

Toward Desirable Industrial Property Systems — First Informal Meeting of the Heads of Patent Offices in Certain Developed Nations

By Nakazawa Norio

The Commissioners of the Patent Offices met in Tokyo for the First Informal Meeting of the Heads of the Patent Offices in Certain Developed Nations to discuss industrial property matters. Participants came from Canada, France, Germany, Japan, the U.K., the U.S., the EC and there was also a special guest from the European Patent Office. The agenda included possible industrial property systems from a global perspective, recognizing the importance of reinvigorating technological innovation and the global protection of the fruits thereof, as well as facilitating their transfer in view of the rapid globalization of economic activity. This meeting is timely and meaningful in view of the next round of WTO negotiations and the Diplomatic Conference on the WIPO Patent Law Treaty to be held next year, and was welcomed by the Quadrilateral Trade Ministers Meeting in Tokyo of May 11-12.

Background

Private enterprises are now developing their business activities from a global perspective, taking full advantage of the borderless environment in anticipation of the changing times.

For example, it is often the case that the costs involved in developing emerging technologies, both in terms of financing and human resources, are so large that it is either not possible or not economical for a single company or even a single country to bear them. It is natural and essential for companies to work jointly to develop technology through networking with the nations involved.

In such cases, it is now a matter of common sense to obtain rights such as patents for the technology, in order to avoid any potential future frictions among the parties concerned.

In the case of transfer of technology from developed nations to developing nations as well, it is a prerequisite for the licensees to respect the terms and conditions of the transfer of the patent and other rights and for the country of the licensee to have in place the legal system for respecting such rights.

We are no longer in an age where governments control businesses. Rather, we are increasingly in an age where it is the business sector that selects the markets to operate in. Businesses will move out of markets which they consider to be to their disadvantage, and only those markets that are considerate towards business activities will be able to survive. The patent system must be able to support such business activities.

The current systems, however, are not able to positively respond to these challenges of newly developed products and services. Each country has its own patent system which is not able to fully respond to global activities since harmonization has not yet been achieved in some major aspects. There are also cases where patent systems are failing to keep up with the speed of technological developments.

The absence of rules to address globalized business activities in a borderless environment would curb the spirit of enterprises. In this context, harmonization of patent systems is now an urgent task in order to achieve a well-balanced development of the world economy.

With such backdrops, the Commissioners discussed the future of intellectual property rights systems such as harmonization of patent systems to realize world-wide patent granting and protection of intellectual property under the current rapid technological innovation from a global viewpoint focusing on the next

century.

Highlights of the Meeting

A. Patent Protection for Leading-edge Technology

There is a common understanding that the development of emerging technologies such as biotechnology, software and business methods is important. It was noted that it would be beneficial to continue our dialogue with respect to advanced technologies.

B. International Harmonization of Patent Systems

Simplification and convergence of patent systems is noted as an essential and pressing task for a balanced development of the global economy. The participants discussed the issues of first-to-file, international grace period and early publication and reaffirmed to aim at an early conclusion of PLT regarding the composition of application documents.

C. Well-known Marks and Geographical Indications

The necessity to improve protection for well-known marks internationally was discussed. The participants also noted the need to ensure appropriate protection of well-known marks on the Internet. Regarding the protection of geographical indications, the need to have further discussions on the establishment of a multilateral system of notification and registration of geographical indications was acknowledged.

D. World-wide Patent Granting

Recognizing that users of patent and other systems seek the granting of stable and high-quality rights quickly with high cost performance in many nations at the same time, the participants discussed the desirability of making efforts for the creation of a

global system.

The participants identified the need for simplification and convergence of the substantive and procedural patent law and for effective cooperation among patent offices in order to reduce costs and grant stable rights expeditiously.

The participants also discussed the importance of building confidence among examiners as well as the desirability of mutual recognition of the results of searches/examinations among patent offices.

Isayama Takeshi, Commissioner of the Japanese Patent Office, proposed the minimum conditions to realize global patent protection quickly and at low cost for applicants. They are: 1) Simplicity, 2) Uniformity (Equitability), 3) Reliability, and 4) Enforceability (Effectiveness), the so-called "SURE principles." Isayama's presentation was highly appraised by the participants.

E. WIPO Issues

The participants discussed the need to resume discussion on the early conclusion of the PLT and consideration of substantive harmonization, and expressed the hope that the WIPO will make a positive effort for the achievement of a Patent Cooperation Treaty (PCT), simplification and automation and PCT fee reduction.

The Significance of this Meeting — Toward Desirable Patent Systems

This meeting was the significant first step of the initiative by the developed nations. Patent applications from these nations account for more than 90% of the world total. The participating nations have a responsibility to enhance the patent system to meet the current reality of business development.

There have been discussions among developed nations in the past to harmonize the different patent systems



Reception of the Informal Meeting attended by Yosano Kaoru, Minister of International Trade and Industry (center)

of various nations. For example, the Trilateral Patent Offices, namely the USPTO, EPO, and JPO, have been realistically yet positively promoting cooperative action among themselves toward a "Global Patent" as well as harmonization of examination practices. Under the concurrent search and examination project, cooperation in the area of concurrent prior art search has been positively appraised by the nations concerned. The project is now proceeding to the next stage of embarking upon cooperation in the area of examinations.

However, even among the Trilateral Patent Offices, there are still many problems to be overcome. Hereafter, every opportunity to address these issues needs to be pursued at all levels, both at the WIPO and at the bilateral and regional levels.

At any rate, a lot rests upon the decisions that we make as heads of the patent offices representing the developed nations.

There are good reasons behind each country having their own different

systems. These include the history of a nation, its social conditions, economic situation and so forth that go beyond merely technical issues, sometimes involving political issues as well.

Today, however, when the major part of economic activity has become globalized, different local rules would become a constraint on economic development. A close look at the details of each nation's rules will doubtless reveal differences, but at the same time, many similarities can be found as well. Many of these differences can be overcome through cooperation and effort.

To what extent can common systems be developed? That depends first and foremost on the initiatives that we take.

The next meeting will be organized by the U.K. JTI

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