.****Specification**

[Title of the invention]

[Technical field]

[Background art]

[prior arts information]

[Disclosure of the invention] (added)

[Brief description of the drawings]
[Figure 1]...[Best mode for working the
invention]
[embodiment]

[Industrial applicability] (added)

Specification

Title of the invention

Cross reference to related art

Background of the invention

Field of the invention

Description of related art

Summary of the inventionBrief description of the several
views of drawingDetailed description of the
invention**Claims.****Abstract****Description**

Title of the invention

Technical field

Background art

Disclosure of the claimed invention

Brief description of the drawings

Detailed explanation of the ways of
carrying out the inventionThe ways of exploitation in industry
(optional Article 57; Rule 27(1)(f))**Description**

Title of the invention

Technical field

Background art

Disclosure of invention

Brief description of drawings

Best mode for carrying out the
invention (Mode(s) for carrying out
the invention)**Industrial applicability****List of reference signs****Drawings**

[Figure 1]...

Drawings

Figure 1

Drawings

Figure 1

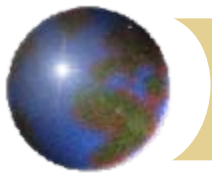
Drawings

Figure 1

Abstract**Abstract****Abstract**

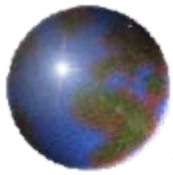
XML format allows any order

One glance Comparison



JIPA propose for the Same Format Realization

- 1: Sign up Joint Declaration(JD).
- 2: Send JD
to EPO/USPTO/JPO & WIPO
- 3: Public Announcement.



共同宣言文書の合意

(プレアンブル)

.....

Patent offices should move towards the adoption of a common patent application standard so that conforming applications can be electronically filed and prosecuted in any patent office without the need for any change to accommodate local rules. A first step towards this goal should be the adoption of a common patent application format by the trilateral offices, based generally on PCT format, so that conforming applications (i) can be filed, preferably electronically without need for any change in the submitted application to accommodate national/regional rules, and (ii) aid in facilitating machine translation of the application.

三極特許庁はPCTフォーマットを基本に同一フォーマットとし、電子申請・機械翻訳の便を図るべきである。



第4回会議までの宿題

- ❁ Same formatに関し、形式的に問題となる事項に付いての検討
 - ❏ 例) タイトル名・式・表・図面・段落番号
 - ❏ JIPAが中心となって他団体の意見を取り纏める
- ❁ Same formatに関し、実態的に問題となる事項に付いての検討
 - ❏ 例) 参照番号・クロスレファレンス・アブストラクト
 - ❏ IPOが中心となって他団体の意見を取り纏める



三極ユーザーからWIPOへの提言



RESOLUTION FOR A PATH FORWARD IN WIPO HARMONIZATION TALKS

FROM THE INDUSTRY TRILATERAL

Organizations representing intellectual property interests of industry in the regions of the Trilateral Patent Offices agreed at their first meeting in Nice, France, in 2003, to form an "Industry Trilateral" to cooperate in developing and expressing a coordinated view of industry on intellectual property matters.

At its second meeting, held in Tokyo in February, 2004, the Industry Trilateral discussed and adopted the attached resolution favoring a reduced scope for the patent law harmonization talks being held under the auspices of the World Intellectual Property Organization in the Standing Committee on Patents. It is believed that by focusing on the adoption of common search and examination standards that the discussions in WIPO will have the best chance to provide applicants with legal certainty regarding the patentability of their inventions and to relieve the pressures of the growing workloads of the EPO, JPO, and USPTO.

We commend your consideration of the attached resolution.

Philippe de Buck
UNICE Secretary General

J. Jeffrey Hawley
President of IPO

Y. Sekita
President of JIPA

Rick Nydegger
President of AIPLA



RESOLUTION

Substantive Patent Law Harmonization Treaty

The Industry Trilateral comprising representatives of industry from Europe, Japan, and the United States:

Desiring the negotiation and conclusion of an effective Substantive Patent Law Treaty (SPLT) that will reduce costs to applicants and industrial property offices, promote legal certainty, and reduce redundancy;

Believing that far too many different and divisive issues have been introduced into the negotiations of the SPLT resulting in little progress toward the desired goal of an effective SPLT;

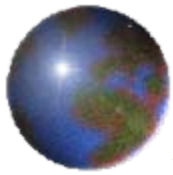
Recognizing that opinions of governmental and non-governmental representatives are widely divergent on these many issues, rendering the conclusion of negotiations on the entire set of issues currently under discussion unlikely in the foreseeable future;

Further recognizing that any package of issues to be negotiated should provide balance to the desires and needs of applicants from the Member States of the World Intellectual Property Organization, as well as address the desires and needs of industrial property offices in these Member States;

Therefore Recommends that the Standing Committee on Patents concentrate its efforts on a reduced set of provisions which will lead industrial property offices to the adoption of common search and examination standards and provide applicants with legal certainty regarding the patentability of their inventions; and

Specifically, Recommends that the harmonization of substantive patent laws in the SCP initially concentrate on achieving a reduced harmonization package containing the following provisions:

- a first-to-file system of priority;
- an international grace period for a first-to-file system;
- an agreed definition of prior art having no geographic limitations;
- an agreed definition of how and when pending published patent applications, including PCT applications, are to be used as prior art, including any necessary solution for double patenting.



WIPOへの提言

❁ 実体的特許法条約 (Substantive Patent Law Harmonization Treaty) は以下の項目に注力すべきである。

- ❁ 先願主義の採用
- ❁ 国際的なグレースピリオド
- ❁ 公知技術の定義 (世界公知)
- ❁ 先願出願の扱い



三極ユーザの意見集約

- One Search実現のため
 - ① グレースピリオドの期間
 - ② 先願を公知例とするか否か
 - ③ 先願対象にPCT出願を含めるか否か

- UNICEが中心となって、第4回会議までに他団体の意見を集約する



三極ユーザーからWIPOへの要請

UNICE
THE VOICE OF BUSINESS IN EUROPE



September 22, 2004

Dr. Kamul Idris
Director General
World Intellectual Property Organization
34, chemin des Colombettes
1211 Geneva 20, Switzerland

Dear Mr. Director General,

We are writing on behalf of the Industry Trilateral to express our strong opposition to the proposal by the World Intellectual Property Organization (WIPO) to raise the International Filing Fee by 12% beginning January 1, 2005 (document PCT/A/33/5).

The proposal recalls that the PCT fees were modified just last year by the PCT Assembly fixing the new International Filing Fee at 1,400 Swiss francs (replacing the former basic fee and designation fee). The Director General stated his intention to consult with Member States and to review the actual usage of the new PCT arrangement. On the basis of this work, the Director General indicated that he would propose a readjustment of the PCT fees, if necessary, in 2004. While document PCT/A/33/5 states that, at the time of its preparation, information on actual use of the PCT under the new arrangements shows that the International Filing Fee, if not readjusted now, would result in a significant shortfall of the PCT income, no details are proffered in that document.

Without a convincing justification, the Industry Trilateral must oppose the proposal for increasing the International Filing Fee at this time. Specifically, we base our opposition on the following considerations:

1. Last year, when increases were approved, the number of international filings had decreased relative to previous years. The International Bureau (IB) reported that this decrease would result in a reduction of income from PCT fees. Currently, however, we understand that PCT filings have increased to an annual growth rate of approximately 4%.
2. With implementation of the electronic filing system in the PCT operations in the IB, there has been a concomitant increase in electronic filings which should have resulted in higher efficiencies and a more productive staff.

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3. The proposal to increase the International Filing Fee does not contain any analysis evidencing a shortfall of PCT income. To justify the proposed increase, an accounting of the costs of the PCT operation, the income realized from PCT fees, and the use to which PCT fee revenue is put should be provided. The proposal lacks any such information.

4. As noted above, the Director General stated his intention to consult with Member States and review the actual usage of the new reformed PCT during this past year. As we understand it, no such consultations have yet taken place. Thus, users are unable to learn from their national and regional offices what the situation actually is regarding PCT fee income and its use.

We are aware that PCT funds are used to subsidize other WIPO programs. Indeed, it is our understanding, based on document WO/PBC/7/2, that PCT is expected to generate 505,719,000 Swiss francs for the 2004 - 2005 biennium, but will only receive 124,603,000 Swiss francs of this total. While we are interested in some of these other activities, we believe this difference exceeds the limit as to how much PCT applicants should reasonably be expected to subsidize the other activities of WIPO.

For all of these reasons, we urge that the proposal to increase the International Filing Fee at the upcoming PCT Assembly Meeting be deferred and not adopted until and unless the International Bureau can justify the proposed increase.

Sincerely,

Philippe de Buck
UNICE Secretary General

J. Jeffrey Hawley
President of IPO

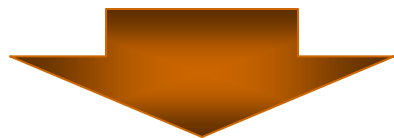
Taisuke Kato
Managing Director of JIPA

Rick Nydegger
President of AIPLA



WIPOへの要請(料金値上げ反対)

- SCPの南北問題(遺伝子資源の原産地保護等)の為、PCT値上げの動きがあった。
- 三極ユーザーから共同でWIPO宛に意見書を提出した。



- 今回の値上げは見送られた。



三極ユーザから三極特許庁への提言



Mr. Alain Pompidou
President
European Patent Office

Mr. Hiroshi Ogawa
Commissioner
Japan Patent Office

The Honorable Jon Dudas
Undersecretary of Commerce for Intellectual Property
and Director of the U.S. Patent and Trademark Office
United States Department of Commerce

2 December 2004

Dear Trilateral Office Heads,

The undersigned organisations together form the Industry Trilateral whose aim is to increase industry's cooperation efforts on Intellectual Property discussions. The Industry Trilateral is a unique platform that brings together industry representatives from the United States, Japan and Europe.

We would like, on behalf of the Industry Trilateral, to express our support in principle for the efforts of the Trilateral Offices in order to strengthen their coordination, cooperation and harmonisation efforts.

In this context, we welcome the general orientation of the Memorandum of Understanding (MoU) signed on 22 November 2004 during the 22nd Trilateral Conference held in Alexandria, Virginia.

We support in particular current discussions to coordinate work-sharing, electronic business development to support work-sharing and harmonisation or standardisation of search strategies, tools and substantive patent law.

The Industry Trilateral is in particular supportive of the following projects:

- **Effective access to and use of work results/strategic issues.**
We support making it possible for the search and examination results of the Trilateral Offices of first filing to be provided in a timely manner to be used by the other Trilateral Offices of second filing.
- **Comparative studies in new technologies.**
We welcome the establishment of a working group to identify trends in emerging technologies and exchange of information between the Trilateral Offices in this area.
- **Electronic business system.**
We support the project whose aim is to achieve the goal of author-once-file-anywhere in an operational electronic filing environment, and hope to make recommendations on the goal of author-once-file-anywhere in the spring.
- **Priority documents.**
We welcome the objective of the Trilateral Offices to further work on a technical standard for Trilateral Offices to exchange Priority Documents.
- **Linguistic tools.**
We support progress in studying carefully how machine translation can improve progress in the use of search and examination results.

Nevertheless, concerns have been expressed about certain of the elements in the project LEG on Legal Issues. For example, we cannot support the concept of enlarged novelty.

The Industry Trilateral would appreciate being kept closely informed about developments in the above-mentioned projects. We would also greatly welcome further links being built between the Trilateral Offices and the Industry Trilateral. In this context, we would like to propose that when the next Trilateral Offices meeting takes place in Europe, a meeting be organised with the Industry Trilateral.

We look forward to your reaction to this and we remain at your disposal to discuss further the above comments.

Yours Sincerely,

Philippe de Buck
UNICE Secretary General

J. Jeffrey Hawley
President of IPO

Yasuo Sakata
President of JIPA

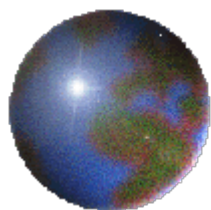
William C. Rooklidge
President of AIPLA



三極特許庁への提言

❖ 三極特許庁のハーモへ向けた努力を支持する。

- ❖ サーチ・審査結果の相互利用
- ❖ 共通化した電子出願システム構築
- ❖ 優先権書類の相互交換
- ❖ 機械翻訳の改良及び活用



End



2005.2.22 JIPAシンポジウム資料

日本知的財産協会