

Making Japan a “Nation Built on Intellectual Property”

A report by the Asian Forum Japan

There is a growing consensus in Japan among opinion elites that the nation’s approach to intellectual property issues has to be revised. To examine ways to enhance intellectual property protection in Japan, a working group of leading intellectuals was convened by the Asian Forum Japan, one of that nation’s free-market think tanks. That working group produced “Making Japan a Nation Built on Intellectual Property,” which is published here.

Irwin M. Stelzer, Hudson Institute’s Director of Regulatory Studies, offers some introductory reflections on “Making Japan a Nation Built on Intellectual Property.”*

Introductory Reflections

Prime Minister Koizumi is right to recognize that in the twenty-first century the wealth of nations no longer depends on steel production, coal mining, back-breaking labor, and the sort of manufacturing that is shifting to China and other countries. Rather, it is a function of a nation’s ability to develop and deploy knowledge—known technically as intellectual property. Japan, of course, is not the only nation to recognize this new, hard fact: it will have to compete with other countries equally eager to “reinvent” themselves as nations “built on intellectual property,” to use the words of Japan’s Intellectual Property Promotion Plan.

The success of the plan, which is intended to make Japan a leader in intellectual property development, is absolutely crucial to its return to prosperity. In the past five years the Japanese economy has grown at an average annual rate of merely 0.88

percent, compared with 2.65 percent in the United States, 2.13 percent in Euroland, and 3.55 percent in Australia. Worse still, Japan is projected to grow hardly at all next year, or even to shrink as its traditional industries prove incapable of generating either the investment needed to trigger a new round of growth, or the innovative products that will lure consumers back into the shops. And its fiscal and monetary policies have thus far proved incapable of coping with the consequences of the bursting of its real-estate and stock-market bubbles.

So the country must now seek new avenues of growth, avenues that inevitably rely heavily on its ability to achieve its goal of becoming a key player in a world market in which knowledge-based industries are in the ascendancy. In order to compete effectively in those knowledge-based industries, Japanese policy will have to embrace at least five important goals:

It must develop a coordinated policy with the United States. As the report by

*Dr. Stelzer played no role in the working group’s activities and does not claim any responsibility for the conclusions it reached. His reflections are meant to stimulate further debate on the issue of IP in Japan.

the working group of Asian Forum Japan makes clear, “talks aimed at policy coordination with the United States, which leads the way in pro-patent policies, also need to be taken into consideration.” Such talks would have two objectives. The first and most obvious would be to work out policies that serve the interests of both countries and stimulate an optimum rate of innovation in each of them, with each country learning from the other how best to protect intellectual property. The second would be to extend the new “shared awareness about intellectual property” to other areas of common interest. The intellectual property area is of such great importance that agreement on coordinated policies with respect to IT might well lead to better coordination in other areas important to Japan’s prosperity and security.

It must provide assured protection to intellectual property rights. As noted in my antitrust text¹, research is a risky and costly venture. At times it comes to naught, and at times other innovators win the race to market. So it is essential to create a framework in which the rewards of success are sufficient to offset the risks and costs of developing intellectual capital. Otherwise, the relevant industries will be unable to attract sufficient capital and skilled personnel to provide Japan with the leadership it seeks. This means providing the maximum possible protection to intellectual property rights. It is clear that if an innovator cannot appropriate to himself the benefits of his work, if free riders are allowed to use the results of that work without sharing in the cost, the innovator’s incentive to develop intellectual property is reduced.

*The patent process must be efficient and pro-competitive.*² Applications must be processed promptly, and the frivolous separated from the important. Equally important, the patent process must be complemented by a competition policy that prevents abuse of any legally granted monopoly. The legal monopoly must be confined to the product or process covered by the patent, and the patent holder subjected to competition from other legally granted monopolies and other products and processes.

The tax regime must not inefficiently discourage the development of intellectual property. It is no easy chore to avoid two dangers. The first is that in its desire to encourage research and development the government might attempt to “pick winners,” a process that generally results in providing tax and

other incentives that skew research and development efforts in a manner that ignores the demands of the free market. The second and opposite danger is that the government will adopt a tax regime that punitively discourages expenditures on the development of intellectual property by taxing it as if it were long-lived physical capital. Finding a balance between these twin dangers is crucial if the government is to achieve its goal of “Making Japan number one in intellectual property by 2005.”

Policy must recognize the important role of competition. Without a vigorous competition policy, the pace of development and diffusion of intellectual property will be sub-optimal. Competition provides the spur that forces firms and individuals to innovate in order to survive. In order to maximize the pressure competition places on Japanese firms to maximize the pace of development of intellectual property, two steps are necessary. First, the nation’s antitrust laws must be vigorously enforced to prevent businessmen from reaching cartel-like agreements that attempt to protect investment in the existing way of doing things from the gale of creative destruction that competition from new ideas and innovations inevitably produces. Second, the economy must be fully open to competition from imported products that have embedded in them the latest intellectual property available in the globalized marketplace.

It should be clear that policies that encourage the development and diffusion of intellectual property in Japan are a necessary condition for its future prosperity—necessary, but not sufficient. The success of the Intellectual Property Promotion Plan will also require growth-oriented reforms of monetary and fiscal policy, a resolution of the problems in the financial sector, and a whole-hearted adoption of programs that open Japanese domestic markets to the full force of international competition.

The chore is a difficult one, since entrenched interests yield their positions only with great reluctance and under great pressure. But the prize—renewed economic growth, rising consumer welfare, a modern communications infrastructure combined with a dynamic intellectual property development sector—is sufficiently great to make the effort more than worthwhile.

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In my administration policy speech I promised I would strive to make Japan into a “nation built on intellectual property.” To revitalize the Japanese economy, I intend to push ahead with intensive reforms over the next three year years and make the Intellectual Property Promotion Plan, unconstrained by the existing system, the best in the world.

—**Prime Minister Koizumi**
March 19, 2003

The first meeting of the Intellectual Property Strategy Commission was held on March 19, 2003, at the Prime Minister’s Official Residence. The cabinet-level group was created in accordance with the Basic Law on Intellectual Property, which went into effect on March 1, to “promote measures for the creation, protection, and utilization of intellectual property in a systematic and focused manner.”

The task confronting the Intellectual Property Strategy Commission is to draw up the Fundamental Principles of Intellectual Property Strategy (working title) by this July. The main objective of these principles is to present a concrete plan for promoting intellectual property with a view to achieving the government’s previously stated policy of making Japan a “nation built on intellectual property.” The Commission’s urgent task is to formulate by July an “Intellectual Property Promotion Plan” (IPPP) that will identify those specific measures and policies that must be implemented to create, protect, and utilize intellectual property in Japan by 2005.

The Prime Minister’s statement, cited above, reflects the firm conviction that the only way to ensure Japan’s position as the world’s leading economic superpower is to build a society in the twenty-first century in which the citizenry puts its intellectual property to practical use.

Japan achieved rapid economic growth after World War II through the mass production of high-quality goods centered on the manufacturing industry. Today, however, the manufacturing industry upon which Japan is based is being hollowed out as production is shifted to China and other countries. While this is happening, an even more alarming development is underway: The tech-

nology and know-how which Japanese companies have cultivated over many years, and of which Japan is justly proud, are being drained away overseas. Under these circumstances, Japan must reinvent itself as a nation built on intellectual property in order to maintain its economic prosperity and international competitiveness in the twenty-first century.

If the “e-Japan initiative” aims at consolidating Japan’s “hard” side (its information and communications infrastructure), then the IPPP must aim to prepare the groundwork on the “soft” side (intellectual property). There must be a renewed awareness that laying the groundwork in both areas is indispensable for making Japan a nation built on intellectual property: like the two wheels of a cart, the two are inseparable and mutually complementary.

What must not be forgotten is that these matters relate to Japan’s national security; more than anything else, an awareness of the relationship of a viable intellectual property sector to our own security is vital for pushing ahead with plans to prepare both the “hard” and “soft” infrastructure.

We must take a national perspective and grasp the various security-related impacts that information technology (IT) has on Japan’s national interests. In short, in order to ensure Japan’s economic security, we must be prepared to make it into a nation built on intellectual property. The most pressing problems at this time are to make Japanese society aware of what intellectual property is, and to take rapid and forceful action to prepare the intellectual infrastructure to do so.

A nation built on dependable IT will lead to a nation built on safe IP

In 2001, in conformity with the basic IT law (the Basic Law on the Formation of an Advanced Information and Telecommunications Network Society), the IT Strategy Commission proposed an “e-Japan” strategy and declared it a national goal to make Japan the “most advanced IT country in the world in five years’ time.” E-Japan is expected to be achieved in 2005. If e-Japan is a national strategy aimed at bringing about prosperity and international competitiveness, then the plan to make Japan into a nation built on intellectual property is the chief economic prerequisite for maintaining that prosperity and competitiveness.

Open source-related issues, including copyright, are frequently discussed in Japan today. But the observation that we must “verify once and for all whether or not we are safe under the present

circumstances”ⁱ is a timely one.

Research studies of various open source-related issues, as well as of contracts, rights, and other IP-related matters pertaining to open source, need to be carried out, and a thorough investigation made in a neutral manner to develop policies conducive to Japan’s national interests and economic security.

In the debate over Operating Systems, we must make sure that illusionary discussions of freeware do not take precedent. We must take another close look at conditions as they actually exist in Japan, and thoroughly evaluate and examine the issues involved.

In looking at intellectual property from the perspective of economic security, talks aimed at policy coordination with the United States—which leads the way in pro-patent policies—also need to be considered. From the security standpoint, including IT security, no discussion of this matter is possible without the United States. Policy coordination with the United States also has great advantages for Japan because it can lead to a shared awareness about intellectual property between the two countries.

Achieving a thorough public appreciation for IP through education

In the twentieth century, Japan’s industrial system, centered on manufacturing, brought rapid economic growth to Japan, and with it wealth and prosperity. Education was the foundation upon which this system was built. The high educational attainment levels of the Japanese people and the standardization of the education system made it possible for Japan to catch up with the West.

Today, the industrial system that has long supported Japan is being forced to change with the advance of an information-oriented society that revolves around information technology. At its heart is the revolution in “soft” areas, such as intellectual property. The biggest problem facing Japan today lies in the fact that the Japanese public’s understanding and awareness of “soft” issues is far from adequate.

There has been much talk recently that developing and protecting its own “soft” property will form the basis for Japan’s prosperity in the twenty-first century. At present, however, when the public cannot be said to have an adequate understanding and awareness of intellectual propertyⁱⁱ, Japan’s first task must be to instill a deeper and more thorough understanding and appreciation of IT among the Japanese people. There must be forums and media

through which the Japanese people can come to a joint understanding that intellectual property is an important matter not just for companies, but even more for Japan’s national interests. It must not be forgotten that this is a moral issue. The public must be made to understand that such things as counterfeiting and pirating violate social morality and are not permissible from a moral standpoint.

When taking such a perspective, ways need to be found to lay the groundwork for an even more wide-ranging concept of “intellectual infrastructure” and to bring about a complete revolution in attitudes toward intellectual property.

If one takes an overview of the Japanese industrial world, IP is not confined to video games and movies; IP-related industries exist in every sector of society. Hiroshima’s brush industry, for example, has a 60 percent share of the world’s brushes for cosmetic use because of its technology for mass-producing high-quality goods. A manufacturer in Okayama has a 30 percent share of the world’s ship propellers (70 percent nationwide) based on its advanced processing techniques. Japanese-made metal fittings are used in the world’s brand-name bags thanks to our country’s metal-working and gilding techniques. Intellectual properties such as these, involving technologies to mass produce high-quality goods, processing techniques, and even brand names, can be found in every area of our daily lives. Most of them are information technologies that have been nurtured through long years of experience by small and medium-sized companies.

Nevertheless, Japanese awareness of intellectual property is low. It is easy to make people aware of the value of something tangible, but it is extremely difficult to make people aware of the value of intangible intellectual property, and make it an object of public policy discussion.

We need to bear in mind that “soft IT” (intellectual property) has the potential to contribute greatly to Japan’s future national interests. As damage to these wide-ranging intellectual properties will also damage Japan’s national interests in the twenty-first century, this issue is closely related to our economic security.

Achieving economic recovery and economic security through IP

The economic cycle during the period of rapid economic growth consisted of (1) product development and technological innovation based on technologies imported from the West, which led to (2) the development of outstanding production systems and cost reductions, which led in turn to (3) the provision of

attractive products, (4) greater consumer spending, and (5) investment in the development of new technologies. This cycle gave rise to favorable economic conditions, under which leading industries centered on manufacturing supported the economy.

Because the hub of twenty-first century mass production is shifting from Japan to Asia, however, Japan is being called on to create new leading industries. In addition, a “negative cycle” now grips the country, in which (1) industrial stagnation brought about by the recession has led to (2) a lack of attractive consumer products, which has led to (3) a shrinkage in consumption. Bankruptcies and restructuring are further exacerbating this situation.

In addition to the necessary adjustments in macro-economic policy, it is essential to create leading industries suitable for the twenty-first century. In that sense, Prime Minister Koizumi’s statement of his intention to make Japan the world leader in intellectual property hits the nail on the head. It shows his firm intention to establish intellectual property as the foundation that will support Japan, and to seek ways to develop industries that will give rise to this intellectual property. The important task is to create an economic cycle like the following, aimed at transforming intellectual properties into new businesses.

To be more precise, this means drawing up a plan that will produce a favorable economic cycle in which (1) corporate, government, and university research will lead to (2) innovations in advanced technologies and application ware, which will lead in turn to (3) the development of businesses that use these new techniques and technologies, which will have (4) a positive impact on the economy (such as improved corporate performance, spending on technology, and a resulting beneficial effect on tax revenues) that will lead to (5) investment in new research and development.

Creating the economic and policy environments in which this economic cycle can develop will be an important role of economic security:

1. *Strengthening and implementing pro-patent policies.* In the 1980s under the Reagan administration, the United States implemented pro-patent policies, and a partnership and division of labor was established between industry and academia. Thanks in part to this “Bayh-Dole system,” America recovered its industrial vitality.

China under the Hu Jintao administration has also been trying to promote strong pro-patent policies aimed at transforming itself from

a copycat superpower into a nation built on intellectual property.

It would be fair to say that the world now regards pro-patent policies to protect intellectual property and maintain and strengthen international competitiveness as common sense.

Japan, too, has enacted a Basic Law on Intellectual Property and has been moving ahead with pro-patent policies. But it would be hard to say that the support system for acquiring patents is adequate compared with those of the United States, which vigorously promotes pro-patent policies through an industry-university partnership. Speed, for example, is an important factor as far as patents are concerned. In the United States the examination phase takes fourteen months; in Japan at present it takes twenty-two months. Such slowness will be a major source of future problems for Japan.

For that reason Japan must push ahead with strong pro-patent policies which correctly balance industrial protection and vigorous competition to enhance Japan’s industrial strengths.

2. *Drastic tax reforms to strengthen competitiveness.* IT implementation promotes the digitalization of the information and technology that companies possess. But the rate at which this implementation is progressing is still slow within Japanese small businesses. In order to move vigorously ahead in this area, policies must be promoted to support entrepreneurs and small businesses that are seriously engaged in implementing IT. Not only do existing IT tax reductions need to be continued, but a new tax framework needs to be established that will entail a drastic reform of the tax system, such as lightening the tax load for entrepreneurs and small businesses that are seriously engaged in implementing IT, and expanding government-supported credit guarantees for IT investment in cases in which such investment is not occurring at an optimal level.

3. *A new industry-university plus government collaboration.* After World War II the government and private sectors united to lay the groundwork for Japan’s present prosperity. But distortions in Japan’s industry-protection policies led to an economic bubble and its collapse. Japan is still struggling to deal with this legacy.

Today, however, when Japan is being called upon to set out on the path of becoming a nation built on intellectual property, what it

needs most is to build a system of close partnership between industry and academia, with the government playing the role of lubricant where necessary. What is required of government at this juncture is that it reform the existing system of vertical administration and bureaucratic sectionalism. That is because the most important task from an economic security perspective is to establish a system for relating technology to national security and making an industry-university-plus-government collaboration rational and effective.

This conclusion is inevitably drawn from the situation in which Japan now finds itself, and acknowledges the nation's anxiety about the future.

4. *Establishing a system for training specialists.* The chief aim of an industry-university-plus-government collaboration is to maintain and enhance Japan's industrial strength and R&D capabilities. Japan must recognize this task as a long-term issue and devise a system for training specialists in the areas of intellectual property.

The importance of training specialists who are able to recognize and evaluate intellectual property goes without saying, but from an economic security standpoint there are great risks if there are only a small handful of specialists involved with IP security. There is a need for a system that secures an adequate supply of personnel who can improve security and add new functions as needed. "Intellectual infrastructure" plays an important role in this area as well.

Building a new Japan-U.S. relationship through economic security-related policy coordination

When considering the relation between economic

security and Japan's plans to become a nation built on intellectual property, the issue of "information security" must not be forgotten. This is an important matter that must be taken into account in a comprehensive manner from the perspective of telecommunication technology, basic software technology, middleware technology, application software technology, hardware technology, and application ware as well as techniques for operating, managing, and repairing these technologies.

Even when dealing with the issue of open source—for example, when it come to what kinds of software technology to use to implement IT—the Japanese government must engage in a thorough discussion of what constitutes a desirable technology, both from the standpoint of "national interests" (of strengthening international competitiveness and protecting intellectual property) as well as from the perspective of creating a "virtuous economic cycle" rooted in an efficient policy.

On the issue of economic security as a whole, including information security, there are limits to what Japan can do alone; the issue needs to be dealt with by a cooperative system involving other countries. Renewed attempts must be made to seek a policy-coordination relationship with the United States, which has a head start in dealing with this area, and which is already our ally in the area of national security.

By discussing the issue of economic security within the new framework of Japan-U.S. policy coordination, both countries should be able to develop a plan that will achieve their common interests. Efforts such as these should help establish in a concrete way a new stage of post-September 11 Japan-U.S. relations.

Endnotes

- ¹ *The Antitrust Laws: A Primer* (AEI Press, 2001), Japanese translation copyright by Sanseido Co., Ltd., Tokyo.
- ² As the American courts ruled in *Atari Games Corp v. Nintendo of America, Inc.*, “[T]he aims and objectives of patent and antitrust laws may seem, at first glance, wholly at odds. However, the two bodies of law are actually complementary, as both are aimed at encouraging innovation, industry, and competition.”
- ⁱ Yoshio Tsukio, former vice minister for policy coordination, NIKKEI COMPUTER, 4/21/2003, P56.
- ⁱⁱ The “intellectual properties” referred to here extend over a wide area. They include:
- existing technologies to provide high-quality goods quickly and cheaply
 - recently developed production techniques
 - technology to convert and digitalize existing business models
 - information technology related to telecommunications, software, hardware, etc.
 - biotech and other new technologies
 - characters and brand names

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