

February 14, 2005

To: Secretariat of Intellectual Property Strategy Headquarters  
Cabinet Secretariat

Yasuo Sakuta, President  
Japan Intellectual Property Association

## Opinions Regarding a Review of the “Intellectual Property Strategic Program 2004”\*

We would appreciate if you could take into consideration our opinions stated below.

1. Understanding that the “Intellectual Property Strategic Program 2004” requires ministries and agencies to study and implement as many as 400 measures, we would also like you to conduct follow-up checks on the progress of the study and implementation of these measures.

Regarding the matters described in Item 3 and beyond, we request you to have further discussions to study and implement specific measures.

2. In order to become an intellectual property-based nation, Japan should “revitalize the development of industrial technologies.” The most important goal of the Intellectual Property Strategic Program 2004 should therefore be to get relevant people to aggressively and steadily implement measures from a pro-innovation viewpoint. We should not take a so-called pro-patent stance, which will merely create an intellectual property bubble.

In collaborative projects between companies and universities, in particular, the preference of a pro-patent approach has grown so strong that it could interfere with research and development activities. It is necessary to make the relevant parties realize the importance of a pro-innovation approach.

3. Measures taken for the establishment of a global patent system

Before establishing a global patent system, we need to clear many hurdles including “One Search,” which will make information sharing possible with regards to the results of prior-art searches and “One Examination,” which will achieve the unification of examination standards and mutual recognition of patents grants at patent offices. We should steadily move toward a global system formation one step at a time.

As a starter, we would like to propose to clear the lowest hurdle, which is the unification of patent application formats used in Japan, the US, and Europe based on PCT. The unification of formats will allow the Trilateral Patent Offices to use the same format for examination. Such a unified format will simplify examination-related activities such as examination cooperation and reference search, save applicants the trouble of format change that would otherwise make it necessary to submit applications to other Trilateral Patent Offices, and make the task of translation easier for machines to handle. In this way, format unification will contribute to cost reduction and bring about many other benefits.

After taking this first step of achieving “One Format”, which is designed to unify application formats for the ultimate goal of establishing a global patent system, further unification should be pursued in three stages: One Search, One Examination, and finally, One Patent.

---

\* “CHIZAI KANRI” (Intellectual Property Management), Vol. 55, No.3, pp. 435-437 (2005)

#### 4. Handling of employees' inventions

In our letter dated March 31, 2004, with the title "Review of the Intellectual Property Strategic Program," we proposed that the true nature of employees' inventions should be discussed if the legal change fails to stop conflicts.

Conflicts are expected to continue even after the scheduled enforcement of Section 35 of the revised law in April. The recent reconciliation court cases of Ajinomoto Co., Inc. and Nichia Corporation indicates the difficulty in calculating a "reasonable remuneration" for an employee's invention within the legal framework.

Against this backdrop, if employees of Japanese companies were allowed to demand large compensation for their inventions, such costs would threaten research and development activities in Japan. For this reason, further discussions are necessary about how to treat an employee's invention with the aim of increasing international competitiveness of Japanese industries. In the discussions, the possibility of abolishing the system of employee invention compensation or granting the company the ownership of the invention should also be studied.

#### 5. Matters related to revision of the Trust Business Law

We would like to request a revision of the trust related rules and regulations in order to allow group companies to centrally manage and use their intellectual properties more easily by use of a system of trust .

#### 6. Creation of an environment for easier prior art search (Chapter 2. I. 1. (4))

The Japan Patent Office should disclose all of its data to the private sector for free through the Internet in a user-friendly manner. In terms of text data of publications of patent applications, file wrappers, and cited references, especially those relating to applications published in 1992 or before, problems should be solved regarding copyrights and restricted use of data allowed only in the Japan Patent Office.

#### 7. Matters related to content

We strongly hope that the copyright system will be improved with due consideration for the promotion of the use of content from the standpoint of the promotion and expansion of content business. We are especially interested in the following points.

##### 7-1. Chapter 4, 9 (9) ②ii) P92: Compensation system for private recording

The compensation system for private recording should be revised based on the results of discussions among interested parties such as right holders, manufacturers of relevant equipment and media, and consumers. In the discussions, attendants should focus on what revisions are necessary to make the system more suitable for the actual situation as described in the above items.

##### 7-2. Chapter 4, 9 (12) P93: Giving Consideration to the Balance between Benefits of Right Holders and Benefits of the Public

We agree that a legal system should be created in consideration of the balance between right holders' interests and public interests because the establishment of provisions regarding the restriction of rights is vital for the promotion of the fair use of contents. In particular, we should give positive consideration to the establishment of comprehensive provisions concerning the restriction of rights applicable to any contents use not legally harmful to the interests of right holders.

##### 7-3. Chapter 4, 9 (13) P93: Considering a Legal System Suitable for the Digital Age

In order to establish a legal system suitable for the digital age, we need to discuss what should be specified in the provisions regarding the restriction of rights. Such discussion should be made from the viewpoint of promoting the fair use of contents in consideration of new ways of using contents as a result of technological developments.

This approach is more appropriate than strengthening rights through legal revisions because

people have been getting used to new technical arrangements and contractual practice as exemplified by the spread of music distribution services and the commercialization of CDs equipped with means of technical protection.

7-4. Chapter 2, 3 (7) P38: Strengthening Database Protection

Regarding the enhancement of database protection, a legal system should be established if necessary after extensive discussions with the industrial circles including the providers and users of database about the need for such protection and the methods of protection.

