

JAPAN INTELLECTUAL PROPERTY ASSOCIATION

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30th January, 2015

To: Justice Prabha Sridevan,
Chairperson
IPR Think Tank
New Delhi, INDIA

Dear Justice Prabha Sridevan,

Re: The first Draft of the National IPR Policy

The Japan Intellectual Property Association (JIPA) is a non-governmental organization that was established in 1938, which represents users of intellectual property systems. As an association having about 900 Japanese leading companies, JIPA submits recommendations and proposals to the relevant authorities and organizations with regard to the establishment of intellectual property systems overseas and improvements in the implementation thereof.

In reference to "The first Draft of the National IPR Policy" on which your office invites public comments on the website, enclosed please find JIPA's comments on the draft.

Your deeply consideration on these matters will be appreciated.

Yours faithfully,

(Kazushi TAKEMOTO)

President

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Comments on the “National IPR Policy (First draft)”

Japan Intellectual Property Association

JIPA makes comments on the "National IPR Strategy" (First Draft) in India as follows.

Objective 1: IP Awareness and Promotion

JIPA welcomes the policy of the Indian government to increase the awareness and promotion of IP throughout the country. By raising awareness among the public about IP, the Indian government will give the people recognition to the significance of IP and will also create a climate where IPRs of others are respected. If the raised awareness of IP will obviate the execution of third parties having no legitimate right, Indian companies as well as foreign companies will work in active R&D in India, which will lead to the promotion of the creation, protection, and utilization of IP, bringing about a large number of innovations from India.

Such a wonderful program can serve as a model for other nations to raise the awareness of IP in the future. It is to be hoped that the government will disclose information on the systematization of the program, the way to carry out it, the way to keep everyone informed, etc.

Objective 2: Creation of IP

JIPA welcomes the policy of the Indian government to stimulate the creation and growth of IP. We have requests about the enactment of a new utility model law. For the enactment of the utility model law, we demand that in cases where registration is made only by formality examination, a report of a technical opinion on registrability of the utility model (substantive examination for deciding novelty and inventive step by the Office of the Controller General of Patents, Designs & Trade Marks (CGPDTM)) specified in the Japanese utility model system should be obligated to be submitted at the time of exercising the rights by applicants. This is because business operators are otherwise required to make negotiations or convey their views in infringement suits, in spite of unexamined utility model rights with unproven novelty or inventive step. In addition, there is concern about the abuse of rights by their holders, which might increase business risks to many operators in fostering industries in India.

Objective 3: Legal and Legislative Framework

JIPA actively supports the promotion of legal change in order to promote investments or technological innovations in India. We particularly demand a systemic

revision of the following three articles:

<Mandatory Submission of Implementation Reports>

The preparation of information necessary for submitting implementation reports by confirming the status of yearly implementation and costs required for asking agents to submit the reports place excessive burdens on patent holders and licensees having a large number of patents. These become burdensome equally for foreign companies and for Indian right holders. Hence, we request the alleviation of the burdens associated with the submission of implementation reports.

<Mandatory Submission of Information on Foreign Application>

In response to strict punishments, such as objections or requests for the cancelation of patents, in the case of failure to disclose the information in accordance with the regulations, applicants are required even to submit application information that makes no contribution to reduced burdens of examination or information that is obtainable by examiners. Hence, we request reasonable regulations that do not place excessive burdens on applicants.

<Acceptance Period>

The number of patent applications will probably increase. Accordingly, the number of notifications of reasons for rejection to be issued will also probably increase. This might delay the response of applicants to the first notification of reasons for rejection and also delay examination of the response of applicants. As a result, it is possible that many applications will miss the acceptance period. Hence, we request the abolition of the system or the extension of the acceptance period and the patent term compensating for the delay in examination.

Objective 4: IP Administration and Management

JIPA welcomes the enhancement of the administration, management, and the like of IPOs to bring about advantages to patent holders and licensees. A growing number of Japanese companies are branching out into India every year. Investigation to avoid the infringement of patent rights granted in India is increasingly importance. In particular, search functions are inadequate, making it difficult to exhaustively investigate what patents are present in India. Hence, we request the creation of electronic data on patent information on a regular basis and the provision of the information to DOCDB or institutes creating commercial database. We also request the provision of unlisted past data.

Although four branches for patents and five branches for trademarks currently perform examination and grant operations, there are differences in the accuracy, speed,

etc. of examination due to the absence of uniform service among the branches. Applicants tend to select a filing authority in consideration of these circumstances. This is responsible for further increasing the unevenness among the branches. Hence, we request that these patent or trademark authorities will be unified.

As for the elimination of patent backlogs, we request the introduction of a system of accelerated examination. Applicants require the early registration of some of the inventions for which they file applications, and do not require the early registration of others. It is possible that short-lifecycle techniques are rendered obsolete before being granted. In another case, early registration may be necessary for eliminating infringing items. On the other hand, inventions, for example, relating to techniques which are infeasible to commercialize, may not require early registration unless there is a plan for exploitation (e.g., licensing). This is because the early registration leads to increased patent maintenance fees.

Unfortunately, the existing examination system works to delay the examination of patent applications required to be granted early, due to the unnecessary wait for many other patent applications to be examined. Furthermore, preferential examination of inventions required to be granted patents early renders the IP system more accessible. Since such circumstances are not limited to Japanese companies, the introduction of the system of accelerated examination will also develop the growth of Indian companies. Foreign companies can make investments or branch out into India in a well-planned manner if they can early secure their patents to be implemented.

For the elimination of patent backlogs, we further request the adoption of a patent prosecution highway system. The patent prosecution highway system facilitates early overseas patent granting from applicants' perspective and also aims, in PO of each country, to reduce the examination workload and to improve the quality of the examination in the office of the second filing by the effective use of prior art search results and examination results provided by the office of the first filing. Its framework enables an applicant to ask, by simple procedures, the office of the second filing to make accelerated examination if the applicant also files an application for an invention considered patentable by the office of the first filing with the office of the second filing. This framework is being expanded to "MOTTAINAI-PPH", which enables PO of each country to utilize prior art search results and examination results provided by the office of earlier examination, regardless of whether or not it is the office of the first filing, in the case of patent applications filed in two or more countries or regions. This scheme can also be employed by global companies (applicants) that intend to file international applications, and can also alleviate the examination workload of the Indian PO.

Objective 5: Commercialization of IP

JIPA has great expectations for the policy to raise the awareness of IP creation in India. We also welcome steps to develop industries by the distribution of IP based on proper evaluation and the resulting transfer of technology. For the distribution and commercialization of IP, it is important to enhance database to render IP information accessible. It is required that those involved in the distribution, such as licensors, licensees, intermediaries, investors, and market analysts, should be able to easily find out necessary IP. For this purpose, database should be enhanced by enriching their contents and search functions to have easier searchability for database users. With current iPairs 2, it is difficult to do so. For example, the accurate identification of IP necessary for a user requires the user to easily get access to the whole specification from the "search results" screen. Further preferably, more advanced search criteria can be set. For promoting the distribution and commercialization of IP, it is additionally required to provide data to DOCDB and also to help private companies construct search systems by making a patent database public for easier access to Indian patent information.

Objective 6: Enforcement and Adjudication

JIPA welcomes the policy to enhance enforcement and to expedite the resolution of IP disputes. We expect that IPABs' backlogs in abandonments or objections will be reduced by establishing IPAB at each of the five branch offices or by giving these branch offices the powers of autonomy regarding finance or member selection. The establishment of the five IPABs will hopefully eliminate the need of touring among the branch offices as before, rendering applicants adaptable to hearings. The designation of specialized patent benches in the four high courts may also be effective in expediting the resolution of patent-related lawsuits. Meanwhile, we ask the specialized patent benches in the high courts and IPABs to define the division of roles and collaboration between them and also request measures directed toward the prevention of the unevenness among the five IPABs.

Since JIPA has so far fostered a climate where IP is respected in Japan, we can share the findings with India.

Objective 7: Human Capital Development

JIPA welcomes the policy of the Indian government to develop human resources for supporting IP system. Activities to develop human resources have been

done for long time in Japan.

IP is not just for lawyers. What is important is that user of IP system in companies (managers and engineers working there) are well educated about IP. And they use the IP as assets for the growth of the company. For this purpose, we demand the structure under which users can receive broad support for IP education.

JIPA possesses the largest system of IP education in Japan. In the fiscal year 2013, 14670 people participated in our education program. This education system is successful by virtue of an "ecosystem" where an instructor from a membership company of JIPA gives a lecture to members in the other membership companies.

Japan has Certified Specialist of Intellectual Property Management as a national certification. In addition, methods for scoring IP literacy have also been developed. The setting of such milestones may also be important for cultivating IP human resources throughout India.

JIPA is willing to cooperate with the Indian government to construct a structure related to users in the IP system.

COORDINATION, IMPLEMENTATION, BENCHMARKING, MONITORING AND EVALUATION OF THE IP POLICY

We hope that India will create an organization to decide on the IP policy beyond ministries and agencies for high national-level cooperation. The Japanese cabinet has Intellectual Property Strategy Headquarters. Not only government officials but lawyers and specialists from academy and industry work as members to create national policies. Also, in creating national policies, a wide range of comments are sought, and these discussions are open to the public. This achieves stakeholder-balanced policies.

An organization to summarize the views of industries is also necessary for India. In Japan, JIPA takes that role, and the presence of JIPA enables the views of industries to be gathered quickly.

Conclusion

JIPA expects that India will define such an IP policy and realize the nation intended by this policy. JIPA recognizes that the realization of this policy is a great challenge to India. The realization of this policy requires time, human resources, and domestic and international collaboration. JIPA requests the establishment of specific action items for the achievement of the schemes described in the Objectives and the provision of deadlines or road maps for the achievement.