

“Strategic Program for the Creation, Protection and Exploitation of Intellectual Property” and IP Litigation in the Near Future

Kazumasa ABE*

This article comments on major amendment for the protection of intellectual property, shown in the “Strategic Program for the Creation, Protection and Exploitation of Intellectual Property” that is announced by the Intellectual Property Policy Headquarters in July 2003.

1. Establishment of the Intellectual Property High Court In establishing this court, it is necessary to design the system in the light of realization of reputation and prevention of practical confusion in association with jurisdiction of duties.

2. Introduction of Specialist System Amendment of the Code of Civil Procedure in 2003 introduced the specialist system. Courts should devise a mechanism that can secure quality of specialists. It is necessary for corporate staffs in charge thereof to make careful investigation of specialists and to compare specialists with expert witnesses.

3. Expanding and Clarifying the Authorities of Judicial Research Officials relating to intellectual property If the authorities of judicial research officials are expanded or clarified, it will become important for corporate staffs to study the way to deal with judicial research officials in order to make judges accurately understand details and issues of technology.

4. Expanding Procedures for Collecting Evidence Effective utilization of the reference system prior to litigation, which was introduced in the above-mentioned amendment of the Code of Civil Procedure, should be considered. In addition, if, with respect to the in-camera procedure that can determine whether or not there is a legitimate reason to refuse to obey an order to submit documents, the law is amended to the effect that the party requiring submission can participate after a court issues a confidentiality order, consideration should be given so that companies can cope with the in-camera procedure from a standpoint of both a plaintiff and defendant.

5. Settlement of Disputes at One Time The system is proposed to the effect that both an argument of invalidity of patents in litigation and request for trial for invalidation of patents in the Patent Office are accepted and the Patent Office has priority over examination of request for trial for invalidation and request for trial for correction against argument of invalidity.

*Vice-President of JIPA (Japan Intellectual Property Association) in FY2003

[This article appeared on pp. 423-432 of “CHIZAI KANRI” (Intellectual Property Management), Vol. 54, No. 3 (2004).]