

V. 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 as a trade policy through diplomatic channels. Intellectual property is a life-line. Such intellectual property has to be defended. Therefore, 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.

[Problems]

- 1) A dozen of Japanese companies have suffered from counterfeits and patent infringement whose damage amount reach 7.7 million US\$ or more per year. A key to the breakthrough of the situation where the violation of intellectual property right is commonplace is a successful diplomatic negotiation with a source country that is, in many cases, located in Asian regions.*
- 2) There were heated discussions between the group of patented manufacturers and the governments of developing countries with regard to the treatment of patents for anti-AIDS drug. Focus was whether AIDS drug patents should be exempted from the TRIPs. Special announcement was made at the WTO ministerial meeting at Doha. This clearly witnesses that intellectual property is not a matter among the advanced countries but is a global issue requiring a set of new rules for global commerce.*
- 3) Bayer owns a patent relating to antibiotic to treat patients infected with Anthrax. With regard to this patent, the US Congress and the Canada Congress attempted to make law to introduce a compulsory license and to allow parallel import, which is clearly against the spirit of TRIPs. This tells us that a key component of intellectual property strategy even for industrialized countries is the protection of national interest and national industries. Amid the globalization of intellectual property concerns, Japan should take initiative in the discussion for a world patent agreement. Establishing an international framework to protect the national interest is a first step for Japan to be an advanced IP-oriented country. National interest cannot be protected with a “wait and see” approach for a mediator between US and EU.*

[Proposals]

69. Monitor Counterfeiters and Sanction Them if Found

Japanese companies have been suffering from counterfeits and imported infringing products. PRC and south-east countries, in particular, are major source of counterfeits of motor cycles, home-appliance products and character goods. Among others, motor cycles manufactured in PRC annually reach 11 million, out of which 70% are counterfeits with fake brand of Japanese motor cycles.

The Japanese government should strengthen its monitoring activities toward source countries so far as they leave them uncontrolled. Commercial law should be utilized to deal with their counterfeits. In particular, necessary measures for remedies in compliance with WTO should be sought urgently against PRC. If a source country is a non-member of WTO, a bilateral arrangement should be sought for quicker and effective solution. The free trade agreement should include a provision for intellectual property.

70. Assist Developing Countries for better IP Systems

Japan should lead policy discussion on intellectual property systems in developing countries. UK sought members from developing countries for her policy paper on IP system in developing nations. This is one of the good examples for Japan to learn. Japan should have an initiative in leading international discussion on this issue.

71. Establish an International Trade Commission Against Counterfeits

It is of urgent need to strengthen cross border regulation against counterfeits imported from other countries. Basic scenario is to seek more cooperation from police. With more involvement of police, we call for amendment of the law on national administrative organization and the law of customs and tariffs by 2003. The law of customs and tariffs has a provision for injunction against infringing products but its coverage does not extend to those subject to the patent law and the design law.

Following ROK, Taiwan and Singapore, China is now a 4th competitor in the production of high technology products. Import of infringing products may increase from now on. We do need a national strategy to cope with such situation.

One possible way is to amend the law on national administrative organization so as to allow the establishment of an international trade commission whose function is a cross border screening of imported counterfeits. In USA, the International Trade Commission is a quasi-judicial organization established in 1916. With 6 commission members, it has a strong power to carry out a variety of searches, and to enforce remedies including a ban of import.

Such a special organization is desirable for an IP-oriented country. Even if

establishing a new organization does not fit the policy of small government, then, the government should start reviewing the law of customs and tariffs in 2002. Practically, it may be possible that resources within the appeal board of the Patent Office are used for cross border proceedings for IP violation. Law may be changed so as for the head of custom offices to request, at its own expense, a determination of whether an alleged counterfeit infringe certain IP. Law should allow this PO-route review to go uninterrupted even when a parallel action is pending before a court. For the protection of an importer, however, the head of custom offices would be required to pay a bond.

72. Organize an Anti-Counterfeit Industrial Body

In order to eliminate economic damage and loss in trust from counterfeits, researches and information disclosure should be carried out in connection with counterfeits. So far, the Association for Countermeasures against Unfair Products, and industrial organizations have independently acted on a case by case basis. Results are not sufficient as a whole. We propose that the government establish a national organization of anti-counterfeits, which may advocate against the source countries of counterfeits.

73. Execute Japan-US IP Cooperation Treaty

Patent needs quick examination. Examination requires international cooperation. Judging from the tied economic and trade relationship as well as scientific and technological research level, Japan should think, as a national strategy, of having a bilateral treaty with USA, which is something like a free trade treaty. With mutual cooperation, examination would be quicker, and compliance with US IP policies would be possible. These are good for Japanese companies and may give a step for the world patent system.

We propose an earlier execution of such bilateral treaty on IP between Japan and USA.

74. Take an Initiative in the World Patent Treaty

It is desirable that one application results in a world patent. Aiming at earlier accomplishment of the world patent system, Japan should complete legislations and amendments necessary under WIPO, and initiate arguments for earlier execution of the Substantive Patent Law Treaty (SPLT) now discussed at the WIPO.

75. Legislate a World IP Charter

At the WIPO's first policy council, the Japanese delegation announced a draft World

Intellectual Property Charter. Its purpose was to propagate the notion of IP protection with easy and simple terms. It discusses the fundamental principle of industrial property rights and protection of literature and arts. Japan should seek to promote arguments on this issue by other countries and take an initiative for earlier legislation of the World Intellectual Property Charter.

76. Argue Japan's Interest for Review of the Hague Convention

IP disputes are everywhere in the world and they are increasing in number. Therefore, international jurisdiction is very important. Japanese government should actively contribute to the review of the Hague Convention.

The Hague Convention is executed for the purpose of conforming private international laws. Once every four year, an international meeting is held in Hague. Japan has so far ratified the treaty for the compliance of civil procedures and the treaty for streamlining process of services and notice requirements for document in civil or commercial case. Japan should actively participate in the discussion of governing-law issues and copyright rules.

77. Open a Summit IP Ministerial Meeting

Such IP issues involving drug, genome and Internet need discussions by ministers of major countries. Among others, clone-related technologies and tissue engineering are of particular importance. However, these are areas where discrepancies are growing in IP protection because of cultural and ethical diversifications. It would be necessary to address these emerging discrepancies by way of opening a ministerial IP meeting. The ministerial meeting is the best venue for making international rules on IP in the border-less age.