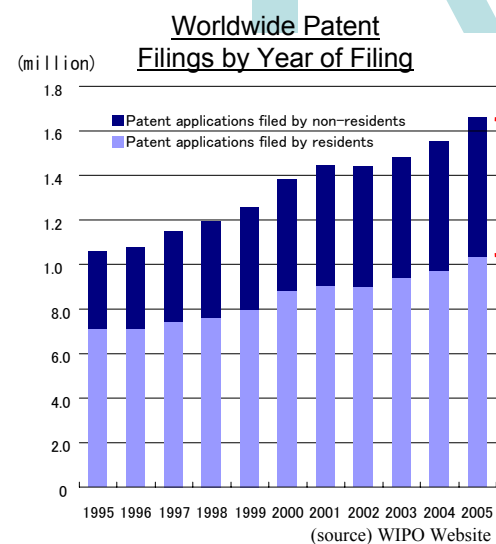


The world intellectual property system is undergoing three major changes:

“Systemic risk”^{*1} of global patent system

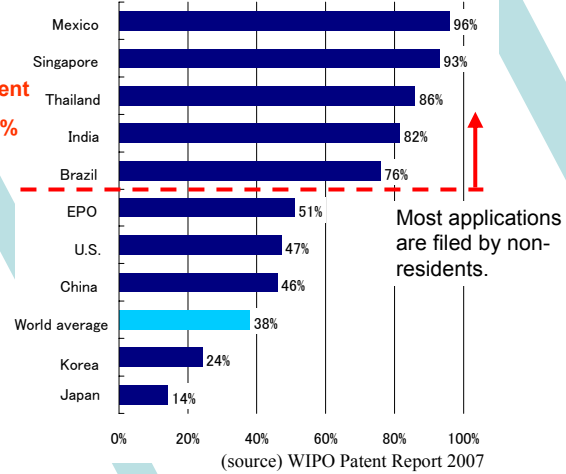
- Worldwide patent filings are rapidly increasing; reached approx. 1.7 million in 2005.
- Approx. 40% out of 1.7 million were filed by non-residents, reflecting the progress of economic globalization.
- Patent offices in the world are receiving multiple applications for the same inventions; and this tendency will continue.
- Most patent applications filed in developing countries are from developed countries. Developing countries perceive that is being introduced in their countries, the patent system essentially for serving users in developed countries. This is one issue of the serious north-south problem.
- As an anti-counterfeiting measure, it is important to acquire and protect IP rights.



Non-resident
approx. 40%

*1 European Patent Office. Scenarios for the Future.

Non-resident Filings as a Percentage of Total Filings by Office (2005)



Most applications are filed by non-residents.

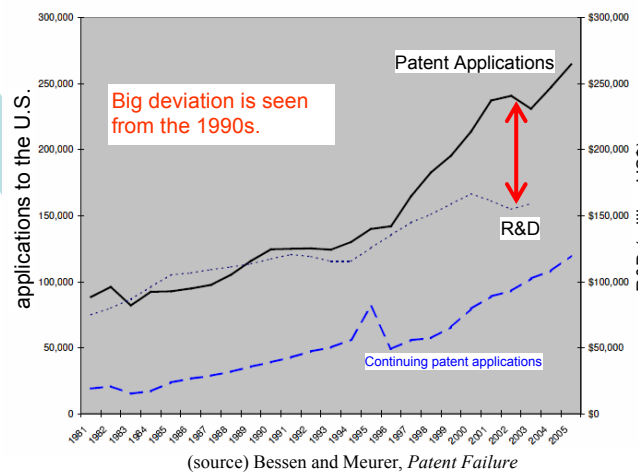
*The rate of non-resident filings with ARIPO/OAPI is reported to be about 97%.

“Arms Race”^{*2} of Patent

- The increase in patent filings has been more rapid than that of R&D investment such as in the U.S. since the 1990's.
- With the increase of patent lawsuits, recent trends show that certain patent applications are filed only as a competitive measure.
- Legal uncertainty of the validity of patent rights may well increase business risk.

*2 The Economist. SURVEY: PATENTS AND TECHNOLOGY

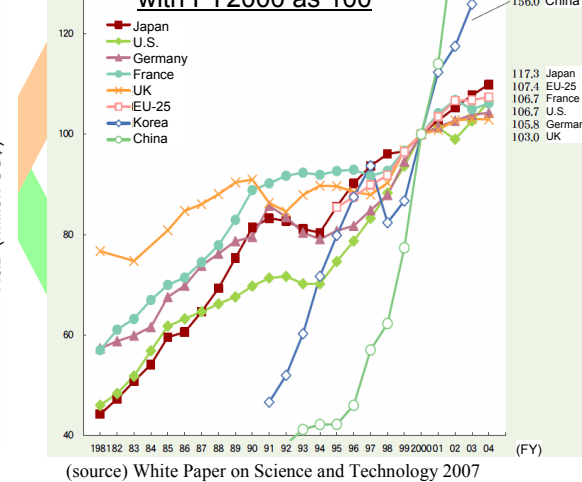
Comparison with the U.S. patent applications and R&D investment



“Open innovation”

- Due to the rapid advance in sophisticated technology, global R&D is expanding.
- There is an opinion that “motivation” for innovation in each business field should be taken into account. For example, the structure for creating innovation is different between the pharmaceutical/biotechnology and IT industries.
- Following the change of industrial structure to horizontal specialization, R&D is changing from closed innovation to open innovation.
- In order to promote standardization and reduce the costs for license negotiation, it is more important to make use of a patent pool.

Growth of R&D expenditures (in real terms) in selected countries with FY2000 as 100



Cases of Open Innovation:

- Cisco secures competitiveness of its products by extensively outsourcing R&D.
- Intel activates related business fields by strategically investing in emerging companies through “Intel Capital”.
- P&G founds “Connect and Develop,” a mechanism to trade and mediate R&D.
- Nokia widely collects advanced product concepts at “Concept Lounge.”

Issues to be considered for a patent system flexible to change:

(1) Work sharing among Offices

- In order to cope with the rapid increase of worldwide patent filings, simply expanding examining resources in each patent office might not be enough.
- It is necessary to promote such measures as the “Patent Prosecution Highway” for utilizing results of examinations of other offices. It has also been proposed that a “virtual global patent office” be created.

(2) Toward “a Global Patent System”

- At WIPO, discussions on the international patent harmonization have been de facto suspended. IP issues such as public health are discussed at many other organizations.
- In order to positively advance global discussions, how could Japan take a more active role?

(3) Cooperation with Other Countries such as Asia and Africa

- To expand Trilateral (JPO, USPTO, EPO) activities to Five Offices (incl. SIPO, KIPO).
- To promote a comprehensive IP cooperation program with ASEAN.
- Cooperation within the APEC region in the fields of patent examination, etc.

- To support developing countries for development of IP system such as examination/enforcement systems.
- To enhance anti-counterfeiting measures.

(4) The expected role of WIPO

- What is the expected role of WIPO?

(5) Patents flexibly corresponding to changes

- To lower uncertainty at the stage of acquisition and protection of patent rights as much as possible should reduce business risks.
- Through comparative studies on examination practices among trilateral offices, further efforts toward harmonization should be important.
- To continue to promote cooperation with other offices in examiner meetings and the mutual utilization of examination results.
- In order to timely and flexibly correspond to changes in innovation environment, rapid changes in technologies, and international patent harmonization, a mechanism of establishing examination guidelines with high transparency and predictability should be considered.

(6) IP investment / IP management

- New businesses have emerged in the strategic investment in patents and in the use of financial technology.
- New businesses have emerged such as the patent management business which deals with the investigation of infringement.

(7) Patent trolls

- Is it necessary to take any measures against patent trolls? If so, what measures?

(8) Transparent license policy

- In addition to the patent pool, is a certain mechanism necessary to facilitate license negotiation relating to such as standardization and research tools?

(9) Maintaining innovation infrastructure

- The recent change in the mechanism of creating innovation reinforces an important role of technical information which is not covered by patent information.
- The data base/search engine needs to be extended to cover also non-patent-literature such as academic papers.
- The community patent review was launched to obtain insight from the technological engineers.
- Machine translation is useful for, e.g., Chinese literature.

(10) SMEs, Regions, and Cooperation among agriculture/commerce/industries

- To activate local economies and SMEs through promoting the effective use of IP.

In order to deal with these topics, three pillars for consideration;

I. Realization of a sustainable global patent system

II. Establishment of a highly transparent and predictable system for improving patent “protection”

III. Development of a wide-ranging innovation infrastructure to facilitate the “creation” and “utilization” of patent rights

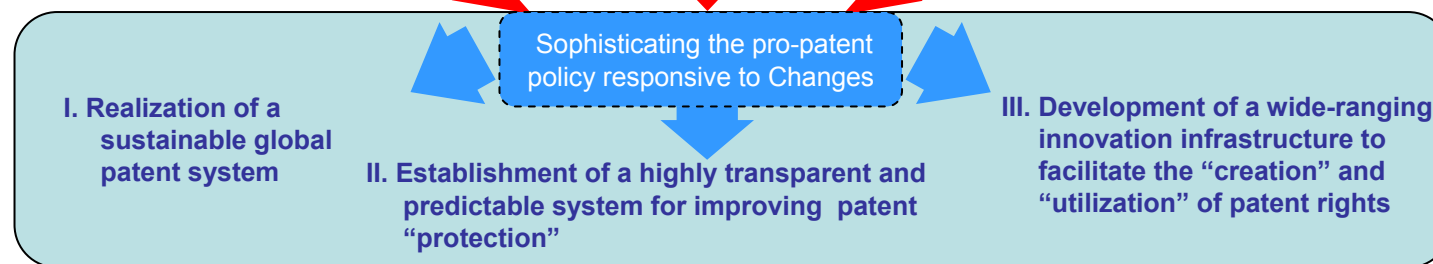
Direction of Study

- To establish an IP system that will help promote innovation in an ever-changing economy, the JPO will study a wide variety of policies beyond the scope of the existing pro-patent policy based on the three major pillars.
- With an economic globalization, there has been an upsurge in worldwide patent filings. To deal with such upsurge, the JPO will proceed toward the realization of a sustainable global patent system.
- In part, legal uncertainty of patents as found in the increase of patent lawsuits in the U.S. has been posing higher business risks. The JPO will proceed toward the establishment of a highly transparent and predictable patent protection mechanism.
- R&D activities have been diversified due to greater technological advancement/complication. To keep pace with the recent trend toward open innovation, the JPO will proceed toward the development of an IP infrastructure in a broad sense.

Crisis of patent systems caused by the increase in worldwide patent filings

Higher business risk due to legal uncertainty of patents

Demand for open innovation due to technological advancement/complication



From a historical / global standpoint

- Stances on IP issues in the world, particularly in the U.S., have been swinging between the straightforward promotion of pro-patent policies and the flexible readjustment of such policies in certain cases.
- The U.S. has pursued a pro-patent policy since the 1980s. After the year 2000, however, many have come to look with a critical eye at low quality patents granted under current patent system which discourage innovation.
- In Europe, a series of future visions/pictures of the desirable IP system were formulated in 2007.
- Japan has emphasized the importance of the IP cycle consisting of the three processes of "creation," "protection" and "utilization." The recent U.S. movement to seek readjustment of the pro-patent policy can be seen as a trend similar to the situation in Japan and Europe.
- Against the backdrop of these dynamic discussions about IP worldwide, Japan might need to review its basic stance, from a historical/global perspective, on the future of an "IP system responsive to changes" with a view to improving the existing pro-patent policy.

(IP issues under discussion worldwide)

In other countries, desirable IP systems have been characterized in different terms.

- The Gowers Review of Intellectual Property in the U.K. uses the expression "improving the balance and flexibility of IP rights" to meet the needs in the globalizing and digitizing society.
- The Scenarios for the Future published by the EPO analyzes the following four directions depending on how the chosen driving forces play out;
 - Market Rules – Business as the dominant driver;
 - Whose Game? Geopolitics as dominant driver;
 - Trees of Knowledge – Society as the dominant driver; and
 - Blue Skies – Technology as the dominant driver.
- "The Economist" uses the expression "Patent improvement."
- The further evolution of the pro-patent policy can be expressed as the "refined patent policy".

Europe	U.S.	Japan
1624 Statute of Monopolies (UK) 1791 Patent Law (France)	Pro-patent era 1790 Patent Law 1802 The U.S. Patent Office 1859 Lincoln speech - pro-patent policy - 1880 Light bulb patent (Thomas Edison)	1885 Patent Regulation Japan Patent Office
	- Anti-Patent Era - 1940~ Antitrust Law 1967 WIPO (World Intellectual Property Organization) 1970 Patent Cooperation Treaty (PCT)	
1973 European Patent Convention European Patent Office (EPO)	Pro-patent era 1974 Cohen-Boyer patent (DNA patent) 1979 Deficit of the trade balance (decline of competitiveness power) 1980 The Bayh-Dole Act 1980 Diamond v. Chakrabarty case (biotechnology patent) 1981 Diamond v. Diehr case (software patent) 1982 Establishment of United States Court of Appeals for the Federal Circuit 1985 Young Report - pro-patent policy -	
	1995 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) The minimum standard of the intellectual property protection which a member nation should observe was clarified.	
2000 London Agreement (enter into force early 2008) eliminate burden to translate the European patent into every member states' official languages.	1998 State Street case (business method patent)	1997 JPO "The Report of the Commission on Intellectual Property Rights in the Twenty-first Century - Toward the Era of Intellectual Creation-"
	Pro-patent era 2003 The Federal Trade Commission "How to Promote Innovation Through Balancing Competition with Patent Law and Policy" 2004 National Research Council "A Patent System for the 21st Century" 2004 Council on Competitiveness "Innovate America" 2006 eBay case (tightening against injunction) 2007 KSR case (Rationalization of judgment of non-obviousness) A federal patent law reform bill is under deliberation.	2002 Basic Law on Intellectual Property 2003 Intellectual property Strategy Headquarters
2007 European Commission "Vision for improving patent system in Europe" EPO "Scenarios for the Future" UK Finance Ministry "Gowers Review"		2005 Intellectual Property High Court