



المعهد القومي للملكية الفكرية

The National Institute of Intellectual Property
Helwan University, Egypt

المجلة العلمية للملكية الفكرية وإدارة الابتكار

دورية نصف سنوية محكمة يصدرها

المعهد القومي للملكية الفكرية

جامعة حلوان

العدد الخامس

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الهدف من المجلة:

تهدف المجلة العلمية للملكية الفكرية وإدارة الابتكار إلى نشر البحوث والدراسات النظرية والتطبيقية في مجال الملكية الفكرية بشقيها الصناعي والأدبي والفني وعلاقتها بإدارة الابتكار والتنمية المستدامة من كافة النواحي القانونية والاقتصادية والإدارية والعلمية والأدبية والفنية.

ضوابط عامة:

- تعبر كافة الدراسات والبحوث والمقالات عن رأى مؤلفيها ويأتي ترتيبها بالمجلة وفقاً لإعتبارات فنية لا علاقة لها بالقيمة العلمية لأى منها.
- تنشر المقالات غير المحكمة (أوراق العمل) فى زاوية خاصة في المجلة.
- تنشر المجلة مراجعات وعروض الكتب الجديدة والدوريات.
- تنشر المجلة التقارير والبحوث والدراسات الملقاه في مؤتمرات ومنتديات علمية والنشاطات الأكاديمية في مجال تخصصها دونما تحكيم في أعداد خاصة من المجلة.
- يمكن الاقتباس من بعض مواد المجلة بشرط الاشارة إلى المصدر.
- تنشر المجلة الأوراق البحثية للطلاب المسجلين لدرجتى الماجستير والدكتوراه.
- تصدر المجلة محكمة ودورية نصف سنوية.

ألية النشر فى المجلة:

- تقبل المجلة كافة البحوث والدراسات التطبيقية والأكاديمية في مجال حقوق الملكية الفكرية بكافة جوانبها القانونية والتقنية والاقتصادية والإدارية والاجتماعية والثقافية والفنية.
- تقبل البحوث باللغات (العربية والانجليزية والفرنسية).
- تنشر المجلة ملخصات الرسائل العلمية الجديدة، وتعامل معاملة أوراق العمل.
- يجب أن يلتزم الباحث بعدم إرسال بحثه إلى جهة أخرى حتى يأتيه رد المجلة.
- يجب أن يلتزم الباحث باتباع الأسس العلمية السليمة في بحثه.
- يجب أن يرسل الباحث بحثه إلى المجلة من ثلاثة نسخ مطبوعة، وملخص باللغة العربية أو الانجليزية أو الفرنسية، فى حدود ٨ - ١٢ سطر، ويجب أن تكون الرسوم البيانية والإيضاحية مطبوعة وواضحة، بالإضافة إلى نسخة إلكترونية Soft Copy، ونوع الخط Romanes Times New ١٤ للعربى، و١٢ للانجليزي على B5 (ورق نصف ثمانيات) على البريد الإلكتروني: ymgad@niip.edi.eg
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- في حالة قبول البحث للنشر، يلتزم الباحث بتعديله ليتناسب مع مقترحات المحكمين، وأسلوب النشر بالمجلة.

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IP CONTRIBUTION IN THE RISE OF THE JAPANESE
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IP CONTRIBUTION IN THE RISE OF THE JAPANESE ECONOMY

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ABSTRACT:

Intellectual Property Rights has always been a topic of debate among nations and populations. Starting from the historical idea of IP protection and the emergence of various theories on whether non-tangible ideas fall under the umbrella of property, to the debates on how can monopoly create a positive impact on a society.

While some debates still stand and each day brings a new question about the topic, no one can deny how complex and ramified IPRs have developed. The questions of modern days are no longer whether IP should be protected but rather how can they be protected with the complexity of modern day technologies and how can we utilize IPRs to solve modern problems.

Amongst the various aspects IP has been an integral part, is the economic aspect. As the idea of Intellectual Property developed from benefitting natural persons to being the spine of big corporations, it started becoming a contributing factor of success in local and global economies.

The journey of the Japanese Economy accompanied by its adoption of Intellectual Property Rights protection systems and strategies is certainly an interesting topic, thus, this Research Paper aims at portraying the direct link between

Intellectual Property and Economic Growth in Japan. The plan is to achieve this through shedding light on different strategies Japan has followed as an attempt to create an IP-friendly system, and how they reflected on its economic development.

Of the strategies that will be briefly mentioned in this paper is the Commercial strategy Japan has been following in recent years through the commercial and economic cooperation with European countries or with countries of the Association of Southeast Asian Nations (ASEAN) among others. All of which raises questions about the role of IP protection in promoting Free-Trade and political relations.

It is important to note, however, that while the goal of this paper is to present the results of utilizing Intellectual Property Rights on a global scale with Economy in mind through briefly studying the Japanese Experiment, it does not represent an economic analysis of the past or current Japanese economic situation.

Introduction:

As will be shown in the next pages, Japan has taken various measures to boost its economy after a slump it passed through at the end of the 20th century. This paper hereinafter discusses one of these measures which was the huge focus on the utilization of the country's Intellectual Property to enhance its competitiveness and refresh the market. Japan as a country has always been famous for innovation and creativity, and it was time the Japanese Government started to take advantage of this fact through

benefitting from the worldwide rise and advancement in IPR protection and utilization systems and strategies.

The enhancement of the Japanese Economy can be linked to a number of national and international movements by the government, of which is the movement towards enhancement and utilization of IPRs. We will walk through some of the major steps taken by Japanese policy makers in order to get a glimpse at the recipe of success followed by Japan.

National Japanese Economy enhancing IP Policies and Strategies:

The Economy in Japan has had its share of turbulence in the 1990s passing through what was called “The lost decade”. Not very long after, Japanese economists and policy makers started to pay attention to non-conventional methods to turn Japan from a manufacturing nation to a knowledge-based and innovative nation to boost the economy in a sustainable manner and avoid past mistakes.

In 2002 the then Prime Minister Junichiro Koizumi gave a speech in the context of policy outline, in which he declared that *“in order to enhance the international competitiveness of its industries, Japan needs to strategically protect and utilize the intellectual properties that are derived from its research and creative activities”*. At the same year, many steps were taken towards turning Japan into a leading intellectual property-based nation. Some of which were: **a)** The founding of the Strategic Council on Intellectual Property at the Office of the Prime Minister, **b)** the proposal of the Intellectual Property

Strategic Headquarters, and c) the proposal of Intellectual Property Basic Act. Immediately, the process of law making was set in motion and development in that field began in earnest. This was also the year when the Intellectual Property Basic Act which was the setting ground for other IP related laws and regulations was enacted.

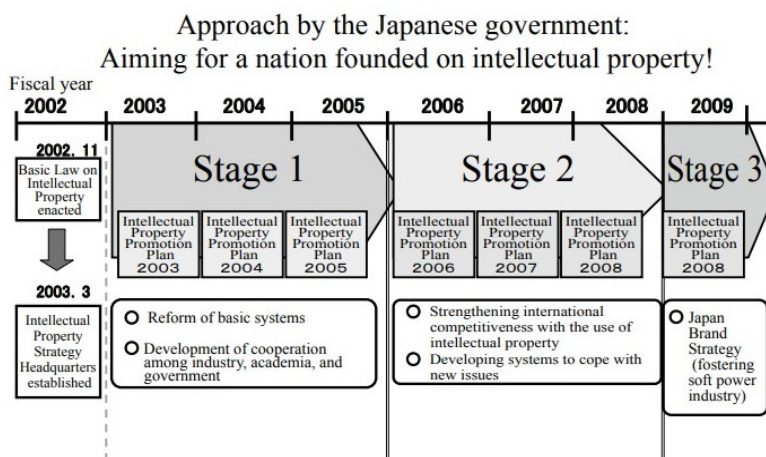
In 2003, the Intellectual Property Strategic Headquarters (IPSH) was created, and set in line with the specifications of (Article 23) of the Intellectual Property Basic Act. The Headquarters consists of the Prime Minister as Director, the Cabinet Ministers and ten IP policy experts from the private sector as members. Its prime task was to create plans for the application and utilization of IP and it is also in charge of developing and following-up the annual IP strategic program, and has been creating the program for every financial year since.

In 2005 the IPSH established the Intellectual Property High Court, the specialization of which is handling all sorts of cases and conflicts related to intellectual property in Japan including appeals against decisions of the Japan Patent Office, and the enforcement of the current and future IP related Acts and legislations. Naturally, under this high court lies several district courts with the same specialization all around Japan for the facilitation of access to fair and timely judicial and enforcement procedures.

Since then, many regional institutions have been established and started functioning to achieve decentralization of IP management throughout the country

and promoting the accessibility of IPR related services in every region.

Below is a figure with a timeline of efforts by the Japanese Government from 2002-2009 to reform IP System. (Credits of this Figure go to Japan Patent Office and Professor Yumi OGOSE of the Tokyo University of Science)



The figure arranges the major steps taken in the period between 2002 (precisely after the enactment of the IP Basic Act) until 2009, marking this Period as the most active in terms of revolutionizing and implementation of the modern Japanese IP system.

Enforcement of Intellectual Property Rights in Japan:

The Intellectual Property Basic Act and other Relevant IP Acts enforced in Japan after 2003 set a concrete base for IPRs enforcement and protection against infringement of these rights through multiple actions guided by the outline set by the TRIPS Agreement.

There are different types of enforcement in the current Japanese IP System: 1) Civil enforcement 2) Criminal enforcement 3) Administrative enforcement and 4) Enforcement by a third-party body.

According to the Intellectual Property Basic Act, the various types of enforcement are applicable for all kinds of IPRs and are selected and utilized on a case by case basis.

Enforcement is usually taken by the Court system, and although there are other types which do not involve courts such as Enforcement by a third-party body which includes arbitration and mediation, The court-based enforcement seems to be the prevailing kind in Japan. Nevertheless, the Japanese Government put the enhancement of the IP dispute settlement system as a goal of the Intellectual Property Strategic programs of 2015 and 2016.

Intellectual Property Strategic Program:

As aforementioned, the Intellectual Property Strategic Program is an annual program created by the Intellectual Property Strategic Headquarters (IPSH). Ever since its creation, a version of the program comes out annually in which an overview and a reflection on the current situation of the Japanese IP system is depicted, an analysis of the government performance relating to IP in terms of achievements and shortcomings is given and the strategy of reparations and development for the upcoming year is set.

Japan's IP strategy is based on the belief that the only way for a country with very limited natural resources to

sustainably boost and maintain its economy, is through enhancing its competitiveness. This could only be achieved through adequate protection of innovation and creation which is directly linked to the industrial and technological welfare of the country.

Thus, the first Strategic Program which came out in 2003 focused primarily on five goals: 1) IP creation 2) IP protection 3) IP commercial exploitation 4) promotion of creative content and 5) human resource development.

To stimulate the innovation process, the role of universities and R&D had a fair share of the focus in the assessment and creation of the programs in order to include them in the commercialization process and further enhance competitiveness in innovation and creation.

The 2021 Strategic Program:

Outline of the Program:

- i. Strengthening the functions of capital and financial markets to encourage investment in and use of IP as a source of competitiveness.
- ii. Promoting the strategic use of standards.
- iii. Environmental improvements aimed at encouraging the use of data.
- iv. A content strategy suited to the digital age.
- v. Bolstering the use of IP among start-ups and SMEs, and in agriculture.
- vi. Restructuring the Cool Japan Strategy.

The 2021 program acknowledged a stagnation in Large Enterprises' performance in R&D. As a corrective action, the corporate governance code was revised and a plan is set to enhance the dialogue between Enterprises on one hand and SMEs and start-ups on the other hand to promote strategy exchange so as to include them in the R&D scene through appropriate methods for fundraising and other steps.

Furthermore, a highlight of the 2021 strategy was promotion of "use of Standards" through uniting efforts of the private and public sectors. The standards referred to are the globally agreed upon business standards for goods and services. As digitalization is changing the internal business structure and value chains and standards strategies are becoming indispensable for establishing a competitive advantage in the market, it is suggested that an internal government system should be developed in which the IP Strategy Promotion Bureau is a control tower promoting setting strategies of use for these standards.

Another take on digitalization in the Program was the point of developing an environment for promoting data utilization in all fields through collection, processing etc. Since it is -according to the program- The 21st Century's most important form of IP.

We believe it is very progressive of a governmental system to acknowledge the benefits of information property and legal data utilization in the enhancement of governmental and private services and market analyses.

Foreign Policies and International Agreements:

Over the past 20 years, Japan did not just work on its internal IP strategies, but also its external strategy through strengthening international relations with the global community which does not just serve the global economy as a whole, but works as a huge economy boost for each country party to an international agreement. The idea of cooperation and mutual benefit is the smartest method for a country to expand its resources, increase its income and raise the welfare of its people. In the case of Japan, it expanded its market and made it one of the pioneer countries in Intellectual Property, innovation and R&D in the field of information technology and machinery among others.

We will be shedding the light below on some of the multilateral agreements Japan has joined which expand beyond its geographical region.

I. The EU and Japan Economic Partnership Agreement (EPA):

In 2018, Japan and the EU entered into an Economic Partnership Agreement (hereinafter referred to as EPA) which came into force in February of 2019 and became one of the largest economic partnership agreements worldwide ; as it joined two of the highest earning economies creating a cornerstone in their relationship, and covered around 30% of the global GDP.

After the Agreement, Japan became the second largest economic partner for the EU in Asia after China, and one of the main exporters for the Union. The growth of Japanese exports and imports to the EU is among the

factors that make the aforementioned EPA and its covering of Intellectual Property Rights of utmost importance. This is because exports and imports between both parties are largely focused on goods such as motor vehicles, machinery and chemicals among other things, most of which require IP protection under Patents, Industrial Designs and Trade Secrets on both sides to ensure safe, smooth and profitable transactions of trade.

In this EPA of 23 Chapters covering various aspects of trade facilitation and organization between the parties, a full chapter was dedicated for Intellectual Property Rights. The objectives of the chapter were briefly stated in Article 14.1.1: *“In order to facilitate the production and commercialisation of innovative and creative products and the provision of services between the Parties and to increase the benefits from trade and investment...”*

The agreement focused primarily on Patents and Trade Secrets due to the nature of their trade as aforementioned. The Agreement contains provisions of IPRs enforcement standards and affirms the parties' obligations towards TRIPS agreement. It also affirms their support of the principles of Most Favoured Nation (MFN) and National Treatment, both of which were established by TRIPS in relation to IP protection and transparency in transactions between the parties.

The EPA and the bilateral agreements and protocols that followed made the Japanese market approachable for European businesses and Goods and Services providers who previously had hardships penetrating the Japanese market due to its special nature of close and intertwined

national business relationships based heavily on trust and reciprocity. This had a positive impact on the Japanese economy as it expanded the market for consumption but also for export and technological innovation since it created competition with international markets, generating profit off of Japan's excellence in Tech innovation and R&D.

II. Trans-Pacific Partnership Agreement (TPP):

In 2013, Japan officially joined the negotiations on the TPP alongside 11 other countries. And on February 2016, Japan signed the Agreement and became part of the TPP.

In 2017 however, the United States withdrew from the agreement which then urged the 11 remaining countries including Japan to enhance and re-negotiate parts of the TPP, this is when the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) also known as (TPP11) was created. The TPP11 incorporated the original agreement keeping most of the original text, and while a limited set of provisions of the TPP and of Chapter 18 relating to Intellectual Property were suspended, the Outline of the TPP which will be hereby discussed, has been wholly kept as is and incorporated in the TPP11 by reference.

The main objectives of the TPP is the promotion of liberalized and facilitated trade and investment between countries in the Asia-Pacific region. Chapter 18 of the agreement discussed provisions relating to Intellectual Property. It started by defining the different conventions which preceded TRIPS such as Paris and Berne

Conventions, Madrid Protocol and Singapore Treaty, and stating that its objectives are set in accordance these conventions and treaties and that the signatories shall ratify them.

Throughout the chapter, the TPP established its goals and objectives as the following:

- a) Protection of Intellectual Property and enforcement of its rights for the purposes of technological innovation promotion.
- b) Enhancement of technology dissemination.
- c) Contribution to the social and economic welfare of the signatory countries.
- d) Creation of a balance between the rights and obligations of creators and users of IP.
- e) Prevention of IPRs abuse and misuse by the rights holders as it hinders trade facilitation and technological dissemination.
- f) Fostering creativity and competition.

All through obliging the signatories to amend and formulate their laws and regulations to create IP systems which serve the aforementioned purposes, and take all the necessary measures to be consistent with provisions of the Chapter. However, it also stated that the parties may but are not obliged to take measures that are more extensive than those recommended in the Agreement.

Among the most important provisions of the Agreement-in our opinion-is the Principle of the establishment of necessary measures to prevent abuse of IPRs by right holders and unfair competition. This reflects the core of IPRs and refutes allegations claiming IPRs promote

absolute monopoly and constraints dissemination of IP Rights.

Another important part of the Chapter was discussing public health and stating that protection of IP rights holders shall be aligned with the priority of public health protection, especially through national and global health crises. In our opinion, this part can be nowadays explained to serve the current pandemic situation and serve the principle of compulsory licensing for medications and vaccines that are proved to help combatting the pandemic.

It has to be mentioned that the TPP11 is open for other countries that might want to join, on the condition that they meet its high standards.

In conclusion, the TPP created a one of s kind open market for very diverse economies and combatted the boarders that would have otherwise hindered free trade and technology exchange between these markets.

III. Asia-Pacific Economic Cooperation (APEC)'s Intellectual Property Experts Group (IPEG):

The Asia-Pacific Economic Cooperation (APEC) was founded in 1989 by 12 founding member states including Japan. A throughout the next decade, other countries joined to reach the current full membership of 21 states.

The APEC was successful in helping with the dynamic growth of the region through implementing multiple

policies one of which is asserting collective success of all of the 21 member countries.

The APEC has several committees focused on different fields of economic and social growth, one of which is the Committee on Trade and Investment (CTI) which established the IPEG in 1997 after it started a year earlier as a get together to negotiate and develop IP related strategies.

The key goals of IPEG is to ensure adequate protection of IPRs in the region through administrative and legislative mechanisms based on TRIPS and other WTO related agreements. Some of the topics IPEG is engaged with include IP commercialization and security of its assets, International IP dispute resolution and deepening the dialogue on IP Policy.

These topics are discussed under the CTI priorities of Trade facilitation and strengthening connectivity and infrastructure, support for the multilateral trading system and others.

IV. The Regional Comprehensive Economic Partnership (RCEP):

The RCEP Agreement is the most recent multilateral agreement Japan has been a part of. It is a Free Trade Agreement between then ten ASEAN member states and five other FTA partners including Japan. Negotiations on the RCEP started were initiated by the ASEAN in November 2012, and it entered into force on January this year. It is expected to be the world's largest free trade agreement, with the goals to minimize the development

gaps between member countries, strengthening economic relations and enhancing trade and investment related activities.

Intellectual Property is among the main coverage areas for the RCEP. Chapter 11 is wholly dedicated to Intellectual Property and has a wide range of similarities in its text with Chapter 14 of the TPP. This especially applies in Section A which discusses the general provisions and basic principles.

Each Section of the Agreement from Section B to H covers one of the aspects of IP including unfair competition. IP enforcement provisions in set in Section J, focusing on providing procedures, provisional measures and damages which work as a deterrent for infringement and abuse of IPRs without creating barriers to free trade.

V. Japan Patent Office Patronage and involvement with ASEAN:

The Association of South-East Asian Nations (ASEAN) was initially established in 1967 by 10 South-Eastern countries. The ASEAN Declaration states the goals of the organization being to accelerate economic growth, promote regional peace and stability, and provide active collaboration for the enhancement of the social and economic statuses of the signatory countries. Until now, it is considered one of the most successful inter-governmental organizations in the developing world.

In 2012, the Japan Patent Office (JPO) formed the ASEAN-Japan heads of Intellectual Property offices meeting as an opportunity to foster cooperation between

the countries of the Association and Japan to develop the IP Systems in the region. Ever since, the meeting is annually held to set IP plans and strategies for each financial year.

Japan continues to cooperate with the Association in various manners, and launches and funds projects and training programs to raise awareness of the importance of IP in the ASEAN countries and enhance the utilization of IPRs in the region. It also works on deepening the Japan-ASEAN cooperation of the field of IP.

Conclusion:

The Japanese economy received a hard hit caused by COVID –along with the world’s global economy- yet the new Prime Minister Fumio Kishida’s economic strategy which put the focus on vital topics such income inequality, improving the tax system, competition and regulation, and the environmental policy, gained very optimistic and supportive worldwide feedback and positive expectations of a once more stimulated economy.

And although the Japanese IP system might not have succeeded in single-handedly prevent the Japanese economy from being affected by an international crisis, it sure had a very positive effect on the pre-COVID Japanese economy in a manner which certainly was one of the reasons the economy in Japan did not completely collapse.

This allows us to categorize the kind of economic rise Intellectual Property enables in local economies, which is slow but sustainable growth that is not easily threatened by turbulences. Finally, we believe that innovation is a human

trait, and that even at humanity's darkest hours, it will not
seize to create.

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