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## *REQUESTS OR OPINIONS*

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Addressed to: Multilateral Trade System Department,  
Trade Policy Bureau,  
Ministry of Economy, Trade and Industry  
(Japan)

February 16, 2001

### Re: Proposals Towards the Rectification of Licensing Regulations in Asian Countries

Kunio OBAM\*

The Japan Intellectual Property Association (JIPA), led chiefly by its Licensing Committee, has performed over a seven-year period from 1993 repeated surveys and studies regarding the current status of, and several problems thereof, licensing regulations in Asian countries, in which Japanese industry shows an interest increasingly. Within this time period, JIPA has striven to gain an understanding of the actual status, and problem points related thereto, of the regulations within these countries, through such activities as the performance of two on-site surveys and two questionnaire-based surveys, etc. Since the grace period provided for developing countries under the WTO TRIPs Agreement ended in January 2000, JIPA has compiled its own proposal with its chief focus on conformity with the WTO TRIPs Agreement, referring to the latest information about systems within each country. We attach a copy of our proposal: "Proposals Regarding Policies for Rectification of Licensing Regulations in Asian Countries."

Within your Bureau, too, already sufficient studies have been performed regarding problems concerning the licensing regulations within Asian countries, as manifested, for example, by mention of these matters within the "Report on Unfair Trade: Year 2000" and in the "Priority Engagement Particulars for MITI: Year 2000" annexed to that Report, edited by the International Trade Policy Bureau of the Ministry of International Trade and Industry (MITI) [the former organizational names, respectively, of your current Bureau and Ministry]. Here, mentioned among the particulars are such things as, "A thorough investigation shall be made regarding the existence or lack thereof of annulments of measures against violations of the TRIPs Agreement," and "We shall continue to request improvements." Along these lines, we humbly request also that you make a careful perusal and study of the attached proposals as being made from the perspective of private enterprises that are engaged in practical affairs relating to these matters.

Pertaining to licensing agreements and technology transfers made with Asian countries, there exist regulations in certain countries that result in a violation of the proper rights of patentees and proprietors of know-how, etc. There could be many cases, which are carried out in expecting of bringing benefits to business, despite of fully conscious of obscurity or indistinctness in the subject cases and reluctantly accept that a certain extent of strict regulations will be applied. In such cases, a license must be concluded that can go no farther than the maximum beneficial conditions, among only a limited extent of possible conditions, that can be wrestled out through negotiations with local authorities and/or with authorized government bodies, etc. There are limits to such separate negotiations per-

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\* President of JIPA (the fiscal year 2000)

formed on a case-by-case basis on the private level. These situations dampen the ambition of private enterprises for business activities, particularly investments and technology transfers, among Asian countries. Moreover, the respective countries might miss the opportunities for their economic growth because of such situations.

Upon consideration of the fact that, leaving as is the current damaging and unbeneficial situation concerning licensing regulations will only make it harder to get a full grasp of this situation. We sincerely request of you to correct information about IP situation, as the responsible governmental organization, in order to share consciousness of the problems among Japanese and Asian private sectors, and also at the government level to strive to rationalization of systems within each country.

[Attachment]

## **Proposals Regarding Policies for Rectification of Licensing Regulations in Asian Countries**

### **1. The Establishment of a Co-operative Framework between the Government and the Private Sector**

#### (1) A Shared Consciousness of Existing Problems

In order to rectify the problem points of licensing regulations within Asian countries, in the final analysis, each country must be urged to improve its own laws and regulations at the government level. As a prerequisite for such, however, it will also be necessary to strive for a common understanding regarding these problems between the government and private sector. In other words, since leaving, as is, the current damaging and unbeneficial situation concerning licensing regulations will only make it harder to get a full grasp of this situation, we desire that, as the responsible governmental organization, you make vigorous efforts to collect related information and to come to a common consensus of opinion and a common consciousness of these problems with the Japanese private sector in your efforts towards rectification.

As policies towards doing so, we would like to request the following points.

- 1) We would like you to consider the establishment of information submission routes from the private sector, as well as the convening of related meetings regularly. If such an arrangement already exists, we ask that you please add to such the full-fledged participation of the Japan Intellectual Property Association (JIPA) as a group representing users of intellectual property systems.
- 2) We humbly request that the results of your information collection be reflected within the "Reports on Unfair Trade" as the organ via which information regarding these problems is disclosed to the public, and that such Reports contain concrete statements regarding these problems, including time schedules for rectification, etc.

#### (2) The Establishment of a Support System

Even if each country continues to be urged to rectify its laws and regulations, it can be imagined that improvements of the laws and regulations themselves will not likely occur within a short time period. Therefore, within the intervening time, at the very least it will be necessary to strive for the resolution of problems as each concrete case actually occurs.

For this reason, we request that you please consider the establishment, within the immediate future, of a system for the provision of support and assistance to the private sector for negotiations with responsible countries, within each concrete case as it occurs within the major countries of this region, namely, Asia.

## 2. The Rectification of the Laws and Regulations of Each Country

In regards to policies for rectifying the specific problem points themselves of each country's licensing regulations, we would certainly like to leave such to the responsibility of studies made at the government level. However, in general, the following methods, etc., should also be considered.

### (1) The Rectification of Problem Points Concerning the TRIPs Agreement

It is desirable that efforts to urge rectification continue to be made during inter-governmental deliberative meetings which is held with each country's government except for those countries currently applying for WTO (China and Vietnam). Its studies should be made in regards to the application, in certain cases, and on the basis of Article 64 of the TRIPs Agreement, of uniform dispute resolution procedures of the WTO; in other words, in regards to the performance of even more formal "deliberative discussions," and further of the adoption of "subcommittee (panel) procedures."

Especially in regards to the problem of the lack of transparency of in the procedures and standards for examinations regarding approval/ authorization (a problem that has often been overlooked in the past), it is very much desired that there be a strengthening of the efforts to persuade the governments of each country to provide for transparency.

Further, in regards to regulations, such as those concerning maximum consideration amounts and the obligation to guarantee licenses, etc., which cannot clearly be said to be violations of the TRIPs Agreement under its current form. We request studies including the possibility of proposing amendments of the Agreement itself such that it clearly states the prohibition of such acts.

### (2) The Rectification of Other Points Where Improvements Are Desirable

Certainly, continued requests for improvements must be made within inter-governmental deliberative meetings, etc. At the same time, surely consideration should also be made regarding orientations for amending and improving the TRIPs Agreement itself.

Technology transfers and the grant of licenses thereunder are, inherently, matters having an extremely significant meaning as usage modes of intellectual property rights. Nevertheless, there are almost no clauses within the current TRIPs Agreement that directly set forth the handing of such matters. When provisions of Article 71 of the TRIPs Agreement are reviewed for amendment, addition of one paragraph concerning licensing regulations should be considered, thereby to streamline statutory languages on them.