

## *VI. Legislation – Establish IP Law System in compliance with the 21<sup>st</sup> Century.*

*Informational revolution progressed and international competition became harsh. Along with this trend, corporate strategy changed significantly. Under these circumstances, new problems have arisen: protection of software and bio-engineered products, adjustment of conflicts among users' interest, and the need of dispute resolutions. Legal systems whose framework was established in the Meiji Era are not appropriate to deal with these newly emerging problems. However, without a national strategy, legislation and amendment relevant laws would be in a less compliant manner. It is an urgent task to form an intellectual property system which can meet the demand of the 21<sup>st</sup> century.*

### *[Problems]*

- 1) Intellectual Property (IP) requires professional handling. Public interest is not matured yet. This has allowed a small group of legislatures to be influential for law-amendment.*
- 2) Less public interest did not cause thorough discussion on IP-related matters among legislatures. Even when arguments were made, they resulted in a manipulated, national strategy-free, legislation.*
- 3) IP has attained value. The value is often larger than that of tangible assets. Stealing value-added IP is likely to cause injury and damage, which is more serious than those of a tangible thing. Leakage of IP is a loss of national wealth.*
- 4) Legislatures have to consider how to sweep away a traditional recognition on IP. There has been atmosphere in the society that information was free and that infringement of IP could be excused. Legislatures are responsible for improving the situation. They have to know that without statutory law, IP infringement cannot be held down appropriately.*

### *[Proposals]*

#### *78. Establish an National Council for IP Strategy*

*TV game technology constitutes a world-wide software industry which was born in Japan. Programs and displays are protected under the copyright for which the Agency of Culture is responsible. Underlining ideas are protected under the patent law, which the Patent Office supervises. The Patent Office has to deal with law amendment while it is swamped with the stocked files of patent applications. The Seeds and Seedlings Law, on the other hand, is subject to the Ministry of Agriculture. There is no single ministry responsible for harmonized IP policies in Japan.*

*Shifting toward an IP-oriented country is a key for Japan to survive in global*

*competition in the 21<sup>st</sup> century. The following actions should be taken urgently: Establishment of a National IP Strategy Council within the Government and a National IP Strategy Committee within the National Diet. These institutes should study, implement and monitor the national IP strategy, and urge necessary legislation.*

**79. Establish a Special Committee for Medicine and Patent**

*In March 2000, President Clinton and Prime Minister Blair launched a joint statement concerning the protection of DNA under patent. This issue was one of the agenda for the Summit Meeting held in Okinawa in July 2000. At the 2001 WTO ministerial meetings at Doha, a joint statement was announced in connection with the protection of AIDS' curing drugs under patent. Thus, the protection of drugs, biological substances and medication technologies are on the top of agenda for discussion in each country. In Japan, also, there are debates on the relationship between the patent system and medical services/drug prices. Form a special committee to study what is a desirable relationship between them. The committee members should be sought from a wide variety of circles including Diet-members, academicians, and business people.*

**80. Make a New IP Law to Cope with the Internet Age**

*Current patent law was made as part of the extensive post-war reform of legal systems. At that time, the driving force of industry was a tangible product. But toward the end of the 20<sup>th</sup> century, it has been replaced with intangible information. Current issue under the patent law is protection of information. When the Internet is involved, it is a matter of the copyright law and the trademark law. In these areas, amendments of statutory laws are frequent, almost every year. This shows that the fundamental framework of the patent law and the copyright law do not meet the requirements of knowledge-intensive society in the 21<sup>st</sup> century.*

*1) Individual statutory laws including Patent Law, Copyright Law and Trademark Law should be consolidated into a single IP law with additional provisions to meet requirements of the age of the Internet.*

*2) Subject matters for protection under the IP law should be broadened in category to cover information and services. Grey zones for which two different forms of IP protection are overlapping have to be reviewed for streamlining. New subject matters for IP protection should be added. Subject matters for which protection is not available should be listed specifically. Conventional forms of protection should be reviewed.*

*3) Patent and copyright are different in statutory duration period, 20 years for patent*

*and 50 years for copyright, even in the field of information. This should be reviewed taking international harmonization into account.*

*4) Sufficient protection should be provided to a copyright owner and a creator of a copyrightable work.*

#### ***81. Make a Basic Statute Law for IP***

*A first step for establishing the age of knowledge and creation is to legislate a basic statute law for IP and to set a milestone for national strategy. The basic statute law for IP should proclaim a fundamental principle that an individual concept should be respected and the creativity of the citizen should be explored sufficiently, thereby allowing them to contribute to the society. Under the provisions, the government will have to be obliged to formulate and implement a general policy to achieve the goal proclaimed in the law.*

#### ***82. Have a Constitutional Provision for IP***

*For the purpose of impressing the necessity of conversion to the IP-oriented country, a provision to call for the encouragement and protection of IP creation should be introduced into the Constitution when an amendment is made thereto.*

#### ***83. Remove Employee's Invention Provisions from the Patent Law***

*It is critically important to provide a researcher (employee) with an incentive for better inventions. The patent law allows an employer to monopolize an employee's invention under contractual arrangements. However, such provision is a stereotype and doubtful in enforceability. It should be left upon a contractual arrangement between an employer and an employee as to which party has a right to utilize the result of research activities. The provision of the patent law on the employee's invention should be abolished so that ideas of corporate employees could be well fostered.*

#### ***84. Introduce Treble Damages***

*When an intellectual property right is infringed or wrongly used, treble damages should be found as civil penalty. Currently, there is no substantial difference between damages for use by negligence and for intentional infringement. Detering effects of civil penalty is insufficient. Current situation is not appropriate for a country wherein more weights are put on IPs.*

#### ***85. Strengthen Criminal Penalties against IP Infringement***

*In case of stealing an IP, criminal penalty should be strengthened to “in jail for 10 year or less.” Current penalty for patent infringement is a 5 years imprisonment or less and a 3 years for copyright infringement. Penalties are insufficient in view of deterring effects.*

*We propose that the maximum level of the criminal penalties should be increased up to 500 million yen from the current level of 150 million yen for patent and trademark and 100 million yen for copyright. The current penalties are insufficient to deter corporate infringement.*

#### **86. Introduce New Penalty for Theft of Information**

*With respect to the action of stealing information which has high economic value, current criminal penalties are insufficient. In case law, an individual offender who stole a magnetic tape with information on was found guilty. His guilty was on the stealing the magnetic tape priced 1,000 yen. Actually protected was information stored on the tape but not the tape itself. The court had no grounds for penalty except for the price of the tape.*

*Unless protection is appropriately secured under civil law and criminal law, investment for the development and storage of advanced technology and management know-how may not be recovered sufficiently. Interest of a head-starter is fragile. If situation remains unimproved, it will deteriorate incentive for the creation of original IP.*

*Assuming illegal leakage is made by an organization involving a foreign governmental organization, a severe penalty should be sought against such crime. Without stringent penalties against illegal leakage, world-class pioneer inventions would not be protected, thus allowing national wealth to flow out. Some people may criticize that such legislation is outdated in view of on-going boarder-less economy. But their criticism is not correct. International operation requires measures against misappropriation of information. Some of the advanced countries have legislated this type of measures. There is a reported case based on this type of legislation, which may have a chilling effect against researchers in Japan. We propose early legislation to address the situation.*

#### **87. Introduce a Discovery System for IP Litigation**

*Evidence to prove counterfeits is usually in the hand of offenders. It is not easy for a victim to obtain such evidence. Therefore, necessary is a provision for the court to issue an order of production of evidence from an accused offender. Document production will be applicable to showing of false data in the patent specification.*

#### **88. Reform Tax Law to Foster IP**

*Current tax system is in favor of company and capital. It does not regard an employee and a researcher as a producer of intellectual property. Reform of the tax law system is inevitable, wherein weights should be shifted from company to employee, from capital to IP-creating labor and from capital storage by company to IP storage by employees. Recent trends in Europe and USA are to encourage protection by IP of fruits obtained through a project to which public grant is provided. Current system is to facilitate a commercialization of such IP.*

*We should learn practice in universities in US and Europe. We should utilize dynamism of commercial market. Researchers should be provided refined research environment to assist them to create IP which would bring in wealth in our society. For that purpose, university-industry collaboration should be promoted and labor market should be refined to allow easier spin-off. Donation by companies to university research facilities should be promoted by way of the introduction of favored corporate tax. The new tax law should not hinder venture capital and corporate donation.*

#### **89. Amend Bankruptcy Law to Protect IP License Agreements**

*When a licensor goes into a bankruptcy, a licensee may fall into a fragile position. Trustee in bankruptcy has entitlement to dispose of a licensed patent. He or she has an option to find out a buyer who offers a best price. The existence of a license agreement does not hinder the trustee in selling off the patent. Consequently, it may happen that the licensee would be sued for infringement by a purchaser of the licensed patent. Termination of a license agreement is another risk. It is therefore in urgent need to revive the unused system of official registration and recordation of license agreements. Review of the bankruptcy law is scheduled in 2003. Review should take the protection of IP license agreements into consideration.*

#### **90. Change a State Image from “Industrial” to “Innovational”**

*After the World War II, Japan has been recognized as a factory of good-quality products with cheaper prices. “Made in Japan” has been a logo to prove high appreciation of world consumers. However, many Asian countries have been catching up Japan in the field of consumer products. It is the right time for Japan to change a state image from a product-oriented country to an invention-oriented country, thereby to contribute culture and civilization in the world. Countries where such important inventions as paper, printing machine and steam engines were made have been historically adored and well remembered.*

***91. Establish a State Brand for Japan***

*In UK, Prime Minister Blair launched a motto “Cool Britannia” and his administration tries to establish a new state image. French has an established image of “a country of culture and diplomacy”. In Japan, we should seek a Japan brand which will be an invaluable asset for individual companies. The government should establish a national policy for enhancing a Japan brand.*