ARTICLES

Disclosing IP Information for Investor Relation Purposes*

The Second Subcommittee,
The Second Intellectual Property Management Committee

(Abstract)

An analysis has shown that approximately 70% of corporate value is determined by intangible property. It has been argued that it is necessary to disclose in the course of Investor Relations activities how a company utilizes such important intangible property, especially intellectual property, in its corporate management strategies. However, intellectual property is in its nature treated as confidential information and there has been no common index in this field to show the extent of contribution to the corporate management. Therefore, it is important not to mislead investors by just providing such material information in a careless manner. This article provides the principles pursuant to which the disclosure of IP information for IR purposes, and mainly proposes that: (1) such information disclosure should be made in a manner beneficial to both the disclosing company and the investors; (2) what is important is the "story" of how such intellectual property contributes to the management of the company, and the all information including numerical values should be indicated according to such story as necessary; (3) said "story" is quite unique and specific to each company, and therefore the description of such "story" should be different from company to company, disregarding uniform and standardized descriptive methods.

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1. Corporate Management and Disclosure for IR Purposes

1.1 Corporate Value and Intangible Property

Conventionally, the source of corporate competitiveness has derived from tangible prop-

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erty, such as plants and facilities. However, as the corporate activities have been shifting to knowledge-oriented ones, management executives as well as investors are placing more and more emphasis on "intangible property", which are not calculated in the accounting of the company, as a critical factor to determine the corporate value. According to a survey conducted in the United States by the Brookings Institution on US enterprises[1)], 83% of the corporate value (aggregate market value of listed stocks) derived from tangible property and 17% from intangible property in 1978, while in 1998, only 31% of the corporate value depended on tangible property and 69% on intangible property.

As the world's factories are shifting to China, Japan is trying to develop a way to enforce global competitiveness of the Japanese industries by further enhancing the added-value generated by intellectual property, in addition to its sophisticated workmanship in the manufacturing. From this perspective too, the importance of intellectual property constituting the core of corporate intangible property has increased, and companies are placing higher importance on IP information utilizing such information for their creativeness and exploitation purposes. Investors are also using IP information as a means for clearer understanding of the actual status of companies.

According to an inquiry survey[2)] conducted by the Institute of Intellectual Property in 2002 with institutional investors, participants especially requested the following three items to be disclosed for evaluating corporate values: (1) Outline of the core technology of the company; (2) corporate or business strategies; (3) risk information concerning intellectual property such as the expiration of basic patents, or the result of litigations. The second most requested items were: (4) the rate of sales occupied by principal products (or products related to basic patents) within the whole sales; (5) an analysis and discussion by corporate executives concerning the marketability and the superiority in the market of the technology; and (6) a business model of the company. Examining the results of the survey, it can be construed that market participants are requiring, as material in determing their investment, non-financial information such as IP information that affects the long-term or medium-term cash flow of the company [3)].

1.2 Types and Purposes of Information Disclosure

Information disclosure can be categorized into tow types, compulsory disclosure and voluntary disclosure. Compulsory disclosures are, for example, those required in accordance with the Securities and Exchange Law for the purpose of protecting private investors or those required in accordance with the Commercial Code or Rules of Stock Exchanges for the purpose of protecting creditors or for fulfilling the fiduciary responsibility owed to stockholders. These compulsory disclosures can be further divided into those required for the compliance with the system, represented by financial statements, and those periodically issued by the Stock Exchanges. Voluntary disclosures cannot be enforced by laws but are voluntarily made by each company for the capital market or stockholders as the corporation deems necessary for promoting more accurate understanding and enabling appropriate evaluation with respect to its corporate activities. Such voluntary disclosure is hereinafter referred to as "IR (Investor Related) disclosure".

IP information is a type of non-financial information and subject to IR disclosure. Even though IR disclosure is made on a voluntary basis, it is the same as the compulsory disclosure in that the management executives are responsible for the content of disclosure once such disclosure is made. As discussed later in this article, IP information is unique in its nature. It is important that the IP department of a corporation liaise with the IR division within the corporation and make an effort to realize more effective information disclosure in line with the "corporate management story"; that is, the story the top executives desire to communicate to the market, in terms and phrases that the market participants may understand, to the extent required by the context.

2. Trend of Disclosure of IP Information for IR Purposes

2.1 Trend in the United States

In US, where more advanced system for disclosing IP information is established, the Securities and Exchange Commission (SEC) sets

forth the Regulation for Fair Disclosure (RFD), providing that any material information disclosed to a particular person by a corporation, intentionally or inadvertently, shall be publicly disclosed immediately. The term "material" means information that affects the corporate value, and the item "information concerning new products or supplies" designated by the SEC can be deemed to cover IP information.

In the private sector, the Financial Accounting Standards Board (FASB) had already started their project concerning information disclosure of intangible assets prior to the establishment of RFD, and the information disclosure guideline for intellectual property secured on a legal or contractual basis was under discussion. However, the process of such discussion has been in effect left pending since the Enron shock.

In terms of the actual status of such disclosures per enterprise, for example, Hewlett Packard (HP) improved the level of disclosure and the quality of information disclosed as a result of the company-wide approach for establishing the principle for creating and disclosing information, which was inspired by the RFD. Intel, which is widely known as a leading company in adopting advanced information disclosure principles, already had disclosure principles prior to the implementation of the RFD, and their principles are said to be by no means affected by the establishment of the RFD. Still, Intel is concentrating their efforts on securing "consistency in disclosure", which is an important factor in the investor relations.

However, by examining the annual report for FY2002 issued by HP and Intel, respectively, although we can recognize the improvement of the level of information creation and disclosure, we can hardly recognize that the IP information is disclosed in a proactive manner. For both HP and Intel, the description provided in those annual reports just outlines their intellectual property: for example, HP only described the approximate number of total patents owned in the world, the approximate number of new patent applications and the number patent applications per day in FY2002 in the topics on the first page.

On the other hand, IBM, with the highest licensing income in the world, disclosed the income deriving from intellectual property on a consolidated basis in the "Management Discussion" section of the FY2002 Annual Report. The disclosure is categorized into (i) Sales and other transfer, (ii) Licensing/Royalty-based fee and (iii) Custom Development Income, but not itemized according to each industry and without discussing principal patents on a case-by-case basis. Said "Custom Development Income" includes the income derived from so-called system engineering (SE), system integration (SI) or consulting services, and therefore, this category can be seen as an income based upon "intellectual property" in a broad sense. In the R&D section, we can just find the description that their reputation as a leading company in the patent field, underwritten by various certifications such as the No.1 US corporation in filing the most patent applications, as contributing to their predominant market share in the important and cutting-edge technology field, and further contributing to the income deriving from intellectual property.

2.2 Trend in Japan

A survey was conducted on the present situation of IR activities of Japanese enterprises by the Japan Investor Relations Association (JIRA) in April 2003, revealing that 87.6% of the 1206 responding companies committed to IR activities. We can see from said number that Japanese enterprises are actively engaged in IR activities. According to a survey conducted by the Institute of Intellectual Property discussed in previous section and JIRA, the investors, to whom the enterprises are disclosing information for IR purposes, evaluating the corporation by collecting various information concerning intellectual property for making decision on investment, indicating that they are especially desirous of the disclosure of IP information. It has also been revealed in the survey conducted by the Institute of Intellectual Property that those investors are more interested in qualitative information such as the intellectual property strategy and its relation with the organization, rather than quantative information such as the amount of income deriving from patents or the number of patent applications filed.

According to the "Survey on Actual Situation of Disclosure of Technical and Patent Information" (conducted in 2002)[4] which covered principal 100 manufacturing companies, only 52

out of said 100 companies, a little over half, provided IP information useful for investors, with 12 companies reportedly providing quantative information.

Analysts are beginning to argue how intellectual property such as patents, which are the result of the R&D investment, affect the management and performance of the company. Some companies have begun holding "intellectual property information sessions" or issuing an "intellectual property report", improving the momentum of IP information disclosure, although such movement is still in the trial phase.

2.3 Guidelines by the Ministry of Economy, Trade and Industry

The government compiled the "Intellectual Property Policy Outline" in July 2002, established a "Basic Law on Intellectual Property" in November 2002, and the Intellectual Property Policy Headquarters published the "Strategic Program for the Creation, Protection and Exploitation of Intellectual Property" requiring each Ministry and Agency to implement specific measures in July 2003. This promotion plan sets forth that feasible guidelines concerning IR disclosure of IP information will be established within FY2003.

In response to this promotional plan, the Ministry of Economy, Trade and Industry (METI) compiled "Pilot Model of Patent/ Technical Information Disclosure" (hereinafter referred to as the "Pilot Model") in March 2003 in the Management and Market Environment Subcommittee, Intellectual Property Policy Committee of the Industrial Structure Committee consisting of ten items to be disclosed, and publicly invited participating companies to implement the Pilot Model in April 2003. In July 2003, the "Working Group for Patent / Technical Information Disclosure" was established, consisting of IP and IR representatives of thirteen companies that responded to said invitation, analysts and market-interested persons, and they examined the implementation of the Pilot Model. The Working Group (WG) was an unofficial one and the details of the discussions there are not revealed to the public, but it is said that there were notable discussions, especially from the enterprise side, that five of the te items concerning the business and R&D have already been disclosed by most companies. It was also noted that the disclosure of revenue/cost or enumerative analysis of patent groups would reveal the company's intellectual property strategy for the scrutiny of competitors, and that mere disclosure of numerical values may lead to a misunderstanding of the actual situation of the use of intellectual property. After all, the Pilot Model was amended a little in some aspects, and the "Reference Guidelines for Intellectual Property Information Disclosure" (draft) (hereinafter referred to as the "Guidelines") consisting of the below-specified ten items was established, and publicly announced with "Examples of IP Reports" featuring three virtual companies as "Reference Materials" attached thereto.

(i) Core technology and business model
(ii) Direction of R&D segment and business strategy
(iii) Outline of R&D segments and intellectual property
(iv) Analysis of marketability and market superiority of technology
(v) Organization chart of R&D and intellectual property section, cooperation and association in R&D
(vi) Principles concerning creation, acquisition and management of intellectual property, trade secret management, and prevention of unauthorized technology transfer (including the implementation of the Guidelines)
(vii) Contribution made by licensing-related activities to the corporate business
(viii) Contribution made by patent groups to the corporate business
(ix) Principles concerning IP portfolio
(x) Information concerning risk countermeasures

It is expected that some companies will disclose their IP information by the summer of 2004 pursuant to the above Guidelines as a part of the announcing the financial results of FY2003.

3. Matters to be Noted in Disclosing IP Information for IR Purposes

3.1 Uniqueness of Intellectual Property as Corporate Properties

Intellectual property (especially patents)

have the below-specified multi-lateral characteristics that other property rights do not have, and therefore, the evaluation of value and the use in practice require quite complicated decision.

"Strong Right": that can claim injunctive relief against the competitor's businesses.

"Fragile Right" that might be invalidated even after the grant of the right by trial decision while, for example, the proprietor is enforcing its right against infringing products, based upon the claim for invalidation trial filed by the allegedly infringing party.

"Relation in terms of use": Since inventions are the results of the step-by-step development of new technologies, implementation of a new invention necessarily requires the use of another invention upon which said new invention is based.

It is impossible to cover certain technologies only with a company's own patents in almost all technological fields. In most cases, two or more patents of its own and of other companies are related in a complicated manner. In some cases you might get revenged when you think you are aggressively enforcing your right against your competitor or the allegedly infringing party. In first place, the most important matter to consider is whether there are any grounds for invalidation of your own weapon.

After all, even if you own an effective patent, your superiority cannot be necessarily secured only by such patent. In the actual use of the patent, a comprehensive approach is required for the decision on a case-by-case basis.

3.2 Numerical Information not Functioning as Index for Intellectual Property Management

The sales or operational profit indicating the financial state of a company as well as ROA (Return on Asset) or ROE (Return on Equity) used for financial analysis can be compared based on a common standard, and we can make decision on whether it is good or bad from the difference of values. However, the values deriving from IP activities, such as the number of patents owned or the amount of income resulting from licensing activities, can vary according to the IP strategy of each company. In that sense, those numerical values cannot demonstrate the actual status or the strength of the IP of a company, and therefore, those values can hardly be regarded as an index utilized for enhancing the corporate value by the use of intellectual property.

Further, the result of IP activities does not emerge in an obvious manner indicating annual or semi-annual transition, not to mention the quarterly transition. The decision on IP activities should be made from the medium or long-term perspective. In other words, the result of IP activities should be evaluated only in conjunction with the corporate R&D and business strategies, and we cannot argue the intellectual property strategy of a company only with the analysis of superficial numerical data.

The following are examples that the numerical data under discussion do not necessarily demonstrate actual status:

(i) Amount of Income from Licensing Activities:

If a company having a lot of important patents is aiming to increase the income from licensing activities, then the higher the income, the more said IP complies with the corporate management policy and contributes to said management policy. On the other hand, if the company is aiming at eliminating competitors and exclusively conducting business without licensing, then there will be no income from the licensing activities. Even though the intellectual property is contributing to the corporate management, the latter case seems inferior to the former case in terms of the income from licensing activities. Since the amount of income from the licensing activities greatly varies according to the business strategy of each company, there is no use in comparing each company by the amount of income.

(ii) Number of Patents Owned:

It is true that a company actively promoting the acquisition of patents for the purpose of establishing a strong and solid patent portfolio in its core business field may acquire and own a number of patents. On the other hand, if the company is conscious of sliming down its intellectual property portfolio by always strictly examining the patent portfolio and abandoning unnecessary patents, the number of patents owned by such company will not increase significantly. Further, a company having the strategy of not filing patent applications but internally accumulating its technologies as know-

how will only have a small number of patents. Therefore, you cannot compare each company by the number of patents owned.

(iii) Rate of Patents Granted or Registered:

If a company is filing patent applications as a pioneer in an innovative new field, then the rate of patents granted or registered will be high because there will be little prior art. On the contrary, if the company is filing patent applications in a field involving highly competitive R&D, the rate of patents granted will become necessarily lower because there will be a large amount of prior art. However, even in the latter case, it is not so difficult to simply enhance the rate of patents granted. As long as the scope of the patent is sufficiently narrowed, in most cases the invention will become patentable. But patents with only a narrow scope may not actually protect the business of the company, or exclude competitors from the market, meaning that it has no use as a patent. Each company is scaling high hurdles to acquire patents with broad scope to the extent possible, with the intention of exploiting such a patent in its own business. It is good if the rate of patents granted is higher as a result of such effort, but it will be a mistake to compare each company by only the rate of patents granted. This approach may increase the value of companies not taking risks and not scaling high hurdles.

3.3 Actual Situation of Contribution to Corporate Management by Intellectual Property

Constant development of new technology is indispensable for a company to maintain its competitiveness and continue growth. As a result of such technology development, intellectual property such as patents and know-how are accumulated within the company. IP strategy outlines how to utilize accumulated intellectual property as a source of competitiveness and contribute to the management of the company.

Frequently argued contribution to the management of the company is the direct contribution through the profit-earning licensing activities brought by utilizing those intellectual property. In practice, however, many of the companies do not establish such as IP strategy, placing the first priority on the income from licensing activities. Their first priority is placed on the smooth development of their own businesses or the maximization of the operating revenue [5]. In the IT industry, for example, no company would be able to operate its business activities only by its own patents because any single product within that industry involves so many patents, and the companies utilize their own intellectual properties in securing freedom in their own businesses. In the pharmaceutical industry, in many cases a single product is protected by only a single patent, and the company holding that patent may secure huge operating revenue by the exclusive implementation of its own intellectual property. In another case, in terms of unique technology involving high-level know-how, represented by highly sophisticated manufacturing technologies, there are companies having the policy of not filing patent applications but internally accumulating such know-how and preventing any unauthorized technology transfer to others in order to maintaining their competitiveness.

As discussed above, IP strategies vary according to the industry, corporate policy, type of product, or the timing of the implementation, and therefore the method of making intellectual property contribute to the corporate management highly depend on the elements of each individual company.

4. Opinions of Japan Intellectual Property Association

4.1 Problems of METI Guidelines

(1) Unobvious Relation between Intellectual Property-based Management and Items for Disclosure:

The Guidelines set forth, as the purpose of disclosing information, “to show an example of information disclosure concerning intellectual property” so that “enterprises having a corporate strategy proactively utilizing their intellectual property, namely enterprises practicing so-called ‘intellectual property-based management’ may be properly valued in the market”. However, there is no further description of the most important matter, that is, what is the “intellectual property-based management”, and the Guidelines only provide an explanation of the items for disclosure and the example report of virtual compa-

nies. Those examples of IP disclosure report cannot be construed to demonstrate what is intellectual property-based management, but merely provide examples of the description of the ten items for disclosure. The Guidelines just present those ten items for disclosure as though they are the necessary and sufficient conditions, without clarifying why these ten items were selected.

(2) Possibility of Resulting in Uniform and Standardized Disclosure:

The Guidelines emphasize that "(the disclosure) should not be enforced by laws and regulations" and "the disclosure is absolutely made on a voluntary basis". However, all the examples of IP report attached to the Guidelines as reference materials have the description of all items for disclosure, and as a result, there is a possibility that the companies would refrain from making information disclosure in any form other than those provided in the examples.

The ten items for disclosure overlaps with the descriptions in the annual reports issued by companies in many aspects, and therefore, it would be reasonable for a company intending to disclose those ten items to describe those ten items in the form of additional notes to its conventional annual report. However, the Guidelines set forth that "it is preferable that a separate "IP Report" is prepared recompiling the items from the perspective of intellectual property-based management", thus halting the adoption of such a disclosure method, although the Guidelines repeatedly emphasize "voluntary" disclosure.

(3) Insufficient Discussion on Corporate Risks due to Disclosure:

Although, naturally IR disclosure should be made on a voluntary basis, there is no difference where compared with compulsory disclosure in that the management executives are responsible for the content once such information is disclosed. Therefore, IR disclosure requires a meticulous approach in making decisions on the types and content of the information. However, the Guidelines simply emphasize the merit of disclosure but does not mention the demerit or corporate risks involved except for the reference to the indemnification or "safe harbor rule" applicable to the issuing parties. Information disclosure made with reference to the safe-harbor rule would reduce the efficacy of the information disclosure by weakening the reliability of the information itself while avoiding the risks. On the contrary, the Guidelines use expressions such as "explanation of … would be sufficient" or "it is enough to indicate …" in the explanation of the items for disclosure, giving the impression that the risks arising from the information disclosure is securely guaranteed. These expressions are misleading and quite dangerous.

(4) Excessively High Hopes Built on Numerical Information:

As discussed in the previous section, you cannot rely solely on numerical information concerning intellectual property for evaluating IP strategies. Regrettably, there is no dependable numerical information available for use as an index of "intellectual property-based management". However, the Guidelines seem to place excessively high hopes on numerical information such as the income from licensing activities or the number of patents owned as numerical evidence or ground of "intellectual property-based management". These numerical data do not serve as the basis for such evidence or grounds, and may even give an unexpected adverse effect on the market. Further, there is a possibility that faithful companies refraining from disclosing such numerical information in view of said possible adverse effect may be evaluated in an unreasonable manner as a result.

4.2 Disclosure Beneficial to Both Disclosing Company and Investors

The Japan Intellectual Property Association opines concerning IR disclosure of IP information as discussed below:

(1) Disclosure should also be beneficial to the disclosing company:

It is true that intellectual property holds an important position in today's corporate management strategies. It is meaningful for a company to proactively demonstrate to the market that it places importance on intellectual property and utilizes them in its management.

In this respect, it is important to realize an IR disclosure that demonstrates the company's internal value to the public itself leading to fair

evaluation of its corporate value; it is also important to realize such disclosures can stimulate the company in a good sense as a result of cumulative disclosure. These disclosures can also motivate improvement of the technology power of the company.

(2) What is important in the disclosure is the specific "story":

It is quite important in IR disclosure to tell the story of how the intellectual property contribute to the management strategy in the company's own words.

IP strategies of companies vary depending on the type of industry, type of management or operation as well as the competition conditions and business phases. For accurate and appropriate disclosure of highly specific and unique circumstances of a company, disclosure of such information is indispensable when it is in a form consistent with the "corporate management story" through which the corporate executive desires such information to be delivered to the market. The basis of IR disclosure is the establishment of a corporate management story [6].

(3) The uniqueness of the company should be respected:

The content of the IP disclosure is in its nature highly specific and unique to each company. Therefore, the disclosure should not be uniform or formulated perse, but should be conducted in an independent manner and form under the responsibility and discretion of the executives of each company, as with the disclosure of other IR information.

From the viewpoint of "those who transmit" information, uniform and standardized disclosure may require more energy on the examination of various risks arising from such disclosure than to commit oneself to proactive IR disclosure. From the viewpoint of "those who receive" information, the disclosure may merely provide an excuse for the performance of the company because an unique and non-standardized disclosure is impossible.

Some may argue that IR disclosure placing emphasis on self-initiative should require inspection because of the doubt in the reliability of the disclosed information. However, it is impossible for any third party to determine information as constituting a corporate strategy. Any disclosure of misleading or unfaithful information would be revealed in the end, resulting in any company disclosing such misleading information would be punished by the market. We can trust the check-and-balance function of the market with respect to the reliability of the disclosed information.

4.3 Matters to be Noted for Disclosure

Even when the disclosure is made as a story which is specific to the company, there are some matters to be noted for IR disclosure as listed in the following:

(1) Continuity and Consistency:

Continuity and consistency are the most important factors in IR disclosure. As long as the disclosure is made on a voluntary basis, once the market judges "the disclosure of information is arbitrarily manipulated", any subsequent information disclosure will not be at all persuasive. Therefore, it is important to maintain the continuity in the quality of the disclosure once the company determines that such information "should be disclosed".

It is also important to disclose certain information once disclosed in a manner deemed as "the same information" on a continuous basis. As long as the content of the disclosure is determined by each company at its discretion, the company should also be responsible for the valuation of the meaning of such information. Any ambiguity or inconsistency in such valuation of meaning could lead directly to the evaluation of "manipulating information".

In terms of consistency in the information disclosure, the same is applicable to the consistency of information among globally disclosed information if the company is listed on foreign stock exchanges. The company should consider a method of disclosure so that there will be no inconsistency or no possible disclosure deemed as inconsistent due to the differences in legal systems.

(2) Treatment of Numerical Information:

The most important concern in IR disclosure is as discussed in Section 3 above, the possibility of misleading those who receive the information. Conventionally, only a small amount of information concerning intellectual property

has been disclosed to the public, and it is necessary to deal with such information in a prudent manner especially when disclosing numerical data. More specifically, the amount of deemed revenue or the economic value of intellectual property that are not described in the financial reports since the beginning in principle, should not be disclosed (see SEC Regulation G of US).

Presently, the dominant opinion is that it is basically impossible for a company to disclose numerical information as evidence to demonstrate the value of patents, considering the corporate risks upon such disclosure, because such disclosure always involves the risk of misleading the market [7]. For the time being, each company should consider limiting the disclosure of all information including numerical information to those necessary to support and provide grounds for the "story" specific to the company.

(3) Treatment of Confidential Information:

There is no objection to the non-disclosure of information concerning trade secrets or information of which a company is obliged by contract to keep confidential. The problem is that a simple and standardized disclosure may, in a sense, result in the disclosure of such confidential information. Therefore it is necessary to disclose information, especially those concerning numerical values, risks or the organizations after fully examining the relationship between such disclosure and the confidentiality of information.

5. Actual Method of Disclosure

5.1 Media for Disclosure

As discussed in Section 2 above, many companies have already been disclosing information affecting their competitiveness such as the status of R&D in great needs or their core technologies and major products, as required by investors, in their annual reports or technology reports. Therefore, if they prepare a separate report independent from those conventional annual reports like the examples proposed by METI, the information disclosed will be in many aspects repeated in the conventional media, and practically there will be no meaning in preparing a new media for disclosure as in the METI examples.

Moreover, for most companies, the operation of business comes first, and it is natural that intellectual property related information is attached in relation to the report of such business operations from the viewpoint of both those who disclose and those who receive such information. Therefore, although the selection of media for disclosure is left to the discretion of each company, it would be more realistic to adopt the form of attaching IP information as a part of the descriptions in the conventional annual reports.

5.2 Contents of Disclosure

Since the items for disclosure by which each company expect certain effects upon disclosure of IP information would vary according to the method of use of the intellectual property of each company, it would be natural that the items for disclosure vary according to each company. Below are the examples of items for disclosure of three companies, each of which have an IP strategy that differs from the other.

As discussed in Section 3 above, the numerical information as provided in the examples of IP report are not necessarily directly related to the potential strength of the company. Therefore, qualitative information rather than the quantative information should be used where such numerical data may cause misunderstanding among those who receive the information or mislead investors in any way. Thus most of the following examples of the items for disclosure are of qualitative information.

On the other hand, if a company deems the numerical information concerning intellectual properties such as the number of applications filed (and the ranking thereof), number of patents owned (and the ranking thereof), number of patents granted in domestic and overseas, or the income from licensing activities as appropriate index for demonstrating the potential competitiveness of the technology and operation of the company, or an index that might generate future profit, then the company should disclose such numerical information. However, although the example IP reports proposed by the METI describe the number of patents owned according to each principal segment, it should be noted that the number of patents owned does not necessarily represent the intellectual property-based management for a company mainly deal-

ing with products with short life-cycle, considering the long period required from filing to the registration of a patent. What should be considered is the fact that the disclosed information requires continuity once it is disclosed. Therefore, it is necessary to examine whether such disclosed information can be traced in the future or whether the company can explain and follow-up the information in case of any change.

(1) Companies Utilizing Intellectual Property for Securing Their Freedom in Operation of Business:

Many companies implement their IP strategy for the purpose of maximizing the profit from their business operations and smooth business development, rather than for earning income from the intellectual property itself. More specifically, those companies are reinforcing the competitiveness of their businesses by acquiring patents and committing themselves to the prevention of infringement, alliancing with other companies or becoming involved in standardization activities so that the freedom in their business activities such as development, manufacturing and sales will not be hampered by another company's intellectual property. It would be effective for this type of company to briefly introduce the following items in their IR disclosure:

(i) Commitment to the promotion of acquiring patents in the core technology or industrial field;
(ii) Global development of intellectual property;
(iii) Proposals for technological standardization (the technical standard (such as patent pools) involving their own patents); and
(iv) Commitment to the prevention (or reducing the risk) of infringement of an other party's intellectual property.

(2) Companies Placing Emphasis on Know-How as a Resource of Technology Competitiveness:

In businesses having their foundation on basic technologies accumulated over the long-term, in some cases, these companies secure long lasting superiority over their competitors by utilizing their accumulated know-how, not merely depending on intellectual property such as patents concerning such technologies. Companies offering products that are competitive in terms of special techniques or compositions/formulae tend to avoid publication of technology through patent applications and choose to accumulate such technology internally as know-how. It would be effective for this type of company to briefly introduce the following items in their IR disclosure:

(i) IP strategy (purpose of IP related activities in a broad sense including the know-how for reinforcing competitiveness, or the method of achieving such a goal;
(ii) Internal evaluation of intellectual property (existence of a standard for determining whether to file a patent application or keep the information as confidential as know-how, etc.;
(iii) Top-to-bottom employee training (such as the improvement of trade secrecy awareness and the penalties, etc.); and
(iv) Measures for preventing unauthorized transfer of technical information (such as the establishment of a security system and the outline of management provisions).

(3) Companies Utilizing Patents Principally for Excluding Competitors from the Market:

For pharmaceutical companies and venture businesses, the value of intellectual property is quite high, and in many cases the existence of intellectual property for protecting their own business affects the corporate profit a great deal. Within these industries, intellectual property is utilized mainly for standing at advantage over competitor's products or services, or in other words, for excluding such competitors from the market in particular industrial field. It would be effective for this type of company to briefly introduce the following items in their IR disclosure:

(i) Outline of intellectual properties owned (such as the list of intellectual property such as the basic patents for protecting its main products);
(ii) Response to the intellectual property of others (such as risk management concerning the injunction measures taken against its business operation, or the activities for making alliance with such other parties);
(iii) Policies in responding to the challenges already in the public domain (such as measures to be taken after the expiration of basic

patents); and

(iv) Results of IP related activities (such as the promotion of a new invention, the company's remuneration system, or past records of awards and commendations outside the company.

Only three examples are shown above. However, as discussed in above sections, the items and methods of disclosure should be selected at the discretion of each company. It should be noted that there is no sample or example of a disclosure demonstrating that "the disclosure should be sufficient if you…". Further, for companies listed or scheduled to be listed in the domestic and overseas stock exchanges (mainly in US), it is preferable that the disclosure should be free of discrimination with regard to each country, by fully examining the legislation and policies of each foreign country.

6. Conclusion

What if, stating that intelligence is important for a person, the intelligence of each person is valued by the "number of books owned" or the "amount paid for purchasing books" in a uniform manner? Some persons read only a limited number of books thoroughly one by one, and others may read as many books as possible without deeply examining the content. Some may purchase all the books they read, and others may borrow books from libraries. There is no meaning in measuring the level of intelligence by the number of books owned, in a uniform manner; or rather, such a manner of measuring intelligence may even be dangerous. By examining the Guidelines and example reports provided by the METI, we are concerned that the same mistake may occur as in the above example.

IR disclosure of IP information is important for each company. This IR disclosure should be proactively promoted for the market to accurately understand how those intellectual property is actually increasing the corporate value. However, the method of utilizing intellectual property varies, and this matter constitutes a quite specific and unique strategy. No uniform disclosure could be applicable to IP information disclosure.

IR disclosure is made to the market by the corporate executive at its responsibility. For example, if a company discloses the "number of patents owned" as shown in the report example, the market will construe that the company is representing its corporate value by such "number of patents owned". Subsequently, the corporate value will be compared based on the "number of patents owned", and the corporate executives should expect to be required to account for any decrease in such number because the decrease is seen as a decrease in corporate value.

Companies planning to disclose IP information should not have the idea of "disclosure would be OK if we follow the items for disclosure set forth in the Guidelines" or "it would be safe if we prepare such report in the same manner as the example". It would be rather dangerous to just blindly follow the METI Guidelines and examples. As long as IR disclosure is voluntary, it is important that at their discretion, the corporate executives determine the content of disclosure (including what media should be used), as it is their responsibility.

This article should not be retained as reference information within the intellectual property divisions, but we expect that this article be shared with the IR divisions, in utilizing it for IR activities involving the top management of the company.

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