

Japan's intellectual property strategy

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Abstract

Initiated by a speech by the Japanese Prime Minister in 2002, an improved strategy for the creation, protection and use of intellectual property in the Japanese economy has rapidly evolved. The author outlines the major elements and achievements of the new strategy under five categories:

- Creativity and inventiveness (e.g. facilitating technology transfer from universities to the private sector).
- Protection (e.g. trilateral sharing of search and examination results, speedier examination, and the establishment of an IP high court).
- Exploitation (e.g. widening the range of organisations allowed to assist SMEs).
- Contents (mainly aspects of IP in the movie industry).
- Cultivating human resources (e.g. increased emphasis on IP education in universities).

Future work, in phase 2 through to 2009, in making Japan an 'IP Rich Country', will concentrate on building on these changes to integrate IP more fully into business growth.

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1. Japan's intellectual property (IP) strategy

The Japanese Government's decision to stress Japan's IP strategy was announced by Prime Minister Koizumi in a speech in February 2002 on Government Policy. He made clear that "We will make it a national objective to protect and leverage the results of R&D and creative activity as IP, etc.". This is the first time in Japanese history that the objective of making Japan an 'IP Rich Country' was defined as a national objective.

Based on this announcement the 'Basic Law on IP' was proposed in November 2002 defining the creation, protection and use of IP as a basic duty alongside other national

principles. In March 2003, the basic law of IP was passed and, with the Prime Minister as the leader, the intellectual property headquarters was set up as a Cabinet Secretariat combining the best and brightest from among the Cabinet and opinion leaders in the public forum (Financial leaders, Academic Heads, Research Institute Heads, Lawyers, Film Company Representatives, etc.). The job of the IP HQ is to play a central role in promulgating the new IP policy in liaison with other government departments and interested parties. Moreover, the IP HQ should decide the outline policies which the government should take to implement the 'IP Rich Country' policy including an important Annual IP Promotion Plan and thus be the overall coordinator and planner. This Annual IP Promotion Plan should not only yield concrete (measurable) results every year but in order to be able to respond shrewdly to actual conditions should adopt a rolling plan approach as used by companies and planners alike. Since its set-up the IP HQ has defined

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Chronology of Japan's IP Strategy

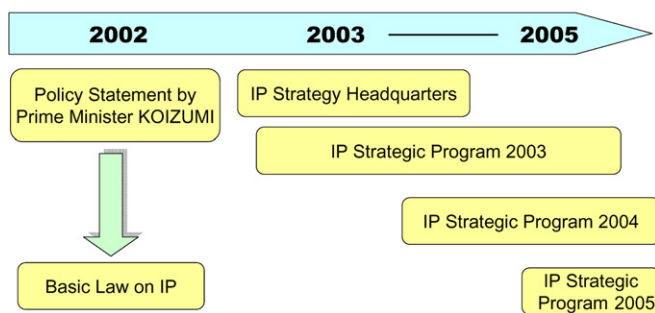


Fig. 1. Chronology of Japan's IP strategy.

policies in this way in each of 2003, 2004 and 2005 and, for example, has had great success in setting-up the IP High Court and the introducing the Patent Examination Acceleration Law. In the 'IP Promotion Plan 2005' launched in June 2005 some initiatives were 'Advocacy of a Treaty on Prevention of Diffusion of Counterfeits and Pirated Copies', 'Realising a World Patent', 'Protection of Trade Secrets', etc. resulting in the promulgation of 450 items of new or improved policy initiatives to promote IP (see Fig. 1). The basic features of these initiatives, up to 2004, are mentioned briefly in Section 5 of an article by Wada on 'Recent developments in Japan's intellectual property industry' [1].

2. Why is IP important now?

From an historical perspective we can say that placing importance in IP was a necessity in the economic development of Japan. At the start of the Meiji Era in Japan (1868–1912) 90% of the population were engaged in agriculture and so land was an important resource in feeding the people (resource based era). Later as industry and commerce developed in Japan we moved from a resource based economy to one based on machinery and facilities necessary for mass production of cheap goods. Later with the IT revolution the importance of software and invisible intelligence arose, in effect giving rise to the present age where IP itself is important (Era of IP dependence). All of these, as expressed in the phrase 'Knowledge Economics', mean that as advanced countries economic development progresses, the technological revolution and role of innovation is huge, with the result that the protection afforded by patents and know-how for advanced technology and the added value of knowledge become increasingly more important than before.

Also, with the advances in science and technology we must not lose sight of the fact that the scope of IP broadens. Patents were concerned with the way products were made but just as drugs themselves became patentable, software also became patentable and even DNA sequences became patentable. This all resulted from the need to respect the products of human intellectual input, economic

input and total human effort in a society where proper protection was essential to economic development.

Further, the value of IP other than patents and know-how has grown immeasurably. Companies have grown to value the role of Trademarks and Brands as IP which garner consumers' trust. Moreover copyright which protects movies, music and broadcast works has become extraordinarily important for the contents industry.

In an age when business is increasingly globalized, companies from every country compete aggressively in global markets. Against a background where the number of companies which place IP strategy at the core of their company activities is increasing, it is fair to say that if we build an attractive IP environment then companies will come to this country to carry out R&D. Indeed in an age where multinational companies select countries, they select based on the attractiveness of the market environment in that country. Against this backdrop it is imperative that Japan develop an attractive IP environment.

In order for a country such as Japan which lacks natural resources to maintain its position in the world economy we must not only cultivate human resources who are creative but also strategically create IP consisting of superior inventions and works, protect them and exploit them. It is essential that Japan exploits Japanese abilities in inventiveness and creativity in many fields, activate Japanese economic activity and contribute to the development of the world economy and culture with this 'IP Rich Country' policy.

3. Achievements of the new Japanese IP strategy

The annual IP Promotion Plan consists of activities in the five areas of (1) Creativity and inventiveness, (2) Protection, (3) Exploitation, (4) Contents and (5) Cultivating human resources and here we would like to elaborate on achievements in each of these activities.

(1) *Creativity and inventiveness*: In order to achieve an IP Rich Country we must first generate creative and revolutionary R&D results and we must have a mechanism to deliver the benefits of those R&D results to society. In particular the role of the large research resources at Universities and Research Institutes is very important. On the occasion of the establishment of national universities as legal entities from April 2004 we achieved the principle that for Industry-University collaboration or technology transfer projects in every University to happen we must apply the principle of reversion of the IP rights of the University Staff inventions to the University. To that end rules were formulated which stipulate that when a University has royalty like revenue then it must be distributed to researchers in accordance with rules to not only provide an incentive but also to reflect patent activity success in the evaluation of both the university and of the University staff. Moreover, for the strategic management and exploitation of IP resources to happen, 43 University IP Strategy Headquarters and 41 Technology Licensing Offices (TLO) were established nationwide and Industry-

University collaboration has been facilitated to ensure that research results from Universities etc. are transferred to the private sector. As a result of this initiative in the three years from 2002 the numbers of patents filed by national universities etc. increased 7.6 times, the numbers of patents which were worked increased by 3.8 times and royalty income increased 1.7 times, moreover the numbers of patents filed abroad by national universities etc. increased 1.2 times.

(2) *Protection*: As well as creating an incentive to protect IP creation and ensure that effective exploitation happens, appropriate protection of IP is essential and so the system and organisation needs to be dramatically improved.

In particular, as the examination-by-turn patent examination system used in Japan has resulted in longer delays for patent approval than in the US and Europe, we need to aim eventually for an examination-by-turn system which has a delay eventually of zero with an intermediate objective of a examination-by-turn delay of 11 months by 2013, down from a peak delay of 20 months expected at the nadir around 2008.

Indeed, to effect these aims a law was passed in June 2004 called the ‘Partial Amendment to the Patent Law to Achieve Speedier Examination’. According to this amendment the need for public organisations to effect the prior art examination has been scrapped and nominated prior art examination organisations search reports and reduced ‘Request-for-Examination’ fees were introduced, as well as opening up the Utility Model registrations to term extension.

Moreover, as a prelude to the construction of a world patent system, the Dossier Access System was put into operation from October 2004 whereby each of the members of the Trilateral Patent Organisations, the Japan, US and European Patent Offices, can access the search and examination information of the other members. In addition the Japanese Patent office has proposed that when a patent is examined and approved by one office then it should be subject to a simplified procedure to be examined quickly under a proposed “Patent Examination Highway” project and implementation of a test version between the Japanese and US Patent Offices is planned for the first half of fiscal 2006.

In the Japanese Intellectual Property Digital Library (IPDL) both unexamined and examined Japanese patents which have been made available digitally can also all be viewed in English using automatic translation.

From April 2005 the IP High Court was established with the object of speedier resolution of disputes through predictable decision timings (effectively decisions should be made in a uniform turn-around schedule) using improving IP technical expert support. The establishment of the IP high court was a demonstrable symbol of the importance placed on IP by the body politic. Henceforth, using proactive information gathering both in country and internationally we expect to control the inward flow of counterfeit products to Japan.

At the G8 Glen Eagles Summit of July 2005 Prime Minister Koizumi proposed an international treaty to prevent the spread of counterfeit and pirated products, and the completion of the “Treaty for the Prevention of Spread of Pirated and Counterfeit Products” is being promoted as a Diplomatic initiative.

(3) *Exploitation*: To initiate a process whereby IP is effectively exploited.

One way in which IP exploitation was facilitated was the passing in December 2004 of the new Trust Business Law which not only made it possible to collateralize IP rights and other general property rights but also extended the possibility of bearers being not just Trust Banks and the like but also Stock Companies and nominated TLOs and group holding companies. Based on these provisions Trust Banks and Law Firms could join together to exploit IP of small and medium enterprises (SME), facilitating appropriate protection of the rights from infringement by exploiting the entrusted IP. These provisions also enable the use of trust schemes for Movies and Animation (‘Anime’) type contents so as to raise funds for the generation of the same. In this way the exploitation of IP was opened up to the private sector and IP has begun to be exploited more effectively.

(4) *Contents*: Japanese contents such as movies and anime are popular around the world but that popularity has not sufficiently translated to business results. A new ‘Promotion of Contents Creation, Protection and Exploitation Law’ (A.k.a. Contents Promotion Law) was passed in May 2004 to deal with this situation. The new Contents Promotion Law has as its aim that the Government, local public organisations and related persons should share the aims of contents creation, protection and exploitation and work together to make that policy work effectively.

In addition, in order to promote the international competitiveness of Japanese movie contents industry the formation of a Movie Industry Promotion Organisation was approved by the May 2005 Non-Profit organisation Law with the objectives of cultivating human resources of content creators and producers, as well as helping with production costs of specific projects and marketing initiatives in Japan and abroad. Moreover, an Entertainment Lawyers Network was established in April 2004 to promote contact and exchanges between lawyers, contents industry people and contents creators, currently this organisation has 500 members.

(5) *Cultivating human resources*: In realizing an ‘IP Rich Country’ the test will be if ‘People’ can in the end use the system provided to achieve a meaningful result. Therefore, in Japan there is a need more and more to develop specialist human resources equipped to deal with IP.

In the law faculties set up since April 2004 (currently 74 colleges) they all have courses in IP Law related topics and it is expected that they will educate students proficient in IP law. Moreover, in April 2005 two specialist IP Graduate Schools were set up and their curriculum is under constant

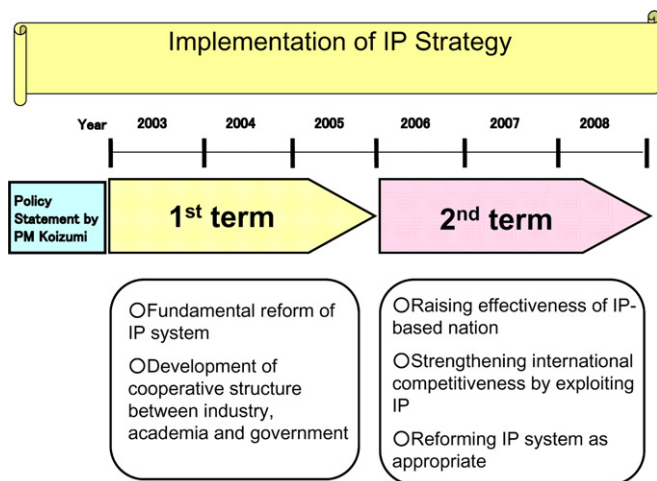


Fig. 2. Implementation of IP strategy.

development. Also, human networks dedicated to IP topics such as 'IP Lawyer Network' (Bengoshi Chizai Net) and an access point for the Japan Patent Agent Association (Nihon Benrishikai) have been formed.

In addition, in February 2005 the Intellectual Creative Cycle Survey Group within the IP Strategy Headquarters decided on an "Overall Strategy for Education of Human Resources in IP" with the objectives of increasing the number of persons active in IP from the current 60,000 people to 120,000 people over the next 10 years as well as raising the skill levels.

4. Conclusion

The situation in relation to IP has changed considerably in Japan in the last two to three years and even the Government has hurried to implement measures to realize the 'IP Rich Country' policy. The IP strategy headquarters has



Fig. 3. Further perspectives of 2nd term.

achieved a basic reform of the IP system in Japan in the last three years (2003–2005, Phase 1) and those achievements have been acknowledged by the House, industry and the mass media. Henceforth, we plan to tie these basic system reforms in with business growth and increased employment. So in the next three years (2006–2009) in Phase 2 we plan to build on the achievements of Phase 1 to make Japan a world leading IP Rich Country as measured in science, technology and macroeconomic terms (see Figs. 2 and 3) We plan to implement this revolution in a timely fashion without detriment to previous achievements and all organisations in Japan need to pull together to achieve this aim.

Reference

- [1] Wada Y. Recent developments in Japan's intellectual property industry. *World Patent Inform* 2005;27(1):31–5.