

**THE NATIONAL FORUM
FOR
INTELLECTUAL PROPERTY STRATEGY**

[Message from the Chair]

The National Forum for Intellectual Property Strategy (“FORUM”) believes a driving force for Japanese economy in the 21st century is such intellectual property as patent and know-how. Based on this belief, the FORUM has formulated policy proposals for the earlier implementation. It is sincerely hoped that, the Japanese government, while tackling with bad-loan issues, should carry out intellectual property-oriented policies which will help the stagnant Japanese economy in reviving.

In late 1990’s, changes in industrial structures were progressing on the global basis. Such trend was based on rapid innovation which had been formed around information technology. Many of industrial technologies in Japan matured at the time of high economic growth but they have lost competitiveness as developing nations caught up Japan. Consequently, many companies contemplate the transfer of manufacturing facilities abroad. There is a growing concern that resources for technological development in Japan will be seriously affected by the hollowing out of industry.

Under these circumstances, a measure left for us in order to survive international competitiveness of our national economy is to create a national wealth through intellectual properties. It is a matter of urgency to organize a social structure as soon as possible under the strong initiative of the national government. Such structure will be an infrastructure to keep creating intellectual properties not only in the advance technologies in life science but also in financial transactions.

Thus organized structure should assure persons who have invented new useful inventions, appropriate rewards for their inventions. Companies, universities and research laboratories need to be freely engaged in the creation of intellectual properties without unnecessary regulations. At the same time, the structure has to assure the sufficient protection of the intellectual property rights acquired for the inventions.

In order to achieve this goal, we have to have an immediate and drastic change in the fields

of universities, education, businesses, administration, diplomacy, legislation and judicial system. We need a strong political leadership. The government and the National Diet should show a national goal that, by the year of 2010, Japan becomes a No. 1 intellectual property-oriented country in the world with the highest economic value-added intangible assets in the world. In order to realize the goal, the government and the Diet should establish as soon as possible an organization which will study, implement and monitor the policies extensively and organically, while making necessary laws if necessary.

On this 10th day of January, 2002

Hisamitsu Arai

On behalf of the FORUM Members

[CONTENTS]

Outline of the FORUM

Why Intellectual Property Strategies Now?

Ten years' Plan

Four Perspectives

Cycle of Intellectual Creation

Seven Strategies

1. Universities – Reform universities to make them the source of intellectual properties

2. Education – Focus on intellectual property classes

3. Corporation – Intellectual property as means of a major income source

4. Administration – Services in support of intellectual properties

5. Diplomacy – Defend the interest of intellectual property of the nation

6. Legislation – Change the intellectual property system into one for the 21st century

7. Legal System – Stop the Japanese IP owner run for other countries for relief

Chart for Steps toward an IP-oriented country.

[Outline of the FORUM]

1. History

The National Forum for Intellectual Property Strategy is a non-profit group headed by Mr. Hisamitsu Arai, former JPO Commissioner (hereinafter “FORUM.”) After preliminary meetings, the FORUM was formed on August 30, 2001 with 11 members and 6 observers. The members are intellectual property specialists who have been active as corporate management, practitioners, journalists and academicians. They have strongly felt the necessity of having national strategies for intellectual properties in order to revive the stagnant Japanese economy.

One of the direct reasons for the establishment of the FORUM was the indictment of two Japanese researchers in the United States. The United States Government indicted them in charge of the violation of the Economic Espionage Act in May 2001. Since one of them was an employee of the Institute of Physical and Chemical Research (RIKEN) funded by the Japanese government, the US government attempted the application of Section 1832 directed to thefts supported by foreign governments. This case has revealed the stringent attitude of the United States against the taking out of technical materials and, contrarily, lenient management in Japanese public research institutes.

In August 2001, another incident took place. Mr. Shuji Nakamura, Professor of Santa Barbara University in California, sued his former employer where Mr. Nakamura achieved a world-famous invention of blue-laser emitting diode. In his complaint filed before the Tokyo District Court, Professor Nakamura claimed, as part of damages, 2 billion yen (US\$15.3 million). The complaint made it open that the reward he received from his former company for his invention was just 20,000 yen (US\$153). This suit fueled arguments on reward systems for employee's inventions in Japan and triggered the reform of bonus payment system for excellent corporate researchers.

These incidents took place when the Japanese government just started an extensive review of the policy for science and technology along with the education system and legal system. The FORUM, with serious concern that the revival of Japanese economy is hard without a consolidated strategy for intellectual property, started discussion by the members.

On October 5, 2001, the FORUM issued a preliminary report summarizing the discussion made so far. Since then, the FORUM received many opinions from relevant administrative agencies and legislative and judicial bodies. The final report was issued in January 2002 reflecting the overall discussions at the FORUM and opinions given via more than 1000 e-mails.

The report of the FORUM covers the issues comprehensively covering wide areas such as university, education, business, administration, diplomacy, legislation and judicial system. The FORUM members hope that their proposals be considered as soon as possible for earlier implementation.

The FORUM will continue its activities in order to review and analyze how the suggestions are received.

2. Members

ARAI, Hisamitsu, Chair

Chairman & CEO of Nippon Export and Investment Insurance

ANNEN, Junji

Professor of Law, Seikei University

BABA, Rensei, Vice-Chair

Journalist, Lecturer at Waseda University

HARA, Yutaka

Ph.D., Division Executive, Recruit Co., Ltd.

KUBORI, Toshiaki

Attorney-at-law, Vice-President of Japan Federation Bar Associations

NARUKE, Makoto

President & CEO, Inspire Corporation

SHIMOSAKA, Sumiko

Patent Attorney, SHIMOKAWA & MATSUDA International Patent Office

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Associate Professor, National Graduate Institute for Policy Studies

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President, Center for Advanced Science and Technology Incubation (CASTI)

[Why Intellectual Property Now]

1. Crisis of Japanese Economy

1) Japanese economy suffers from stagnant growth with increasing unemployment. Trade surplus has reduced and it will be in deficit in several years.

2) One of the reasons for the stagnant economy is the reduced global competitiveness in the manufacturing sector. Wages are higher in Japan than Asian countries. There are no choices left for companies – they have to invest in foreign countries to survive. This inevitably causes hollowing out of domestic industry.

3) Another reason is the stagnant development of service industries. Service industries in the United States succeeded in refining technologies and business methods, thus resulting in a handful of business model patents. Given facing bad loan problems, financial organizations in Japan were slow in this area.

2. Shift to “Knowledge” from “Products”

1) Basis for enhancing global competitiveness in manufacturing industries is intellectual property such as advanced, creative manufacturing technologies, brand-new planning. In order for Japan to overcome the facing economic crisis, we have to aim at being an intellectual property-oriented country.

2) Under the Second National Basic Plan for Science and Technology, 24,000 billion yen (US\$ 185 billion) is to be invested for 5 years to come. Unless fruits of this investment are appropriately protected, the plan itself would be useless.

3. Reform of Patent System Needed

1) Japan is outstanding in the number of patent applications which are beyond 400,000 per year. However, the number of patent granted is smaller than that in the United States. More importantly, among approx. one million patents presently in force, one third remain unused.

2) Japanese companies lack in basic patents. After the World War II, Japan imported basic patents from US and Europe. Based on them, Japan manufactured and supplied to market products of high quality at cheaper prices, thereby achieving rapid economic development. Nowadays, companies in industrialized nations are reluctant to export basic patents to Japan.

3) Japanese universities do not pay appropriate attention to patent and its importance. In 2000, university applications totaled 580, accounting for 0.25% of the total number of patent application. Universities are the venue for producing basic patents. But, universities in

Japan failed in paying due attention to patent, resulting in the small number of basic patents.

4) Competitiveness in patent export is weak. In the United States, deficits of the trade of tangible goods are balanced with the surplus of intangible trade. Technology trade in Japan remains in deficit. Without appropriate countermeasures, Japan will shortly face deficits in both, tangible and intangible trades.

4. Pro-Patent Age

1) In 1980s, the Reagan Administration forcefully drove the policy of deregulation and pro-patent. It strengthened collaboration between universities and industry and paved the way for active investment to ventures. These measures resulted in the emergence of new companies and brought up them. Existing companies also selected business areas to continue and focused corporate resources to the selected areas. These helped companies recover global competitiveness and build up healthy national economy in 90s. In the United States, the pro-patent policy strengthened the global competitiveness of American companies from ventures to large companies in a wide variety of areas including patent administration to litigation.

2) Given the inherent social and economic importance of patent and copyright, Japan has lacked in a consolidated national strategies, leaving the arguments on practitioners in individual sectors. Companies and universities are not exceptional.

[10 Year Plan]

Under these circumstances, the FORUM suggests that by the year 2010, Japan will bear a national goal to be a “No. 1 IP-oriented country” where intangible assets with high economic value, and seek and implement national strategies in the 7 fields: University, Education, Company, Administration, Diplomacy, Legislation and Court System. For implementation, however, each strategy needs specific action plans for implementation and efforts for prompt implementation.

The FORUM suggests implementation with three phases.

First Phase: Getting in hand (2002-2004)

Establish an IP National Strategic Committee and amend statutes with consolidate strategy.

Second Phase: Innovation (2005-2008)

Establish the IP Court and the IP Law School and carry out innovation in various areas.

Third Phase: Harvesting (2009-2010)

IP-oriented country will be realized. Japan will be No. 1 in economy and in the academic circle.

[Four Perspectives]

In order to achieve the goal, the FORUM considers that the following four perspectives will be necessary as prerequisite for the realization of the national strategies.

1. Individual - Creative activities by individuals should be rewarded sufficiently.

The origin of intellectual property is an individual’s creative activity. Environment has to be improved in order for an individual as a pioneer to be rewarded appropriately.

2. Company – Intellectual Property is a major component of business

Companies and university research laboratories bring wealth to society. Unnecessary regulations have to be removed, thereby enabling them to freely engage in the creation of intellectual property, and to sufficiently protect and utilize intellectual property.

3. Japan – Nationwide scheme for supporting creative activities of IP

Japan largely owes its destiny to knowledge-intensive creative activities in the 21st century. Therefore, IP strategies have to be sought on behalf of the nation. The government, in compliance with the administrative innovation, should educate people to have recognition that the creation of intellectual property is a driving force for Japanese economy.

4. World – System and Enforcement in international harmony

In light of the population of internet and the global distribution of products, the refinement of the international cooperation system and treaties is indispensable for the sufficient protection of intellectual property of Japanese.

Japan should have an initiative for the establishment of a world patent system.

[Knowledge-Intensive Creation Cycle]

In order to strengthen all forms of intellectual properties including patent and copyright, the following three functions have to be strengthened: creation, affirmation of rights and enforcement of rights. It will be a driving force for the revival of Japanese economy to rotate the ring of knowledge-intensive creation, quickly and powerfully. For that purpose, the prompt establishment of national strategies is essential.

[Cycle in graphic form is omitted.]

The FORUM, with the background thus far described, suggests the earlier implementation of the following proposals in respective fields.

[Seven Strategies]

For the purpose of strengthening the knowledge-intensive creation cycle, the policy-makers for legislation, legal system, administration and university should drastically and promptly review current systems and have them changed so as to foster corporate cultures and economic environments. The former will acknowledge intellectual property as an important business component while the latter will allow the establishment of venture companies which will promote the renewal of industry.

1. University – Reform so as to change it as a source of IP

Universities in the 21st century should be different from what they were in the previous century. They have to produce a number of, globally top-rated, intellectual property based on advanced basis research activities. Intellectual property thus produced has to be exploited to dedicate to the development of economy and society. Appropriate reform of universities should be made, thereby enabling universities to be a source of active venture businesses and new industries with high competitiveness based on highly advanced basic technologies.

2. Education –Foster Capable Inventors and Creators

Intellectual property is the product of intellectual work by the human beings. It is therefore, necessary that education be provided for creativity and aspiration. Potential creators and supporters of intellectual property are not limited to students at school. Social workers are another source of talents. Teachers should recognize the importance of intellectual property and provide lessons to raise their creativity. Programs should include more practical aspects including technology transfer and entrepreneurships.

3. Company – Treat IPs as a Component of Corporate Revenue

Under the circumstances where companies struggle with cost reduction, intellectual property plays an important role for competitiveness. Whether a company has strong intellectual property competitive to foreign companies is critical. Intellectual property is more vital for venture businesses and medium/small companies than large companies, playing a key role for their corporate strategy and market competitiveness. Measures should be

sought in order to appropriately evaluate the value of intellectual property, and to weigh the value of IP in corporate revenue. This type of business-assisting, IP-related business will be offering professional service of high quality on free competition market.

4. Administration – Support IP-related Policies

The purpose of intellectual property administration is to contribute to the development of economy and civilization by way of promoting inventions and arts. Existing systems and services available based on the systems should be improved so as to make them user-friendly, quick, and form a global model.

5. Diplomacy – Protect National Interests under IP

Intellectual property is an invaluable resource of Japan. It can easily be copied. There are countries and regions that are less positive for the protection of intellectual property. More active approach should be taken to defend intellectual property as a life-line for Japan against such countries and regions utilizing trade policy through diplomatic channels. Efforts should be made in order to reflect national interest. Such efforts include the standardization of our educational and social systems as a global model for the respect of intellectual property policy and resultant intellectual properties. International cooperation shall be needed for that purpose. Leading developing countries for the world patent system, which is inherently charming for them, is in a top priority.

6. Legislation – Establish an IP Law System in compliance with the 21st century.

Along with the progress of information revolution, change of corporate strategy and harsh international competition, protection of advanced technologies including software and bio-engineered products is needed along with the adjustment of conflict of users' interest and dispute resolution among companies. These problems cannot be addressed with the legal systems whose framework was established in the Meiji Era. Without national strategy, law-making will be without conformity at random, and effectively concerted legal framework will be far-reaching. Intellectual property system in compliance with the demand of the 21st century should be sought as soon as possible.

7. Legal System – Avoid Hollowing out of IP Venue

Venue for intellectual property litigation is moving out of Japan. New legal system should be sought which will be friendly to inventors and creators, and reliable for the parties. If the Japanese court has a head start in interpretation of IP laws, such trend would meet the

national interest.