

# Basic Law on Intellectual Property

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## I. Introduction

The Basic Law on Intellectual Property (Basic Law) was approved in the 2002 extraordinary session of the Diet and promulgated on Dec. 4 the same year.

The Basic Law established the fundamental policy on intellectual property for government in the future. It has attracted global attention, as this type of law is unprecedented among the world's foremost nations.

This paper will report on the background leading up to the approval of the Basic Law, the specific content of the Law and the efforts that have followed its approval.

## II. The Circumstances Leading up to the Approval of the Basic Law

First, I will introduce the circumstances leading up to the approval of the Basic Law.

### A. The Rise in the Importance and a Background of Intellectual Property Strategy

In recent years, awareness about the importance of "intellectual property" as the source of national wealth has increased sharply. Concerns over Japan's prolonged economic stagnation and the decrease in the international competitiveness of its industry form the backdrop to this growing awareness.

Although Japan was placed at the top in the international competitiveness rankings produced by the International Institute for Management Development (IMD) at the beginning of the 1990s, it had dropped to 30<sup>th</sup> in the 2002 assessments. This decline in national competitiveness is one factor in the economic recession since the 1990s.

However, there is still a high standard of science and technology in Japan, and

it held onto second place in the IMD rankings for science and technology until 2000. Moreover, this is substantiated by the fact that Japanese citizens have become Nobel Prize recipients for three successive years. Therefore, now is the time for a plan to restore competitiveness based on science and technology capabilities, while a comprehensive strength in science and technology still remains.

Furthermore, given the fact that Asian nations are steadily improving their technology capabilities, it will be difficult for Japanese industry to succeed in an era of global mega-competition using a strategy of reducing costs. Therefore, there is a pressing need to create an industrial structure that will succeed in spite of high costs. This requires the establishment of a social system that produces high added value backed up by unequaled originality, or an "intellectual creation cycle." (Fig. 1) This means creating an environment that produces many creative technologies, establishing a technological advantage, promptly granting rights to this intellectual capital in the form of intellectual property and providing strong protection for it. This leads to the exploitation of intellectual property in a whole society and the benefits that flow from it form the foundation for the creation of intellectual capital. If this "intellectual creation cycle" accelerates and expands, it will be a powerful engine for sustainable social and economic development. The path that Japan should follow in the future is a frontier economic model centered on the activation of the intellectual creation cycle.

Therefore, intellectual property strategy will attract attention as a means of boosting Japan's competitiveness and as a trump card in the revitalization of Japan's economy.

### B. The Development of Intellectual Property Strategy

#### 1. Establishment of the Strategic Council on Intellectual Property

In view of the importance of this intellectual property strategy, 2002 should be commemorated as the first year of intellectual property strategy.

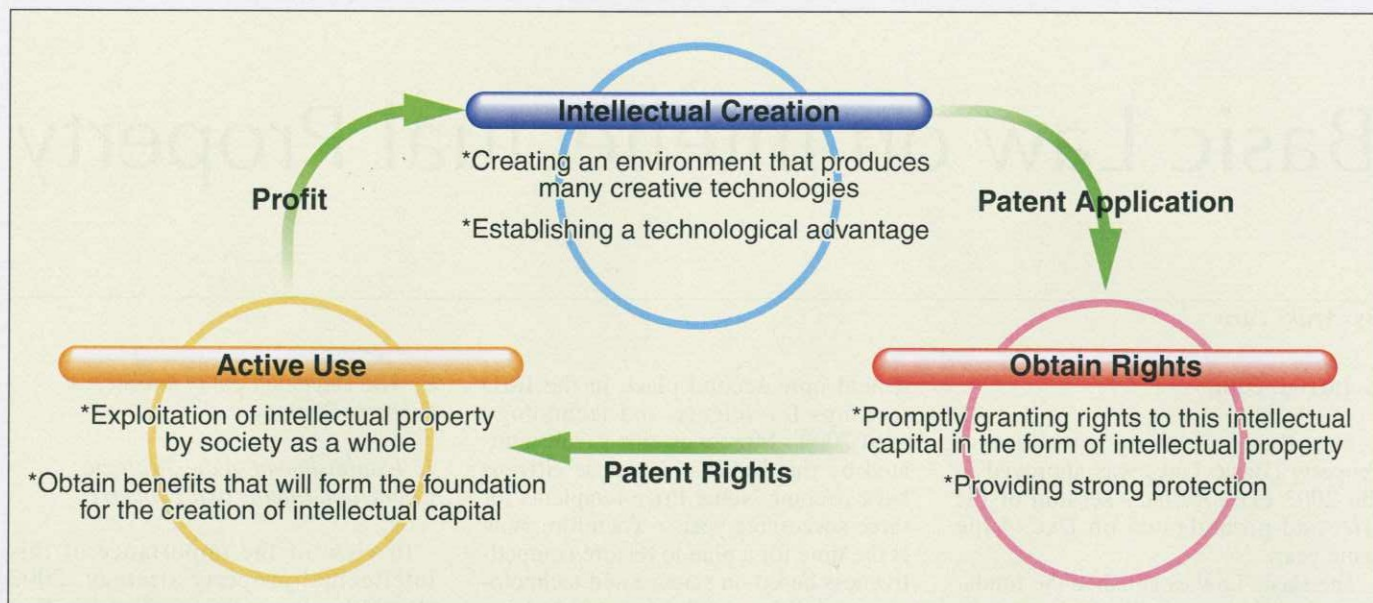
First, Prime Minister Koizumi Junichiro stressed the importance of intellectual property strategy in the ordinary session of the Diet in January 2002 and announced the establishment of the Strategic Council on Intellectual Property. Following that, the Council was set up in March 2002 to quickly formulate intellectual property strategy for the nation, strengthen the international competitiveness of Japan's industry and promote the revitalization of the economy. On July 3, 2002, the "Intellectual Property Policy Outline" was prepared, forming the grand design of future intellectual property policy.

#### 2. Intellectual Property Policy Outline

The objective presented by the Intellectual Property Policy Outline is the realization of a nation built on intellectual property with sustainable economic, social and cultural development through the creation, protection and exploitation of intellectual property as a source of national wealth. It set out a specific action plan in the four areas of intellectual property – "creation," "protection," "exploitation" and "cultivation of human resources" – that the Japanese government must implement intensively and systematically by fiscal 2005.

Firstly, in the "creation" area, it is necessary to promote the creation of intellectual property at universities and public research institutes, encourage the creation of intellectual property in companies, enhance education to develop

Figure 1 Intellectual Creation Cycle



creativity and formulate research personnel.

Secondly, in the “protection” area, there is a need to speed up patent examinations and judgments, establish an effective “patent court” function, strengthen measures against copies and pirated editions, increase protection for trade secrets and provide protection for intellectual property in new fields.

Thirdly, in the “exploitation” area, it is necessary to promote technology transfer from universities and to encourage the exploitation of strategic intellectual property by companies and the distribution of intellectual property.

Finally, in the “cultivation of human resources” area, there is a need to develop expert personnel to form a base for the creation, protection and exploitation of intellectual property and to raise the awareness of the Japanese people about intellectual property.

The Intellectual Property Policy Outline set forth the establishment of an Intellectual Property Policy Headquarters (provisional title) no later than the next ordinary session of the Diet and the amendment of the Basic Law on Intellectual Property (provisional title) to include preparation of the Intellectual Property Policy Plan (provisional title) to promote quick and focused measures to implement these policies.

### 3. Approval of the Basic Law on Intellectual Property

The Basic Law on Intellectual

Property was submitted to the extraordinary session of the Diet held from October 2002 as a Cabinet bill. Following debate in both the House of Representatives and the House of Councilors, it was approved by the plenary session of the House of Councilors on Nov. 23, 2002. It was promulgated on Dec. 4 and came into force on March 1, 2003.

I will now explain the Basic Law on Intellectual Property (Basic Law) point by point and introduce the overall picture.

### III. Content of the Basic Law on Intellectual Property

#### A. The Purpose and Basic Ideas of the Basic Law on Intellectual Property

##### 1. The Purpose of the Basic Law (Article 1)

In order to intensify the international competitiveness of Japanese industry, the content of the Basic Law: (1) stipulates the basic ideas of intellectual property policy; (2) clarifies the responsibilities of the State; (3) provides for a promotion program on the creation, protection and exploitation of intellectual property; and (4) establishes the Intellectual Property Policy Headquarters in order to form a necessary system for implementing the plan.

#### 2. The Basic Ideas of the Basic Law (Articles 3 and 4)

The basic ideas of the Basic Law are to revitalize the Japanese economy and society through the establishment of an “intellectual creation cycle” for the creation, protection and exploitation of intellectual property. The ultimate aim is to establish a society in which the public can enjoy the benefits of the creation of a rich culture.

#### B. Responsibilities of the State and Other Parties

##### 1. Responsibilities of the State (Article 5)

The State shall have the responsibility for formulating and implementing intellectual property policy in accordance with the basic ideas of the Basic Law, and the Basic Law shall provide for the basic direction of future intellectual property policy.

##### 2. Responsibilities of Local Governments (Article 6)

In the promotion of intellectual property policy, the State promotes intellectual property policy from a comprehensive perspective that encompasses the entire nation. Therefore, in the light of the administrative approach which is based on local residents, local governments are required to address intellectual property policy in reflection of dis-

tinctive regional features in addition to the State's intellectual property policy, to achieve development of individual regions. In the future, they will be expected to implement human resources development and industry-academia-government cooperation that meets regional needs.

### 3. Responsibilities of Universities (Article 7)

Given the importance of the social role of universities in relation to the creation of intellectual property, the universities themselves, and not just the State, are required to make various efforts to establish a suitable environment for intellectual property. For example, because it is important to draw out the creative capabilities of individual researchers for the creation of outstanding intellectual property, the Basic Law stipulates that universities shall make efforts to ensure the proper treatment of researchers and engineers.

Moreover, when implementing measures related to research institutes, the State and local governments are required to give consideration so as not to impede university research, which should be independent in nature.

### 4. Responsibilities of Business Enterprises (Article 8)

Business enterprises that exploit intellectual property are required to make efforts in management practice in such areas as the constructive application of an intellectual property strategy integrated with management strategy and technology strategy in accordance with the basic ideas of the Basic Law.

Furthermore, business enterprises are required to respond appropriately to issues concerning the treatment of inventors and other employees who are engaged in creative activities, a topic which has been the subject of animated discussion due to the frequency of litigation related to workplace inventions in recent years.

In addition to this, the Basic Law stipulates that the State is responsible for strengthening industry-academia-

government cooperation, considering competition policy and taking legal measures.

### C. Basic Measures Stipulated in the Basic Law

#### 1. Stipulations on Creation

##### a) Promotion of Research and Development (Article 12)

The creation of a wealth of intellectual property is essential for the activation of the intellectual creation cycle. Therefore, the Basic Law stipulates that taking the necessary measures to establish such an environment, including improving the treatment of researchers, providing research facilities and effectively using funds for research and development (R&D), in order to promote world class research at universities and other research institutions and create a wealth of intellectual property more quickly, shall be the responsibility of the State.

##### b) Promotion of Transfer of R&D Results (Article 13)

In order to realize a nation built on intellectual property, it is necessary to establish a system that grants rights to intellectual property promptly and then restores it to society. Therefore, the Basic Law stipulates that the State shall take the necessary measures to encourage the smooth transfer of technology from universities and other research institutions.

#### 2. Stipulations on Protection

##### a) Prompt Granting of Rights (Article 14)

In order to realize a nation built on intellectual property, it is essential to grant rights to and protect outstanding technology without missing opportunities for commercialization. From this perspective, the Basic Law gives the State the responsibility for taking the necessary measures, including the establishment of an examination sys-

tem, to allow rights to be granted promptly with respect to intellectual property for which a right is established on the basis of national registrations.

Moreover, the Basic Law also stipulates that the State shall make efforts to obtain the understanding and cooperation of business enterprises because it is important to implement reforms to the Japanese application and examination structure based on the cooperation of the users of the system with an acceleration of examinations.

##### b) Effective and Prompt Legal Proceedings (Article 15)

The establishment of a prompt and effective dispute resolution system is needed to realize a nation built on intellectual property. The Basic Law stipulates that the State is responsible for taking the necessary measures, because the exploitation of intellectual property will be promoted if prompt and appropriate judicial assistance is guaranteed in the courts (judicature) in disputes related to intellectual property.

##### c) Measures against Infringement of Rights (Article 16)

Serious damage is inflicted on the Japanese economy by products that infringe intellectual property rights, such as counterfeit goods and pirated editions overseas, particularly in Asian countries. As Japan seeks to become a nation built on intellectual property, the flood of counterfeit goods and pirated editions in the international market is a very significant problem that cannot be overlooked. Therefore, the Basic Law stipulates that the State shall take the necessary measures to counter counterfeit goods and pirated editions, including: (1) regulations within Japan; (2) inspection measures; and (3) overseas measures.

##### d) Establishment of International Systems (Article 17)

Business enterprises need to acquire intellectual property rights in many countries in order to develop interna-

tionally, and a sharp increase in international patent applications means a massive financial burden on business enterprises. Moreover, the burden of examinations for patent offices around the world is becoming a serious problem as the number of applications from multinational companies increases every year. Therefore, the Basic Law stipulates that the State shall be responsible for taking the necessary measures with regard to: (1) international harmonization related to intellectual property; and (2) cooperation with developing countries, primarily in Asia, for the establishment of intellectual property systems.

#### *e) Protection of Intellectual Property in New Fields (Article 18)*

In order to ensure the international competitiveness of Japanese industry, the Basic Law stipulates that the State shall take the necessary measures to adequately protect new intellectual property on the basis of intellectual property rights, including patent rights.

Furthermore, while digital information, such as animated films, is a very valuable property, it can also be reproduced and modified extremely easily. Therefore, the Basic Law stipulates that the State shall take measures to adequately protect rights holders.

#### *3. Measures for Exploitation*

##### *a) Development of an Environment in which Business Enterprises can Effectively and Properly Exploit Intellectual Property (Article 19)*

Business enterprises have to make strategic efforts to exploit intellectual property in order to ensure the international competitiveness of Japanese industry. Therefore, the Basic Law stipulates that the State shall take the necessary measures to establish an environment for the exploitation of intellectual property, such as establishing methods for appropriate evaluation of intellectual property and setting forth management guidelines that will be helpful examples for business enterprises in the acquisition and management

of intellectual property, as well as enhancing assistance measures for small and medium-sized enterprises.

##### *b) Provision of Information (Article 20)*

It is necessary for the State to conduct research and analysis with regard to the collection of information related to intellectual property that business enterprises and universities cannot carry out alone. Therefore, the Basic Law stipulates that it shall be the State's responsibility to: (1) study and analyze domestic and international trends concerning intellectual property and prepare statistics and other data; and (2) develop databases on intellectual property.

#### *4. Measures for the Cultivation of Human Resources*

##### *a) Promotion of Education (Article 21)*

In order to realize a nation built on intellectual property, it is essential to deepen understanding of and interest in intellectual property among individual citizens. Therefore, the Basic Law stipulates that the State shall take the necessary measures for the public to: (1) promote education and learning; and (2) disseminate knowledge.

##### *b) Securing Human Resources (Article 22)*

In order to realize a nation built on intellectual property, the State is obliged to take the necessary measures with the aim of training experts who provide high-level specialist services, including granting of rights, dispute resolution and intellectual property licensing agreements, in addition to nurturing the future creators of intellectual property.

#### *D. Establishment of the Intellectual Property Policy Headquarters and Formulation of the Promotion Program*

##### *1. Establishment of the Intellectual Property Policy Headquarters (Article 24)*

In order to be proactive about intellectual property policy, the Basic Law stipulates the establishment of the Intellectual Property Policy Headquarters in the Cabinet to promote focused and planned implementation of intellectual property policy within a short term with the full cooperation of related organizations under strong and direct leadership from the Prime Minister.

##### *2. Development of a Promotion Program on the Creation, Protection and Exploitation of Intellectual Property (Article 25)*

The Basic Law stipulates that the Intellectual Property Policy Headquarters shall develop a promotion program to facilitate the measures stipulated in the Intellectual Property Policy Outline and the Basic Law on Intellectual Property in a focused and timely manner.

#### **IV. Efforts of Government Ministries Based on the Basic Law on Intellectual Property**

With the enforcement of the Basic Law on Intellectual Property, Japanese government ministries have worked to promote efforts with the aim of realizing a nation built on intellectual property.

##### *A. Work in the Cabinet Secretariat*

With the aim of realizing a nation built on intellectual property, the Japanese government established the Intellectual Property Policy Headquarters in the Cabinet Secretariat on March 1, 2003. The Headquarters will develop a promotion program in order to implement intellectual property policy in a focused and planned manner throughout the entire government and will seek the steady promotion of this policy.

Table 1 Organization of the Intellectual Property Policy Headquarters (Titles have been omitted)

<b>Director-General</b>	Prime Minister
<b>Vice Directors-General</b>	Chief Cabinet Secretary Minister of State for Science and Technology Policy Minister of Education, Culture, Sports, Science and Technology Minister of Economy, Trade and Industry
<b>Expert Committee</b>	
<i>Abe Hiroyuki</i>	Member, Council for Science and Technology Policy
<i>Anzai Yuichiro</i>	President, Keio University
<i>Kadokawa Tsuguhiko</i>	Chairman and CEO, Kadokawa Shoten Publishing Co.
<i>Kawai Maki</i>	Senior Researcher, The Institute of Physical and Chemical Research
<i>Kubori Hideaki</i>	Attorney, representing HIBIYA PARK LAW OFFICES
<i>Shimosaka Sumiko</i>	Patent attorney, Shimosaka and Matsuda
<i>Nakayama Nobuhiro</i>	Professor, Faculty of Law, University of Tokyo
<i>Nomakuchi Tamotsu</i>	President and CEO, Mitsubishi Electric Corp.
<i>Mitarai Fujio</i>	President and CEO, Canon
<i>Morishita Ryuichi</i>	Director, AnGes MG, Assistant Professor, Graduate School of Medicine, Osaka University

### Outline of the Intellectual Property Policy Headquarters

#### Jurisdiction

- Development and implementation of a promotion program for the creation, protection and exploitation of intellectual property.
- Investigation and deliberation on planning important measures on the creation, protection and exploitation of intellectual property, and promotion and comprehensive adjustment of the implementation of such measures.

#### Organization

The Headquarters shall be made up of all the Ministers of State, plus experts. (Table 1)

#### B. Work in Government Ministries

Government ministries have also been making efforts to promote intellectual property policy, including the submission of draft laws to the ordinary session of the Diet that began in January 2003. In the future, government ministries will seek further developments in intellectual property policy on the basis of the promotion program put together by the Intellectual Property Policy Headquarters.

*Draft bills related to intellectual property scheduled for submission to the ordinary session of the Diet (as of Feb. 28, 2003)*

#### *Bill to Partially Amend the Law of Civil Procedure*

- Introduction of expert committee system
  - Give Tokyo and Osaka District Courts exclusive jurisdiction over first patent judgments
  - Concentrate second patent judgments in Tokyo High Court
- (Ministry of Justice)

#### *Bill to Partially Amend the Customs Tariff Law*

- Add goods that infringe cultivators' rights to import prohibited goods, and make them subject to an import prohibition application system
  - Make goods that infringe patent rights subject to an import prohibition application system
- (Ministry of Finance)

#### *Bill to Partially Amend the Copyright Law*

- Strengthen protection for video content, including extension of term of protection, and reduce burden of proof on right holder in legal proceedings
- (Ministry of Education, Culture, Sports, Science and Technology)

#### *Bill to Partially Amend Seeds and Seedlings Law*

- Strengthen penalties for infringement of breeders' rights.
- (Ministry of Agriculture, Forestry and Fisheries)

#### *Bill to Partially Amend Unfair Competition Prevention Law*

- Simplification of proof for infringement and amount of damages in civil suits and introduction of criminal penalties for unfair acquisition, use and disclosure of trade secrets.
- (Ministry of Economy, Trade and Industry)

#### *Bill to Partially Amend Patent Law*

- Review of patent fee system, promotion of international harmonization of patent application procedures and reform of dispute settlement system, including patent judgments.
- (Ministry of Economy, Trade and Industry)

### V. Conclusion

The 21<sup>st</sup> century is being termed the "age of knowledge." In this context, the importance of intellectual property will increase rather than decrease. In Japan, the government is united in promoting intellectual property policy based on the Intellectual Property Policy Headquarters. However, I believe that these efforts have no terminal date. I would like to finish this paper by stating that Japan will continue to move forward in the development of an intellectual property system so that it can extol the blessings of prosperity in the "age of knowledge," all the while working in cooperation with other countries. JTI

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