

“Task Force on Industrial Competitiveness
and Intellectual Property Policy”

Report Summary

June 5, 2002

Ministry of Economy, Trade and Industry

Present Situation of Japan

○ Decline of Japanese Industrial Competitiveness

- Business executives and engineers in Japan and the United States recognize that the United States enjoys a technical advantage over Japan in advanced technology fields such as information technology and biotechnology.
- China's industrial competitiveness has improved; labor costs are 1/25 that of Japan, and China produces more than 50% of the world total of copying machines, printers and desktop personal computers.

○ Success of the U.S. Pro-Patent Policy

- From the late 70's through the 80's, when there was growing concern about decline in industrial competitiveness, the United States implemented a "pro-patent" policy. This policy contributed to the recovery of the U.S. competitiveness through establishing the CAFC, expanding the subject matter of patent protection, promoting technology transfer from universities to industry, and strengthening protection in overseas markets.

○ Progress in Japanese Efforts

- Since 1997, Japan has shifted to a "pro-patent" policy and implemented measures to reinforce the technical settlement system in courts, lighten the plaintiff's burden of proof regarding infringement and the damage amount by amending the Patent Law, properly protect advanced technology by revising Examination Guidelines, develop an environment for technology transfer from universities to industry, and take actions against counterfeits.

Present Situation in Universities, Corporations and Overseas Markets

1. Patents obtained by universities and technology transferred to businesses are both few in number

Patent applications filed by universities (1999)

United States: 5,179; Japan: 374

Licenses granted by universities (since 1994)

United States: 15,480; Japan: 223

2. Intellectual property is not strategically obtained, managed or utilized sufficiently

- “Selection and concentration” of retained patents has not progressed sufficiently (A U.S. company, Dow Chemical Co., succeeded in reducing its unnecessary patents by 3,500, from 12,000 in 1993 to 8,500 in 1999 as well as related costs by \$40 million.)
- Japanese companies have filed less international applications for important technology than European and U.S. companies, which indicates that Japanese companies are not sufficiently aware of the world market.

3. Trade secrets are often leaked

- About 20% of Japanese companies have experienced such trouble concerning their business information.

4. Damage by counterfeits is becoming more serious

- Damage by counterfeits is found in various industrial fields such as motorcycles, industrial machinery, electronic machinery, and foods.
- Infringements have become increasingly sophisticated, progressing from simple infringements of trademark rights to infringements of design and patent rights.

5. Technology is unintentionally draining overseas

- A parts manufacturer suffered a misappropriation of its design drawings containing a great deal of information without its permission. The exact same parts as those produced by the manufacturer were marketed by a company in China.



To become one of the world's principal "intellectual property-based nations," integrated intellectual property strategies are necessary.

<Four Approaches>

1. Establish a Human Foundation for the Era of Intellectual Creation

Develop researchers engaged in intellectually creative activities and intellectual property service providers; raise national awareness of intellectual property.

2. Create and Accumulate More Intellectual Property at Universities and Research Institutes

Accelerate creation of intellectual property in advanced technology at universities and research institutes.

3. Actively Utilize Intellectual Property in Corporate Management

Develop an environment to implement intellectual property based business strategy.

4. Strengthen Protection of Intellectual Property Overseas

Strongly protect Japanese intellectual property overseas.

1. Establish a Human Foundation for the Era of Intellectual Creation (1)

Present situation

- For Japan to become a nation based on technological creation, it is necessary to increase national awareness of creation.
- There are not a sufficient number of lawyers and *benrishi* (patent attorneys) specializing in intellectual property to support obtaining patents and taking measures in patent lawsuits.
- Under the current employees' invention system, it is said that the employer bears a heavy burden in managing inventions since the amount of compensation for the invention cannot clearly be fixed for a long period of time.
- It is said that small and medium-sized companies need more technical experts; there are few opportunities for technical experts retired from large companies to play an active role.



Major measures

Raise national awareness of intellectual property

- Take more efficient measures to support intellectual property education in FY 2002 in order to establish a cultural environment nurturing national awareness of the importance of free ideas, ingenuity, originality and Individuality.

1. Establish a Human foundation for the Age of Intellectual Creation (2)

Develop specialists

- Set standards for establishing law schools to admit students in April 2004 in order to develop intellectual property specialists well-versed both in technology and law.

Review the employees' invention system

- Investigate the status of companies and opinions of inventors and consider whether the Patent Law should be amended from the viewpoint of strengthening industrial competitiveness during FY 2002; arrive at a conclusion by the end of FY 2003.

Utilize in small and medium-sized companies technical experts retired from large companies

- Find ways to match the needs and supplies.

2. Create and Accumulate Globally Superior Intellectual Property through National Research and Development Investment (1)

Present situation

- Intellectual property rights, especially patent rights in advanced technology, are not sufficiently obtained by universities and research institutes.
- Technology transfer from universities and research institutes to companies has not progressed smoothly.



Major measures

Thoroughly enforce the “Japanese version of the Bayh-Dole Provision”

- Thoroughly enforce the Japanese version of the Bayh-Dole Provision by attributing the intellectual property of research results to the contracted party in any contracted research sponsored by ministries and agencies of the Japanese Government.

Organizationally manage inventions at universities

- Change the ownership of invention after succession from current “individual researcher or the Japanese Government” to “university or TLO” in line with the incorporation of national universities.

2. Create and Accumulate Globally Superior Intellectual Property through National Research and Development Investment (2)

Increase allowances for application fees

- Increase allowances provided to universities for legal costs and translation costs for international applications.

Update Examination Guidelines to promote inventions in life science

- Prepare and publish examination case examples on protein 3-D structure related inventions by the end of FY 2002.
- Consider the necessity of amending the Patent Law and revising Examination Guidelines to clarify the handling of cell processing methods used for regeneration medicine and gene therapy; arrive at a conclusion by the end of FY 2002.

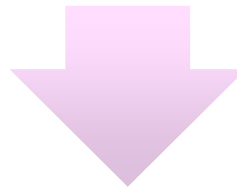
Provide patent information in a timely manner

- Start providing more information on patents in the “eight important fields” including the “four priority fields of advanced technology”, and disclose the number of patents registered in the United States and Europe

3. Develop an Environment to Implement Intellectual Property based Business Strategy (1)

Present situation

- As the methods of obtaining and managing intellectual property are lacking in strategy, trade secrets are leaked and technology drains overseas.
- As information on intellectual property-related activities is not properly disclosed, it is difficult for the market to evaluate the value of a company including its competitiveness.
- There is concern about lengthening of the examination period due to a large increase in the number of applications to be examined.
- Venture enterprises and small and medium-sized enterprises seek to utilize intellectual property to obtain financing.



Major measures

Establish strategic measures for intellectual property

- Prepare informative guidelines by the end of FY 2002 for corporations to establish strategic programs to select and concentrate intellectual property, reinforce management of trade secrets, and prevent technology from unintentionally draining overseas.

3. Develop an Environment to Implement Intellectual Property based Business Strategy (2)

Strengthen protection of trade secrets

- Amend the Unfair Competition Prevention Law in 2003 to strengthen protection of trade secrets.

Promote information disclosure

- Prepare guidelines on information disclosure concerning intellectual property by the end of FY 2003, taking the management of company secrets into consideration.

Ensure examination for timely and high quality patents

- Improve Japan Patent Office examination capability to ensure that examination will be completed within two years on average while maintaining examination quality.

Reform the *shinpan* system(trial system)

- Consider the relationship between the opposition system and the trial for invalidation system, the ideal trial for correction system, and the relationship between a trial for invalidation and a lawsuit for annulment of a trial decision, and make necessary legal amendments in 2003.
- Promote discussion among organizations concerned with respect to the relationship between a decision to invalidate a patent in an infringement lawsuit and a trial for invalidation, including the issue of whether an intellectual property dispute should be settled under a single decision, and take necessary medium and long-term measures by FY 2005.

3. Develop an Environment to Implement Intellectual Property based Business Strategy (3)

Improve civil procedures for collecting evidence

- Consider improving civil procedures for collecting evidence in order to enable a legitimate right holder to easily enforce his/her right as well as to properly protect the interest of a party holding evidence concerning trade secrets, and take necessary measures by FY 2005.

Protect license contracts

- Amend the Bankruptcy Law in FY 2003 to protect a licensee who has fulfilled the required conditions to oppose a third party in the case of a licensor having gone into bankruptcy.

Improve the securitization systems and trust systems for intellectual property

- Improve the system or its operation by FY 2003 so as to fluidize intellectual property including patents to use as financing means.

4. Strengthen Protection of Intellectual Property Overseas

Present Situation

- Damage by counterfeits, which is becoming more serious, is found in various industrial fields. In addition, infringements have become increasingly sophisticated, progressing from simple infringements of trademark rights to infringements of design and patent rights.



Major Measures

Strengthen measures toward infringing countries/regions

- Strengthen measures toward foreign governments in close cooperation between governments and businesses, considering the “International Intellectual Property Protection Forum” inaugurated on April 16, 2002 (in which 141 private organizations and companies participate) as a core organization for taking measures against infringing products.
- Follow up on the improvement status of systems and their operation by the end of FY 2002.

Strengthen border measures

- Promote cooperation among ministries and agencies concerned with respect to strengthening of border measures, prepare specific measures to improve the existing systems and their operation by the end of FY 2002, and take necessary actions in FY 2003.