

# The State of Intellectual Property Strategy

By Senoo Zenta

## The Growing Importance of Intellectual Property

In today's world, the value of intangible assets such as information and technology and consumers' assessment of the design and brand of products are directly linked to the competitiveness of goods and services. In an age when Japan must compete with developing nations such as China not only in terms of cost but also technological capabilities, and when the emergence of completely new technological fields such as information technology (IT) and biotechnology is adding tremendous value to goods and services, it has become essential to turn Japanese industry into a "frontier" industry.

Given this situation, from the standpoint of raising the competitiveness of Japanese industry, the establishment of intellectual property strategies has become a challenge of vital importance to the smooth functioning of the entire intellectual creation cycle. Interest in

and awareness of the importance of this issue is growing in society.

## Challenges for Japan

Intellectual property strategy can be broadly organized into the following three major challenges.

The first challenge is the creation and accumulation of world-class intellectual property that is commensurate with research and development (R&D) spending by the government, which has risen to some ¥24 trillion. In the area of advanced technology in particular, it is important to obtain rights to research outcomes for which licenses and other uses can be anticipated, to facilitate the transfer of technology to private companies, and to pass those technologies on to society through licenses and other means. It is said that Japan lags behind the United States in this point. For example, whereas in the United States, approximately half of all biotechnology-related patent applications are filed

by universities, in Japan, university filings account for only slightly over 10% of all applications in that field.

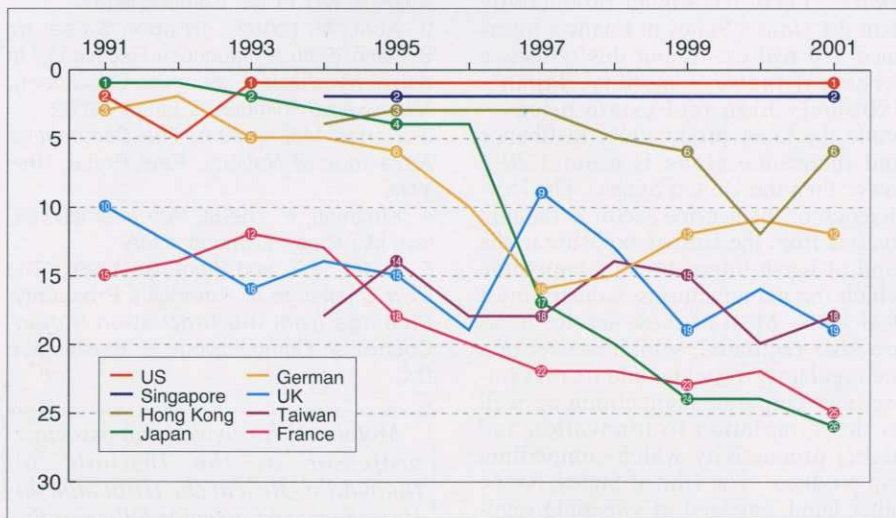
The second challenge is the establishment of an infrastructure for the intellectual property strategies of private companies. An environment in which businesses can adopt intellectual property as a management strategy and use that intellectual property in a strategic manner must be established.

Thirdly, the reinforcement of protection of intellectual property overseas is another important challenge for Japan. Currently, the production and distribution of counterfeits and imitations of Japanese products is rampant, especially in Asia. Not only does this place pressure on sales of genuine products, it also leads to serious damage in the form of deterioration of brand image, making this a problem requiring urgent attention. Also, from the perspective of supporting the acquisition of overseas rights by Japanese companies, the international harmonization of patent systems must be actively promoted.

Based on these challenges of the patent era, a variety of approaches have been implemented by industry, academia and the government in recent years.

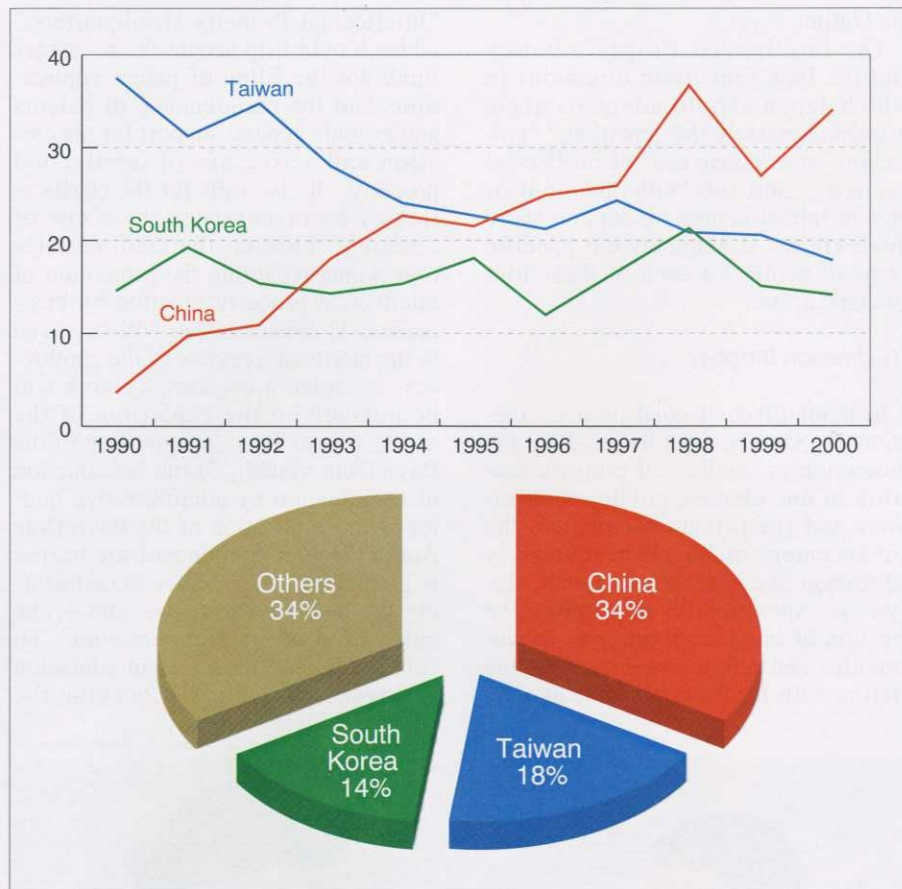
Firstly, the government has made several amendments to intellectual property-related legislation in recent years. In 1999, amendments were made to the Patent Law, including making it easier to prove claims for compensatory damages, and the Copyright Law was changed to prohibit the evasion, or alteration of copy protection, electronic watermarks and the like. Also, in 2000, in an effort to strengthen the infrastructure of intellectual property services, the Patent Attorney Law was amended to expand the scope of services provided by patent attorneys, and further amendments were made to the Copyright Law

Figure 1 Need for Japan to improve international competitiveness



Note: Figures after 1997 are based on new criteria.  
The numbers in each circle indicate the ranking of competitiveness for each year.  
Source: *The World Competitiveness Yearbook 2001*, IMD

Figure 2 International comparison of counterfeits of Japanese products



Source: Survey Report on Damage Caused by Counterfeit Goods / Services Fiscal 2001

to improve court procedures in connection with copyright infringements. Further, in 2001, amendments have been made to the Unfair Competition Prevention Law, thus establishing regulations against illegal acts regarding domain names.

Other legislative amendments made this year include the partial amendment of the Patent Law towards the clarification of the protection of intellectual property rights on networks, the partial amendment of the Patent Attorney Law to grant patent attorneys the right to represent clients in patent infringement suits, and the establishment of new transmission rights for transmission enterprises.

In addition to these amendments to patent and copyright systems by the government, a variety of approaches are also being taken by businesses,

including the establishment of awards (bonuses) for inventions and the reinforcement of intellectual property departments. In particular, a series of newspaper reports about the employees' invention system has provided the impetus for managers and researchers involved in the creation and management of intellectual property to renew their awareness of intellectual property.

Also, in universities and other institutions, which are expected to play an important role in basic research, approaches aimed at strengthening intellectual property creation and promoting its effective utilization have begun. In particular, technology licensing organizations (TLO) are seen as the linchpin to universities' intellectual property management in the future, and efforts are being made to enhance their functions, including placing specialist

staff in these organizations. The fact that the incorporation of national universities as independent administrative institutes is anticipated and the securing of funds and income for these universities is becoming a major issue could be described as reasons for the recent acceleration of such developments.

### The Government's Approaches to Intellectual Property Strategy

In response to the growing recognition of the importance of intellectual property policy and strategy, approaches are now being adopted in earnest not only by the Ministry of Economy, Trade and Industry (METI), but by the Japanese government as a whole.

#### Council for Science and Technology Policy

Firstly, at the Council for Science and Technology Policy, intellectual property attracted a great deal of interest as an important theme in Japan's future science and technology policy. Debate on this issue is being pursued, including in the Expert Panel on Management of Intellectual Properties that was set up in March this year. In recent developments, this Expert Panel released an interim report entitled "On Intellectual Property Strategy" on June 13.

In this interim report, the Expert Panel first stated the importance of securing and making active use of intellectual property in line with the government's R&D spending, and makes a number of recommendations, including wider application of the Japanese equivalent of the Bayh/Dole Act, and improvements to the way in which intellectual property is dealt with in universities and public-sector research institutes.

Regarding intellectual property legislation in the area of advanced science and technology, the report stresses the need to increase incentives for front runners, and places particular priority on two fields – life sciences and information technology – in its recommendations. Regarding life sciences, the

report mentions the establishment of systems for the patentization of advanced medical technologies, and it also includes studies of the collection and use of biological resources by the country as a whole since the Convention on Biological Diversity came into effect. In the area of IT, regarding the protection and use of intellectual property in advanced technological fields, the report points out the need to respond with interest to the convention negotiations taking place in the Hague Conference on Private International Law as a means of addressing the problem of trans-border intellectual property infringements over the Internet. Also, regarding the protection of system large scale integration (LSI) intellectual property, the report calls for deliberation of the protection of "soft" or intangible design assets.

The interim report also recommends that emphasis be placed on respect for creativity in elementary schools as a means of fostering intellectual property-related human resources, and states the need for the United States to change its "first-to-invent" principle as a means of preparing related infrastructure.

## *Strategic Council on Intellectual Property*

In February this year, the Strategic Council on Intellectual Property was launched under the auspices of the Prime Minister. Since then, broad-ranging debate has been conducted into the establishment of a national intellectual property strategy and the strong pursuit of the necessary policies.

On July 3, the "Intellectual Property Policy Outline" was adopted after deliberation by the drafting committee, which comprised expert members of the Council. This Outline provides the government's fundamental concepts for the realization of Japan as a "nation that is built on the platform of intellectual property", and it provides a grand design for Japan's intellectual property policies. From now until 2005, the government will implement intensively and systematically the reforms listed in

the Outline.

The Intellectual Property Policy Outline lists four basic directions in which Japan should adopt strategic responses, namely the "creation," "protection" and "active use" of intellectual property, and the "enhancement of human infrastructure" to support those three areas. It also sets out specific plans of action for each of these four strategic areas.

### (1) Creation Strategy

In terms of intellectual property creation, the Outline cites the need for the promotion of intellectual property creation in universities, public organizations and the private sector, and the enhancement of human resources in education and research to foster creativity. Specifically, to promote the creation of intellectual property in universities and public organizations, the Outline calls for the establishment of an

"Intellectual Property Headquarters," which would help secure the necessary funds for the filing of patent applications and the maintenance of patents and provide general support for the creation and active use of intellectual property. It also calls for the clarification of co-inventors at the scene of research. Further, the Outline notes four points regarding the promotion of intellectual property creation by businesses; 1) consideration will be given to the merits of a review of the employees' invention provisions, 2) work will be pursued on the expansion of the application of Japan's equivalent of the Bayh/Dole system, 3) the introduction of examination by administrative bodies of the application of the Bayh/Dole Act in the event a monopolistic license is granted to a third party manufacturing the invention overseas, and 4) the cultivation of contents creators. To enhance human resources in education and research, who will become the

*Photo: The Mainichi Newspapers*



*Abe Hiroyuki (left), president of Tohoku University, submits the Outline for Intellectual Property Strategy to Koizumi Jun-ichiro (right) at the Strategic Council on Intellectual Property*

foundation of this intellectual property creation, the Outline states the need for greater mobility of researchers, improvement of diversity, and the promotion of education about intellectual property in elementary and secondary schools.

## (2) Protection Strategy

From the standpoint of the protection of intellectual property, the Outline calls for the acceleration of patent examination and adjudication, the creation of a substantive "patent court" function, the strengthening of countermeasures against counterfeiting and piracy, stronger protection of trade secrets, and the protection of intellectual property in new fields.

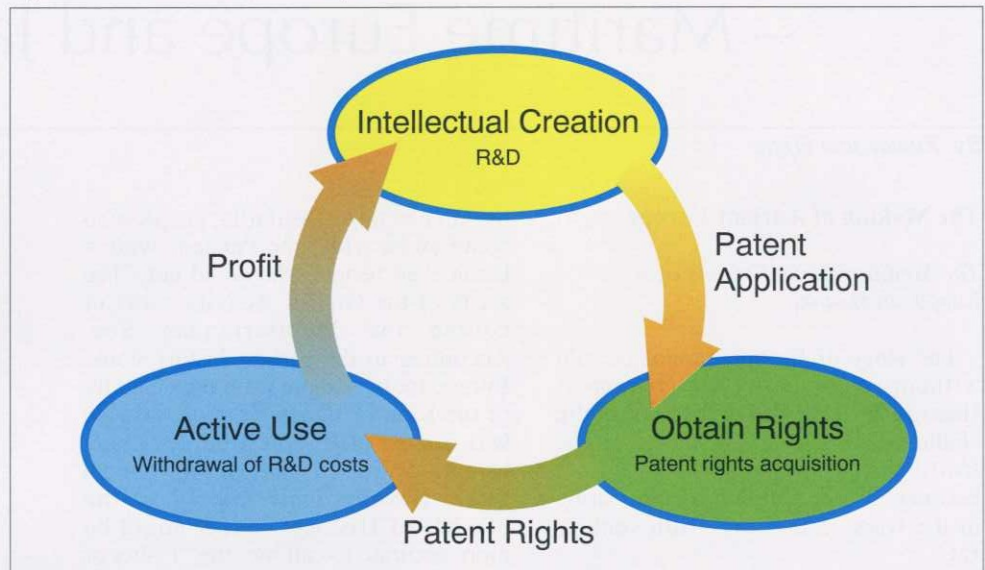
Regarding the creation of a "patent court" function, consideration will be given to granting exclusive jurisdiction over patent-related legal actions to the Tokyo and Osaka District Courts, and concentrating high court functions in the Tokyo High Court. Regarding counterfeiting and piracy countermeasures, the Outline mentions collaboration with a "Contents Industry Overseas Development Promotion Consortium" (provisional title), in addition to the "International Intellectual Property Protection Forum".

## (3) Active Use Strategy

In terms of the active use of intellectual property, the Outline states the need for promotion of technological transfer from universities or other institutions, the strategic use of intellectual property by businesses, and the promotion of the distribution of intellectual property.

To achieve this, the government will address the promotion of the enhancement and further establishment of TLO, the drafting of guidelines for the prevention of unintentional outflows of know-how from businesses, the establishment of assessment of the value of intellectual property, and the amend-

Figure 3 The intellectual creation cycle



ment of the Bankruptcy Law and other legislation towards reinforcing the stability of intellectual property license agreements.

## (4) Human Infrastructure

Major tasks in this area are the development of specialist human resources and raising awareness of intellectual property among the Japanese people to provide the foundation of the creation, protection and active use of intellectual property. Regarding the former, the Outline includes the reinforcement of education about intellectual property legislation at the Graduate Law School, consideration of the establishment of "Specialized Graduate Schools" (provisional title) for intellectual property, greater active use of patent attorneys and increases in the number of such specialists.

In order to pursue these measures speedily and with priority, an "Intellectual Property Strategic Headquarters" (provisional title) is to be established by the next Regular Diet Session at the latest, and an "Intellectual Property Basic Law" (provisional title), which incorporates the drafting of an "Intellectual Property Strategic Plan" (provisional title), is to be prepared.

## Conclusion

In response to the adoption of the Intellectual Property Policy Outline, further deliberations will now take place within the government on intellectual property strategy, focusing on the specifics of the implementation of the measures contained therein.

On July 9, METI held a meeting of the Intellectual Property Policy Sub-Committee of the Industrial Structure Council. The Sub-Committee discussed those parts of the Intellectual Property Policy Outline that this Ministry should pursue. As the government agency with the core role in promoting and implementing intellectual property measures for the full-scale development of pro-patent policies in Japan, METI will work to ensure that these measures are implemented steadily and favorably, with the objective of the smooth functioning of the intellectual creation cycle. JTI

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