

# Japan's lessons for the wider IP world

**For the last four years, Japan has been undergoing something of a revolution. Changes are coming thick and fast as the Prime Minister seeks to put IP rights at the centre of the country's economy. There is much for others to learn from what has been happening**

Politicians just do not get intellectual property is a common enough complaint wherever in the world you are. They are happy to pay lip service to the needs of rights owners, so the refrain goes, but when it comes to actually putting their words into action, well forget it. You see it all the time in Europe, in the US to a lesser extent – as the Patent Reform Act inches its way through Congress in the face of a general lack of enthusiasm from lawmakers and no clear signal that it is supported by the Bush Administration – and it is a given in countless other countries across the world. The fact is, many conclude, politicians and intellectual

property just do not mix.

But, it seems, there is a place where this is not the case. Where, instead, political leaders at the very highest level have understood the potential that exists in IP and have taken action because of this. As a result, things are happening and they are happening quickly. New courts are being established, backlogs at the patent office tackled, universities empowered, the legislative framework underpinning the IP system re-engineered, and businesses – big and small – are actively encouraged to make the most of the rights that they own. Welcome to Japan, four year's into Prime Minister Junichiro

Koizumi's Strategic Programme for the Creation, Protection and Exploitation of Intellectual Property Rights.

## The challenge of change

As the 20th century turned into the 21st, Japan found itself in a difficult situation: growth rates had slowed to zero and the country's position in the global competitiveness league was on the slide. The old manufacturing and exportation model was under serious threat from factories in China and other countries on Asia's Pacific Rim, which had the ability and the willingness to produce goods for far less than any Japanese company could manage. Koizumi realised that the situation was serious and that something had to be done if the people of Japan were to maintain the standards of living to which they had become accustomed since the 1950s.

The solution, the Prime Minister decided, was intellectual property. In 2002, he declared that Japan should become a country based on the development and exploitation of intellectual property, that only through the creation of valuable IP could Japan prosper in the long term. He convened the Strategic Council on Intellectual Property, comprising individuals drawn from the law, science, industry and academia. They suggested action in five key areas: the promotion of intellectual property; greater protection for intellectual property; increased exploitation of intellectual property; an improvement in public awareness of intellectual property issues and the promotion of IP-related human resources.

Ever since that time the Japanese have been engaged in a process of significant IP reform. This has seen the

creation of the country's first specialist intellectual property court, based in Tokyo, and the introduction of laws that allow Japanese patent attorneys similar representative rights in court as those enjoyed by lawyers. All this coming at a time when Japanese companies are more likely than ever to view litigation as the most effective way of solving disputes.

Meanwhile, the Japanese Patent Office has been given the task of making the patent examination system more efficient with special emphasis on speeding up the application process and reducing the costs involved. It is early days yet but there are some signs of progress – in 2004, for example, the last year for which there are figures, the JPO's target was to perform 235,000 first actions for patent applications within 26 months; the actual figure achieved was 236,000 in 26.3 months. The JPO has also undertaken a major education programme designed to explain the benefits of intellectual property to the country's businesses. One of the aims of this is to generate a significant upswing in the number of licensing deals done in Japan. Meanwhile, a move that has been greatly welcomed by business has been an amendment to the customs law that permits seizures of goods entering the country that infringe Japanese patents.

Measures have also been introduced designed to incentivise the creation and commercialisation of intellectual property at Japan's universities: academic institutions now have a brief that encompasses not only education and research but which also requires them to make a contribution to society.

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## IP Value 2006

**Building and enforcing intellectual property value**  
An international guide for the boardroom

On 1st February 2006, *IP Value 2006* will be published by Globe White Page, the publishers of *IAM* magazine.

Produced in association with NASDAQ, Morgan Stanley, Deloitte, Fitch Ratings & Thomson, *IP Value 2006* is the most comprehensive IP annual publication that focuses on the identification, creation, protection, evaluation and commercial exploitation of intellectual property assets on a global basis.

*IP Value 2006* features country-by-country analysis from leading law firms of key IP topics in over 40 jurisdictions. There is also an extensive review of the most important issues in maximising and protecting IP assets in the United States in chapters provided by a number of that country's leading IP practices. In addition, there are a series of cross-border chapters, and separate sections dealing with taxation, valuation and corporate finance.

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Since April 2004, all national universities have become corporations and they have seen the amount of central funding they get from government reduced. However, it is now much easier for universities to keep the proceeds derived from any intellectual property they create and successfully commercialise. This carrot and stick approach from the government has seen the formation of nearly 40 university technology licensing offices in the country, but the amount of revenue-generating, university-created IP in Japan remains small.

### **Strong messages**

It is still early days and there is no evidence yet that the reforms being introduced have had any real impact on Japan's economy, although this is showing signs of

moving into a higher gear anyway. But perhaps that is besides the point: what the Japanese experience does show quite clearly is that when there is interest in IP at a high political level, it is possible to take action quickly. Prime Minister Koizumi continues to state that Japan's future is as an IP nation and he continues to involve himself in the day-to-day roll out of the IP Strategic Programme. To ensure that his government is as co-ordinated as possible in its approach to IP issues, the Cabinet Office – which Koizumi himself leads – has overall responsibility for seeing the reform process through. The buck stops with the Prime Minister, in other words. When you are trying to persuade the general business community of the benefits of IP, that is a pretty strong message to be sending out.

Koizumi did not come to the conclusions he reached about IP on his own. Instead, the Prime Minister was contacted by Japanese business leaders, who explained their problems and identified what they felt could be done to put things right. And these were not any old business leaders, these were senior figures from some of Japan's most prestigious and important boardrooms – the kind of people that any Prime Minister would give time to.

Japan is not a country where lobbying is conducted in the open – approaches are discreet and those involved keep themselves away from the headlines. However, a look at the composition of the 2002 Strategic Committee is instructive. Among those involved were Hatsuo Aoki, President and CEO of Fujisawa Pharmaceutical

Co Ltd (now merged with Yamanouchi Pharmaceutical Co., Ltd to form Asrellas Pharma Inc); Fujio Mitarai, President and CEO of Canon Inc; Isamu Tomitsuka, Chairman and CEO at the Recording Industry Association of Japan (and a former CEO of JVC subsidiary Victor Entertainment); and Hisamitsu Arai, Chairman and CEO of Nippon Export and Investment Insurance.

Instead of complaining that no one listened to what it was saying about intellectual property, Japanese industry did something about it. Business leaders put together a case that no politician could ever ignore – a case that come from the very top. It is when people at that level start to involve themselves in IP that things begin to get moving. And that is a Japanese lesson the rest of the world would be wise not to ignore.