

January 23, 2004

To: Secretariat of Intellectual Property Strategy Headquarters, Cabinet Secretariat

Yasuo Sakuta, President
Japan Intellectual Property Association**Re: Opinion Concerning Countermeasures against Counterfeit or Pirated Products***

As you have been already aware, the legislation and the operation of laws for regulating counterfeit or pirated products in China and other Asian countries are insufficient. Similarly, the border measures taken by the Japanese authorities against such counterfeit or pirated products imported from those countries cannot be described as sufficient.

The problems concerning counterfeit or pirated products are great concern of Japan Intellectual Property Association (JIPA). Since early and effective measures have been longed for in order to facilitate global competition under the fair trade principle and to reinforce the global competitiveness of Japanese industry, please consider the following matters under the special working group concerning the reinforcement of the infrastructure for right-protection.

1. Requesting and Urging the governments of the relevant countries under the cooperation between the Japanese government and the Industry:

Conventionally, requesting or urging to enforce countermeasures against counterfeit or pirated products from the legal aspect have been made under the cooperation between the Japanese government and the private sector through the negotiation under the framework of WTO or by way of bilateral negotiation. However, for the prevention of counterfeit or pirated products, further and thorough measures, such as the actions taken by the administrative authority or the development or reform of judicial system as well as the operation of such judicial system are indispensable. The framework of requesting and urging to the relevant countries under the cooperation of the Japanese government and the private sector should be strengthened by way of utilizing the International Intellectual Property Protection Forum and the like. For that purpose, it is also desired to secure the funds for the activities without fail.

2. Border Measures:

As the Customs Tariff Law was amended, now we can require the opinion and confirmation to the Commissioner of Patent in the process of seeking the approval of injunction of import. However, in practice, since the system was introduced for releasing the products in the process of injunction procedure in exchange of the deposit money, the effectiveness of the border measures are quite doubtful. Therefore, apart from the amendment of the Customs Tariff Law, it is necessary, in order to reinforce the competitiveness of the Japanese industry, to urgently establish a system under which the arguments of both sides (the proprietor and the importer) are heard under the due process, the infringement or non-infringement of the imported product is determined immediately, and the import of infringing product is stopped without delay at the border.

It would be necessary to consider the balance between the import and export upon establishing the above system, since if Japan were to adopt a unique and extraordinary system, other countries would also follow and adopt similar system.

* "CHIZAI KANRI" (Intellectual Property Management), Vol. 54, No. 2, pp. 325-326 (2004)

3. Development of, and Enforcement of, Intellectual Property System under ODA policy:

To improve the system and structure of Intellectual Property in Asian countries, the matters to fund should be carefully selected from the recipient's view point. The ODA funds concentrate to those matters, truly required by the ODA recipients (the government, industrial circles as well as the nation). Also, the results of the conventional financial assistance and aid projects should be reviewed from the perspective of selection and concentration, and the relevant government authorities of Japan should cooperate with each other to establish an effective medium and long term aiding policies.

4. Establishment of effective IPR Service Center

Establishment of IPR Service Center was decided by the Asia-Pacific Economic Cooperation (APEC). The Service Center should be an effective one that may serve as a model for other member countries, taking the needs of industrial circles (especially the purpose of establishment and the stance of the Service Center should be clarified concerning, for example, whether the Center puts importance on domestic measures including the border measures or on overseas measures against counterfeit or pirated product). The IPR Service Center in each country should not be a stand-alone organization, but networked considering the swift proceedings and efficiency.

5. Promotion of Education Activities Placing Importance on Intellectual Property:

It is necessary to promote education activities in each country for fostering "no copy" mind, by recommending or pushing such activities to the relevant government authorities, along with the legislation and the operation of laws for regulating counterfeit or pirated products. Interior quality of pirated or copied products creates disadvantages to the consumers, and do not contribute to the development of industry of the country. To create and introduce original products in the market, not copied products, will lead the country develop. Enlighten the mind of respect Intellectual Property secures this trend and is a effective measure to exclude and terminate counterfeit or pirated products in the future. The education activities in the relevant countries should be reviewed from such viewpoints.

