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Strategic Program for the Creation, Protection and Exploitation of Intellectual Property (General)

1. Introduction

<Situation in Japan>

By eagerly introducing advanced technology from Europe and the United States and gradually modifying and improving such technology, as well as by effectively utilizing the teamwork of a diligent workforce, Japan successfully established the world's best manufacturing system for the "creation of tangible products." As a result, in the 1980s, Japan attracted attention not only from developing countries but also from Europe and the United States.

However, in the 1990s, which is referred to as the "lost decade," the situation in Japan changed drastically. Due to a complicated mixture of various factors including the prolonged bad debt issue, Japan has not yet managed to completely recover from the unprecedented economic slump that has continued since the bubble burst.

<Changes in the Environment and Delay in Response>

There are various factors behind the significant decline recently in the international competitiveness of Japanese industry, which had held the top rank in the world until the beginning of the 1990s. One of these factors is that Japan has been content with its old-style industrial system as a result of past successes and has failed to drastically reform the conventional "Japanese model", amid the rapid changes in the environment in recent years.

One example is that, regardless of the changes in the environment including the globalization of economic activity and intensified and accelerated global competition, firms are continuing to conduct various types of business, instead of concentrating resources on selected domains that could be internationally competitive.

Furthermore, the impact of Asian countries on the international competitiveness of Japanese industry cannot be ignored. With technology that has improved rapidly in recent years and the availability of low-cost labor, Asian countries are surpassing Japan in their ability to mass produce standardized products at lower cost. As a result, Japan's traditional approach to gaining the upper hand in competition by providing cost-competitive products at a designated level of quality has been rendered less effective nowadays.

<Importance of Innovation and Necessity of Reforms in the Knowledge-Based Economy>

In considering the current state of the Japanese economy, it is necessary to focus on another factor related to economic growth; that is, the increasing importance of the role of innovation in the recent economic growth in developed countries. As implied in the term “knowledge-based economy,” the value added by knowledge is becoming much more important than ever before in current economic activities. The competition that companies currently experience is not the conventional price competition of similar products or services; rather, competition is becoming more dynamic in that companies are being required to provide innovative products and services differentiated from those of their competitors.

Under these circumstances, it is necessary for companies to continuously create new innovations, and to this end, establishing a system to effectively utilize the excellent abilities of individuals is important. In this regard, Japan still has much room for improvement. As it is expected that the workforce will decrease as the birthrate declines and that there will be a limit to the vigorous investment activity that has been seen so far, the key to Japan’s future economic growth will be an increase in productivity fueled by innovation.

Consequently, in order to achieve sustainable economic growth, Japan should quickly carry out drastic reforms to establish a mechanism by which innovations are continuously being produced. .. Fortunately, as Japanese industries and universities retain stocks of knowledge that have supported past economic developments, it is not at all impossible for Japan to generate creative and innovative resources capable of producing the new “knowledge-based economy.” Japan is rich in industrious and skilled human resources. Unlike tangible and finite resources such as land and energy, intangible resources such as knowledge and technology will never be exhausted as long as ingenious people continue to exist and create them.

Furthermore, Japanese media content including movies, animated cartoons and game software are highly evaluated internationally. Domestically, the broadband-based content business has come to be recognized as a new industry with high potential. In light of this, it is important to promote the creation, protection and exploitation of such content and, in a narrow sense, the technology used to create and distribute it.

<Aiming at Making Japan an Intellectual Property-based Nation>

In order to generate the creation of innovations and original content in the new

“knowledge-based economy” and to utilize such resources for economic growth, it is primarily necessary to stimulate and revitalize intellectual creation at universities and other institutions. However, this in itself is not sufficient. Economic revitalization will not be achieved unless the results of such creation are properly protected and effectively utilized as intellectual property.

Based on such awareness, the Strategic Council on Intellectual Property established the Intellectual Property Policy Outline in July 2002, setting the goal of making Japan “an intellectual property-based nation,” for the purpose of achieving a dynamic economy and vigorous society through the strategic creation, protection and exploitation of intellectual property. Making Japan an intellectual property-based nation means expressly establishing a national direction which places emphasis on inventions and creation, and in which the production of intangible assets is recognized as the foundation of industry, i.e., the production of “information of value” including technology, design, brands and the content of music, movies, and the like. This is a national policy underpinned by the vision of revitalizing the Japanese economy and society.

In the United States, as appellate courts rendered inconsistent judgments in patent lawsuits and their adverse impacts became serious, the Court of Appeals for the Federal Circuit (CAFC) was established in 1982 as a court with exclusive jurisdiction over patent lawsuits. Though the CAFC was established for the principal purpose of rendering consistent judgments, it solidified rights and improved the predictability of judgments, thereby contributing to a pro-patent business approach. For this reason, the establishment of the CAFC is considered to have played a core role in establishing the pro-patent trend in the United States.

In 1985, the president’s advisory council created the so-called “Young Report” on U.S. competitiveness. Since that time, through the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) concluded at the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) negotiations as well as through bilateral negotiations, the U.S. Government has taken measures to raise the level of protection of IP in countries where intellectual property has not been sufficiently protected and thereby has indirectly assisted U.S. companies in expanding their businesses overseas.

Consequently, there is little dispute that the various reforms undertaken by the U.S., resulting in the shift to the pro-patent policy in the 1980s, contributed to successfully restore and strengthen the international competitiveness of U.S. industry, under the social and economic changes stemming from the full-fledged start of the

information age and the knowledge-based economy, and resulted in the achievement of long-term economic growth in the country.

In Japan, on the other hand, the Basic Law on Intellectual Property, based on the Intellectual Property Policy Outline, was enacted in November 2002. Under the law, the Intellectual Property Policy Headquarters (hereinafter referred to as the “Policy Headquarters”) was established in the Cabinet Secretariat in March 2003. Thus, arrangements were made to design an Intellectual Property Strategic Program (hereinafter referred to as the “Strategic Program”), and Japan took the first step toward becoming a “an intellectual property-based nation.” Today, 20 years after the United States took its first step, Japan must overcome oppressive economic conditions and design a Strategic Program that is not constrained by either an existing framework or a traditional mind-set and which promotes intellectual property strategy; otherwise, it will be too late to revitalize the Japanese economy.

But this does not mean that it will suffice to simply introduce the U.S. system to Japan. As intellectual property systems are international by nature, Japan’s IP system should not only be internationally viable but also be founded on an original and firm strategy.

Based on such recognition and for the purpose of carrying out drastic reforms, the Policy Headquarters should strongly support the promotion of measures included in the Strategic Program. By making the best use of intellectual property as a source of national wealth, including patents, know-how, and content such as movies and game software, Japan should aim at becoming an “intellectual property-based nation” as soon as possible. This is an urgent task for achieving sustainable growth of the Japanese economy.

To this end, it is necessary for various sectors including universities, companies and the government to review conventional systems and practices thoroughly and work effectively together to establish the world’s best- IP system.

<Activation of the Intellectual Creation Cycle>

In order to increase national wealth through the effective use of intellectual property, it is necessary to promote the creation of high-quality intellectual property in the R&D sector and the contents businesses and promptly protect it legally, thereby maximizing the added value in the industry. As this flow is established more firmly, it will become strong and solid, enhancing reproduction of intellectual property. Thus, a virtuous cycle, an intellectual creation cycle, will be established.

It is impossible to make Japan “an intellectual property-based nation” only

through the efforts of certain people engaging in intellectual property affairs. Rather, this goal will not be achieved unless everyone is able to enjoy the benefits of intellectual property and is encouraged to participate in the intellectual property cycle for such benefits.

In this respect, in order to make Japan a true “intellectual property-based nation,” it is necessary to take measures to the maximum extent for the creation, protection and exploitation of intellectual property as well as for the development of human resources that support such activities, from the perspective of ensuring the participation of the entire public in the society. Furthermore, it is important to carry out such measures through integrated and organized efforts; otherwise, it will be impossible to make the intellectual creation cycle move speedily and dynamically.

<Society Realized in an Intellectual Property-based Nation>

Becoming “an intellectual property-based nation ” means expressly indicating a national direction of placing emphasis on inventions and creation and promoting “the creation of information” of value such as technology, design, brands and the contents of music, movies, etc., thereby revitalizing the Japanese economy and society.

The strong driving force for the devastated Japanese economy in the post-war period was competitiveness in the “production of tangible goods,” especially in various manufacturing industries. In the future, the Japanese economy must be based on the “creation of information”, e.g., the creation of original and unrivaled Japanese information. By making the best use of the value added by such information, Japan will be able to also revitalize the field of “production of tangible goods” where Japan is suffering due to the rapidly increasing competitiveness of Asian countries.

The “creation of information” will not only serve as a foundation for the “creation of tangible products,” which has been supporting Japan until the present time, but also will generate a new business field. Therefore, by making Japan “an intellectual property-based nation,” it will also be possible to restore and strengthen the technical capability and competitiveness of the Japanese manufacturing industry while revitalizing the Japanese economy through creation of new job opportunities.

The “creation of information” will not only contribute to increasing material wealth through strengthening international competitiveness and achieving sustainable development of Japanese industry and thereby raising the national income level. The “creation of information” means creating contents such as music, movies and animated cartoons, that is to say, creating Japanese “culture” itself. Thus, in a “nation built on intellectual property,” quality and attractive culture will be fostered, and the general

public will be able to enjoy such culture, i.e., attain spiritual wealth as well.

2. Policy for Making Japan “an Intellectual Property-based Nation”

<Three Viewpoints>

All of the Japanese intellectual property systems, including the Patent Law and the Copyright Law, have their own histories starting from the Meiji era and have been deeply rooted in the current economy and society of Japan. Many decades have already passed since the existing frameworks were first established (Patent Law in 1959 and Copyright Law in 1970). On the other hand, the longer these systems have existed, the more necessary it has been to review them constantly with respect to whether they have satisfied the demands of the times. Accordingly, amendments have been repeatedly made until the present time.

However, the current economy and society are changing at an extremely fast rate and on a dynamic scale. At present, Japan has yet to emerge from its long-protracted recession, and is still seeking a clear vision of the future. Now that the goal of aiming at becoming “an intellectual property-based nation” has been clearly delineated, Japan should actively carry out reforms by anticipating changes in the social and economic situations rather than only responding to such changes passively, and revitalize the economy as soon as possible.

Japan will work to become “an intellectual property-based nation” under the following policies.

(1) Developing special measures on intellectual property that are not constrained by the conventional framework

For the purpose of strengthening the international competitiveness of Japanese industry and achieving a dynamic society and economy, Japan should establish a mechanism that will promote international harmonization of intellectual property systems while contributing to increasing national wealth in accordance with the direction of such harmonization, beyond the framework of conventional ideas and in a bold and flexible manner.

(2) Establishing the World’s best IP system

In the current borderless global economy, companies pursuing more attractive market environments have freedom to choose the countries in which they will do business. As more companies consider intellectual property strategy as the core of their business management, countries that have established more favorable intellectual property

systems for businesses are able to attract more companies from all over the world and enjoy vigorous business activities in various fields, which results in the further development of such countries. Considering that the intellectual property system competition has already started to intensify across the world, Japan should keep up with such developments and establish the world's best IP system.

(3) Carrying out reforms rapidly and in a timely manner

“I thought that I was able to view the world without being influenced by daily concerns, but actually, I was too concerned about the present situation of Japan. Today, the world is progressing at a considerable rate,” said Mr. Soichiro Honda 50 years ago.

And now, the world is changing at a much more formidable pace. To avoid falling behind in the world, not only Japanese companies but also the Japanese national system should continue to evolve in order to respond to the changes in the global environment in a timely manner.

<Implementation>

Japan can afford no further delay in becoming “an intellectual property-based nation.”

The individual items included in the Strategic Program shall be undertaken by the ministry or agency in charge. Where two or more ministries or agencies are in charge, they should secure close coordination with each other to promote the measures. For these reasons, the individual items in the Strategic Program are assigned to the specific ministries or agencies in charge.

The Policy Headquarters shall regularly check the progress of the measures taken by the ministry or agency in charge and encourage them to implement such measures if there is any delay. Furthermore, if there is any delay in the implementation of measures due to the lack of communication between the ministries and agencies in charge, the Policy Headquarters shall comprehensively coordinate the measures. Though not being specifically designated in the Strategic Program, the Policy Headquarters shall be involved in the implementation of all policies.

Highly important issues shall be considered by the ministry or agency in charge as well as investigated and discussed by the Policy Headquarters. To this end, task forces shall be established in the Policy Headquarters under the provision of Article 2 of the Cabinet Order on the Intellectual Property Policy Headquarters (Cabinet Order No. 45 issued in February 2003).

The goal of making Japan “an intellectual property-based nation” will not be

achieved unless the general public shares the understanding of such a goal. Consequently, the Policy Headquarters shall ask for public opinions constantly and also start holding small-scale town meetings on intellectual property in various places in autumn 2003 in order to encourage efforts by local governments or business and have a frank exchange of views with local people throughout Japan.

<Schedule>

As the immediate targets after the development of the Strategic Program, the Government of Japan (GOJ) will implement the measures that should be taken by the end of FY 2003 and submit as many intellectual property-related bills as possible to the ordinary session of the Diet to be held in 2004.

Furthermore, the GOJ will follow up on the progress of the Strategic Program by the end of FY 2003 and take additional measures as necessary in light of the results of the follow-up and the changes in the environment surrounding intellectual property.

3. Points to Be Considered in Making Japan “an Intellectual Property-based Nation”

(1) Support for SMEs and venture companies

SMEs play a significant role in supporting the industrial foundation of Japan and developing local economies. Much is expected from venture companies from the perspective of creating new industries. With the aim of achieving diversified and dynamic development in the current severe economic situation where it is impossible to hire additional staff or acquire sufficient operating funds, SMEs and venture companies should become aware of the importance of intellectual property and take measures to protect and exploit it in a strategic manner.

However, it is often the case that SMEs and venture companies, which own and use innovative technologies for their businesses, fail to sufficiently understand the idea of protecting and exploiting such technologies as intellectual property. They do not have sufficient IP management systems compared with large enterprises.

The GOJ should take the necessary measures to support SMEs and venture companies with respect to all phases of creation, protection and exploitation of intellectual property as well as human resource development.

(2) Regional development

The recent trend of decentralization is leading to the development of regional societies that emphasize their own regional characteristics.

Amid such a situation, local governments have started taking full-fledged measures related to intellectual property to achieve innovative technological development through industrial-academic cooperation between universities, related research institutes and R&D-related companies, with universities, which are the center of intellectual creation, serving as the regional core. Furthermore, based on the human networks that are developed in such cooperation, some local governments form regional clusters and launch new businesses that emphasize regional characteristics.

The GOJ should continue to promote such efforts so that unique inventions and works will be created throughout Japan, and Japan as a whole will become rich in intellectual property.

(3) Improvement of administrative and judicial services

With the aim of making Japan “an intellectual property-based nation”, administrative and judicial authorities should listen sincerely to users’ demands and make constant efforts to improve their services.

Until the present time, intellectual property has not been so familiar to the general public due to its technical expertise or legal nature.

In light of the progress in the development of social networks and for the purpose of actuating the intellectual creation cycle speedily and dynamically, administrative agencies and courts should make positive efforts to provide the public with more information and to improve their services by streamlining the application procedures and reviewing systems for settling disputes on intellectual property, including pioneering inventions.

(4) Significance of Competition Policy and Attaching Importance to Freedom of Expression

Strengthening intellectual property rights is an inevitable requirement of this information age. However, at the same time, strengthening rights may bring with it adverse effects—(i) obstacles to competition and (ii) conflict with the basic values of modern society, such as freedom of expression.

Antitrust laws and other competition laws play a central role in eliminating obstacles to competition, and therefore these laws need reinforcement as appropriate. In the United States, the Antitrust Law is strictly applied to intellectual property monopoly. Such application engenders competition and leads to the development of new industries. Japan too must find a balance and make the appropriate responses.

In the case where the protection of intellectual property goes to extremes, it

conflicts with the basic values of modern society, such as fair and free competition, academic freedom and freedom of expression. For this reason, in establishing intellectual property systems, we must pay attention to these basic values and strike a balance between these values and the protection of intellectual property rights.

Furthermore, we must not forget that universities should not only respond to expectations for the creation and exploitation of intellectual property but also carry out their primary role—providing education. In designing systems for intellectual property at universities, it is necessary to make them flexible, based on the diversity of academic and research fields.

Chapter 1

Creation

An intellectual creation cycle begins with the creation of intellectual property. The goal of making Japan “an intellectual property-based nation” cannot be achieved without a mechanism for producing creative and innovative R&D assets and for providing those assets to society. Universities and public research institutes, which own most of the R&D resources in Japan, play an extremely important role in this respect.

In order to make Japan “an intellectual property-based nation,” it is therefore necessary to establish a mechanism by which universities and public research institutes create outstanding intellectual property, including inventions, software and databases, and that such property be utilized to the maximum extent in society. It is also necessary to increase the motivation of remarkably talented researchers to create intellectual property.

Based on such awareness, the GOJ will take the following measures with the aim of encouraging the creation of high-quality R&D assets at universities and public research institutes, while establishing a society where researchers who create outstanding intellectual property are sufficiently rewarded.

1. Development of a Foundation for the Creation of Intellectual Property

(1) Promoting education for the purpose of encouraging creativity as well as education emphasizing scientific technology to develop world-class human resources with outstanding abilities

In FY 2003 and beyond, in order to foster researchers with abundant creativity, the GOJ will create educational environments and promote educational measures for enhancing the characters and abilities of diversified individuals, while placing emphasis on scientific technology, thereby developing world-class human resources with outstanding abilities.

(Ministry of Education, Culture, Sports, Science and Technology)

(2) Making universities more attractive and enriching research personnel

1) Revitalizing universities and improving their international competitiveness

i) In FY 2003 and beyond, the GOJ will enhance the disclosure of information on the education provided at and the research results of individual universities.

ii) In FY 2003 and beyond, the GOJ will encourage universities to evaluate research results including patents and shift their promotion systems from seniority-based promotion systems to merit-based systems, based on research results.

iii) In FY 2003 and beyond, the GOJ will foster globally competitive universities, being defined as universities that carry out outstanding education and research activities in individual fields. In examining claims for scientific research grants, the GOJ will give due consideration in order not

to excessively burden universities.

(Ministry of Education, Culture, Sports, Science and Technology)

2) Improving the mobility and diversity of researchers

In order to improve the mobility of researchers for the purpose of realizing the principle of competition as well as to enhance their diversity in order to encourage them to stimulate one another and vitalize their research activities, the GOJ will take the following measures.

i) By the end of FY 2003, based on the “Basic Guidelines for the Improvement of Mobility of Researchers” prepared by the Council for Science and Technology Policy, the GOJ will publicize the progress of and take necessary measures to implement the Plan for the Improvement of Mobility of Researchers. So as to prevent researchers who change offices from suffering economic disadvantages, the GOJ will also consider actions to improve the relevant systems (Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

ii) By the end of FY 2003, the GOJ will encourage individual universities and public research institutes to clearly design specific actions, based on their independent judgment, for recruiting researchers from other universities or the private sector, foreign researchers and female researchers (e.g. improving both the research environment and living environment to promote the recruitment of foreign researchers).

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

iii) For the purpose of encouraging the private sector to employ young researchers such as graduates of doctoral programs and post-doctoral fellows, the GOJ will continue to provide support to improve the business abilities and the practical skills of such researchers in 2003 and beyond.

(Council for Science and Technology Policy, and other ministries and agencies concerned)

3) Enabling researchers to devote themselves to research activities

Researchers can cultivate their abilities in the initial stages of their careers and therefore it is important to create an environment where they can devote themselves to research activities during such stages. In order to enhance education at universities and graduate schools and enable young researchers, in particular, to devote themselves to research activities, the GOJ will encourage individual universities and public research institutes to increase the number of full-time research or education assistants by the end of FY 2003.

(Council for Science and Technology Policy and Ministry of Education, Culture, Sports, Science and Technology)

(3) Developing other environments for the creation of intellectual property

In FY 2003 and beyond, the GOJ will take the following measures.

- i) Improve research facilities and equipment constantly and continuously.
- ii) Promote cooperation between local governments and universities/R&D-type independent administrative agencies.
- iii) Consider environmental development including tax deductions for companies or individuals contributing to universities.
- iv) Continue to promote the distribution of R&D results and research papers by improving the mechanism to systematically collect research information at universities and the function of universities and academic societies to disseminate information and by developing a system for promoting global distribution of research information.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunication, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

2. Promoting the Creation of Intellectual Property at Universities and Public Research Institutes

(1) Promoting R&D focused on the creation of intellectual property

1) Promoting R&D focused on the creation of intellectual property at universities and public research institutes

- i) In FY 2003 and beyond, with the participation of private companies, the GOJ will further improve the R&D system, which covers the overall R&D process from basic R&D to the application of research results and technology transfer, and enhance R&D activities that are carried out with the intention of obtaining important intellectual property that should be acquired under the national strategy. In doing so, the GOJ will promote and evaluate research activities that give due consideration to the creation, protection and exploitation of intellectual property.
- ii) In FY 2003 and beyond, the GOJ will double competitive research grants under the Second Science and Technology Basic Plan.
- iii) In FY 2004 and beyond, the GOJ will promote the development and practical application of advanced technology equipment with competitive research grants.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

2) Utilizing patent information in R&D

- i) In FY 2003 and beyond, the GOJ will consider specifications for a comprehensive system for searching bibliographical information, including research papers and patent information, with the aim of launching the system in FY 2005.

ii) In FY 2003 and beyond, the GOJ will develop an environment that will enable researchers at universities and public research institutes to search for patent information and will also enhance training programs concerning methods for searching and utilizing patent information.

iii) In FY 2003 and beyond, universities and public research institutes will use patent information in selecting research targets with respect to R&D sponsored by the national government.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

3) Assigning personnel in charge of intellectual property at R&D sites

In FY 2003 and beyond, in the fields where creation of technology-related intellectual property is expected, the GOJ will promote universities and public research institutes to assign personnel in charge of intellectual property to each appropriate unit at R&D sites in universities and public research institutes and encourage training on intellectual property for such personnel at such sites.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

(2) Exploiting intellectual property through evaluation

1) Utilizing comprehensive evaluation indicators regarding intellectual property

In FY 2003 and beyond, the GOJ will utilize “comprehensive evaluation indicators” as indicators regarding intellectual property that are to be used in R&D evaluation and distribution of R&D funds and other R&D resources. In considering achievements in joint research evaluating business startups, and conducting consultation, these comprehensive evaluation indicators include the number of patents obtained (or patent applications filed) as well as qualitative aspects such as the number of license contracts, the amount of income from such contracts, and the frequency of patents and research papers being cited in other patent documents.,.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

2) Manifesting that making social contribution is included in the researcher’s duties and attaching importance to intellectual property in performance evaluation

i) In FY 2003 and beyond, universities and public research institutes will manifest that making social contribution is included in a researcher’s duties. Furthermore, in fields where the creation of intellectual property is expected, importance will be attached to intellectual property in evaluating research papers and the performance of researchers, and “comprehensive evaluation indicators” will be utilized in such evaluations.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and

Technology, and other ministries and agencies concerned)

ii) In FY 2003 and beyond, the GOJ will encourage universities to establish appropriate evaluation systems, while giving due consideration to transparency and fairness to the greatest possible extent, and diffuse such systems throughout universities. In establishing evaluation systems, it is important to make reference to personnel systems utilized by companies as well as evaluation systems operated by other universities and research institutes in Japan and abroad. In light of this, the GOJ will provide universities with necessary information by publishing specific examples.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

3) Considering intellectual property-related activities in evaluating universities and R&D-type independent administrative agencies

In FY 2003 and beyond, the National Institution for Academic Degrees and University Evaluation and the National University Evaluation Committee will evaluate the efforts of individual universities, while taking their characteristics into consideration, for the creation, protection and exploitation of intellectual property and publish the evaluation results. In the evaluation of R&D-type independent administrative agencies, “comprehensive evaluation indicators” regarding the creation, protection and exploitation of intellectual property will also be applied as indicators for ex post evaluation.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

4) Adding to the items in the applications for research funds by public subscription and the items for ex post facto assessment

In FY 2003 and beyond, the GOJ will require applicants for scientific research subsidies and other research funds to state their intellectual property activities on application forms so that the GOJ will be able to select research targets based on the evaluation of such information. The GOJ will also require applicants to present the condition of their intellectual property activities in performance reports.

(Council for Science and Technology Policy, and other ministries and agencies concerned)

(3) Providing various incentives to researchers

1) Clarifying the rules for returning royalties fees to individual researchers

In FY 2003 and beyond or when national universities acquire independent legal status, universities and public research institutes will clarify the payment rules for returning royalties fees to individual researchers in cases where universities and institutes are assigned the rights for

inventions created by the researchers and obtain the royalties fees for such rights.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

2) Reflecting efforts for intellectual property in the distribution of research resources

In FY 2003 and beyond, as part of the measures to encourage the creation of intellectual property, the GOJ will establish a mechanism to reflect university IP-related efforts to resource allocations. In this case, “comprehensive evaluation indicators” will be utilized.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

(4) Increasing funds for intellectual property-related activities including obtaining and managing intellectual property rights

i) When universities are incorporated, they will have ownership of all patent rights invented professors and are expected to file more patent applications in Japan and abroad. For this reason, in FY 2004 and beyond, the GOJ will increase financial support for national, public and private universities in terms of patent-related expenses including costs for filing foreign patent applications under the principle of competition, while respecting their independent judgments. The GOJ will also encourage individual universities to independently secure necessary patent-related expenses.

ii) In FY 2004 and beyond, the GOJ will secure funds for patent prosecution in research aimed at obtaining patent rights, such as project research funds and competitive research grants, by establishing a separate account for patent-related expenses. Furthermore, by the end of FY 2004, the GOJ will consider the flexible handling of patent-related expenses while taking into consideration the time lag between when R&D is actually carried out and when patent-related expenses are incurred.

iii) In FY 2004 and beyond, the GOJ will give due consideration to the assessment of subsidies for the management of universities so as not to reduce incentives for intellectual property-related activities.

iv) In FY 2004 and beyond, with respect to joint research projects in which universities and public research institutes are proactively engaged, the GOJ will secure sufficient funds necessary for strategically obtaining and maintaining intellectual property for the purpose of commercializing the research results. To this end, the GOJ will take measures to enable universities and public research institutes to flexibly appropriate some indirect expenses, which are included in research funds sponsored by companies, for costs for obtaining and maintaining intellectual property.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

(5) Establishing Comprehensive Systems for Intellectual Property such as University Intellectual Property Headquarters and Technology Licensing Organizations (TLOs)

1) Establishing University Intellectual Property Headquarters

i) Establishing characteristic Intellectual Property Headquarters for universities

As soon as possible in FY 2003 and beyond, the GOJ will improve and strengthen the functions of University Intellectual Property Headquarters, based on the creative efforts of individual universities, and provide support for individual universities to ensure that various types of intellectual property management systems are established according to the circumstances of the individual universities.

ii) Establishing Super Industry-Academic-Government Cooperation Headquarters that have international competitiveness

As soon as possible in FY 2004 and beyond, the GOJ will evaluate intellectual property-related activities carried out by model University Intellectual Property Headquarters, strictly select headquarters that carry out vigorous activities and are expected to contribute to strengthening the international competitiveness of Japanese industry, designate a Super Industry-Academic-Government Cooperation Headquarters, and reinforce support for such headquarters.

iii) Developing and improving human resource information

In FY 2003 and beyond, the GOJ will, with the cooperation of patent agents, lawyers and relevant industrial organizations, collect and organize information on excellent human resources who are able to participate in activities of University Intellectual Property Headquarters, such as (i) private-sector employees who have abundant knowledge and experience on intellectual property and (ii) patent agents and lawyers who have advanced practical abilities) and develop a database, thereby introducing and providing appropriate human resources in response to the requests of universities and public research institutes.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

2) Developing TLOs

i) Promoting the development of TLOs

In FY 2003 and beyond, the GOJ will continue to provide newly established TLOs with financial support for a certain period and assistance in filing foreign patent applications.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

ii) Developing TLOs that place emphasis on specific technical fields

In FY 2004 and beyond, the GOJ will take drastic measures to reinforce the Japanese technology licensing system by providing support especially for existing TLOs that receive high performance evaluations for their technology licensing activities in specific technical fields, in order to assist them in securing human resources specializing in individual technical fields.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

iii) By the end of FY 2003, the GOJ will develop the necessary legal systems to allow TLOs to start management trust businesses of intellectual property rights including rights to obtain patent, without any restrictions in principle.

(Financial Services Agency and Ministry of Economy, Trade and Industry)

3) Establishing the guidelines for handling intellectual property and providing one-stop services

In FY 2003 and beyond, the GOJ will encourage universities to establish basic policies on the creation, protection and exploitation of their intellectual property, including the significance of the development of University Intellectual Property Headquarters, the consideration to be given to domestic companies and venture companies as technology licensees, and the handling of patents after universities are incorporated. In order to support universities in these activities and enable them to file patent applications and transfer patented technologies in a timely manner, the GOJ will provide consultation services through the ministries and agencies concerned.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

4) Clearly indicating the sections in charge of university-industry collaboration

In FY 2003 and beyond, universities and public research institutes will continue to take measures to clearly indicate the sections in charge of university-industry collaboration, which are to receive offers for the application of intellectual property and joint research projects from industry, by concentrating the functions for industry-academic-government cooperation and intellectual property management to such sections.

(Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

5) Establishing comprehensive systems for intellectual property at universities and strengthening the functions of such systems

1) In FY 2003 and beyond, in cooperation with University Intellectual Property Headquarters and

TLOs, individual universities will establish comprehensive systems for promoting the creation, protection and exploitation of intellectual property and take drastic measures to strengthen functions concerning intellectual property, such as raising awareness of intellectual property, providing various guidelines and rules, coordinating joint research and contract research, obtaining intellectual property rights, carrying out technology transfer, dealing with legal affairs, and supporting business startups, while accelerating the relevant procedures.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

ii) In order to avoid the situation in which inventions created at universities are left unused and remain as non-performing assets, the GOJ will establish a system for sufficiently utilizing knowledge and experience stored in TLOs, while utilizing appropriate human resources including individuals in the private sector and lawyers/patent agents, and the aforementioned system will be employed when University Intellectual Property Headquarters evaluate research results and consider the possibility of obtaining rights. As examples of such a system, by the end of FY 2003, the GOJ will present several models of ideal organic linkage of industry-academic-government cooperation organizations, such as IP sections within universities and TLOs.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

6) Evaluating University Intellectual Property Headquarters and TLOs

In FY 2003 and beyond, the GOJ will follow up activities carried out by University Intellectual Property Headquarters and TLOs annually. In FY 2004 and beyond, the GOJ will establish appropriate evaluation methods, evaluate University Intellectual Property Headquarters and TLOs by such methods, and publish evaluation criteria and evaluation results in order to utilize them for resource allocation.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

7) Promoting cooperation and networking

i) In order to prevent a vicious circle in which universities and TLOs have difficulty in achieving economic independence as they file patent applications and obtain patents without any prospect for licensing, by the end of FY 2003, through the expansion of Japan TLO Association, the GOJ will establish a nationwide organization to ensure that universities and TLOs cooperate with one another in (i) investigating “good practices” of industry-academic-government cooperation and technology licensing, (ii) exchanging and sharing information, (iii) coordinating opinions, and

(iv) promoting human resource development.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

ii) In FY 2003 and beyond, in order to ensure that TLOs in Japan cooperate with one another to effectively exploit intellectual property created at universities by licensing such property to the appropriate companies and that University Intellectual Property Headquarters and TLOs also deal effectively with technology transfers from such universities and public research institutes that have not yet established TLOs (including local universities and institutes), the GOJ will support drastic improvement of such business cooperation, enhance industry-academic-government cooperation organizations and technical licensing organizations, and promote the strengthening of cooperation and networking between the relevant institutions nationwide. The GOJ will also provide assistance in obtaining foreign patents for TLOs at their request and for universities that have not yet established relationships with TLOs , .

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

8) Encouraging students to participate in intellectual property-related activities at universities

In FY 2003 and beyond, the GOJ will encourage students to participate in intellectual property-related activities at universities, in addition to personnel in charge of such activities at companies and universities.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

(6) Clarifying the Rules on Intellectual Property

1) Setting the principle of consolidated management by individual organizations while giving due consideration to the mobility of researchers

In FY 2003 and beyond or when national universities are incorporated, in order to achieve the effective use of patents at universities and public research institutes, universities and public research institutes will establish a system under the principle that intellectual property rights are owned by individual universities or institutes. Accordingly, universities and public research institutes will develop rules to ensure that the rights over inventions for which universities and institutes have no intention to file patent applications will be returned to the researchers who created the inventions. Furthermore, universities and public research institutes will take flexible measures to enable researchers to continue research at least with respect to their own inventions after they have changed their offices, while generally considering contract types such as license contracts for research purposes and other possible means, with due consideration to the mobility of researchers

and in light of successful cases at research institutes in Japan and abroad.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

2) Supporting the development of rules for industry-academic-government cooperation and securing flexibility in concluding contracts

i) In order for universities and public research institutes to promote their own strategies for exploitation of intellectual property and implementation of joint research and contract research, in FY 2003 and beyond, the GOJ will encourage such institutions to clarify policies and rules for implementing and handling joint research and contract research with private companies as well as to develop and disclose their own contract formats and operation manuals. These policies and rules include:

- Rules for handling trade secrets and other confidential information
- Rules concerning the attribution of intellectual property rights that are the results of joint research
- Policies for the assignment and licensing of rights to private companies
- Rules for handling rights in cases where intellectual property is created in cooperation with researchers of other domestic or foreign universities.

Furthermore, the GOJ will provide necessary information including various guidelines and specific examples with respect to contract points pertaining to the implementation and the handling of joint research and contract research with private companies, including the consideration of universities which will not commercialize inventions. As for the handling of trade secrets, the GOJ will organize (and make public) model policies for the management of confidential information from the perspective of ensuring balance between the protection of companies' trade secrets and the protection of academic freedom at universities, as well as for the prevention of inventions created by researchers from being made public.

ii) By the end of FY 2003, the GOJ will organize and make public specific examples regarding the conflict of interests that researchers will experience in the course of promoting industry-academic-government cooperation.

iii) In FY 2003 and beyond, the GOJ will secure flexibility in concluding contracts, based on discussions between companies and universities about the handling of intellectual property rights and other matters, so that universities and public research institutes will be able to conclude contracts on joint or contract research..

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

(7) Promoting University Start-ups

i) In FY 2003 and beyond, in order to promote business startups at universities and public research institutes using inventions created at universities and institutes, the GOJ will establish flexible rules to enable universities and institutes to transfer rights or grant licenses at the request of researchers who intend to start businesses, while giving due consideration to conflicts of interest by individual universities and institutes .

ii) For the purpose of steadily promoting the corporatization and commercialization of research results made at universities and institutes, in FY 2003 and beyond, the GOJ will provide support for **University Start-ups** and for other companies in carrying out research through matching industries and universities through empirical testing. Furthermore, the GOJ will promote the transfer of research results made at universities by trusting companies with the development costs for the corporatization of such research results that are made at universities but are difficult to corporatize. In addition, considering that venture companies from universities have difficulty in securing human resources with the necessary management knowledge, the GOJ will dispatch specialists such as lawyers and certified accountants to such ventures.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

(8) The Balance between Smooth Research Activities and Protection of Intellectual Property

1) Realizing the balance between free exchange of opinions among researchers and patent protection

With the aim of solving the problem of inventions lacking novelty due to the free exchange of opinions among researchers, by the end of FY 2003, universities and public research institutes will promulgate to R&D sites that inventions will never lack novelty due to the exchange of opinions under conditions of confidentiality, in light of the criteria for judging “inventions which were publicly known” as unpatentable inventions.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

2) Ensuring the smooth use of patented inventions in research

For the purpose of ensuring the smooth use of patented inventions in research activities by persons other than patentees, by the end of FY 2003, the GOJ will conduct a research on the scope of experimentation exempted from patent infringement and make the research result available to the public on research sites, universities, public research institutes, and private companies. Furthermore, in the case that a patent right extends to experiments and research, the GOJ will broadly investigate

the situation at home and abroad and take measures to ensure the smooth use of patented inventions at universities, public research institutes and private companies, while considering the promulgation of types of license contracts that make distinctions between research conducted for academic and commercial purposes and the possibility of developing guidelines and legislation, referring to the guidelines of the National Institute of Health (NIH).

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

3) Ensuring the smooth use of research materials

i) In FY 2003 and beyond, the GOJ will make efforts to further promulgate among universities and public research institutes the conditions regarding the transfer of research materials and the rules for simple transfer procedures in order to ensure the smooth use of tangible materials in research activities.

ii) In FY 2003 and beyond, the GOJ will clarify the ownership of intellectual property including knowledge that is transformed into tangible materials at universities and public research institutes, as well as the necessary management of such materials, while referring to the “Guidelines for the Management of Trade Secrets.”

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

3. Promoting the Creation of High-Quality Intellectual Property

By establishing a fundamental system for sufficiently rewarding researchers who create basic inventions, the GOJ will motivate researchers and provide them with more incentives to create high-quality intellectual property. The GOJ will also encourage universities, public research institutes and companies to shift the emphasis in their patent strategy from quantity to quality and motivate them to obtain basic patents.

(1) Abolishing or Amending the Provision Regarding Employee’s Inventions under the Patent Law

For the purpose of securing R&D incentive for inventors, reducing patent management cost and risk in individual companies, and strengthening the industrial competitiveness of Japanese industry, the GOJ will consider necessary issues on employee’s invention, while taking into account the changes in the social environment, and submit a bill to abolish or amend the provision in Article 35 of the Patent Law to the ordinary session of the Diet in 2004.

(Ministry of Economy, Trade and Industry)

(2) Reviewing the Exceptions to the Lack of Novelty of Invention

With respect to the exceptions to the lack of novelty of invention that are designed to prevent inventions from lacking novelty due to disclosure in presentation, paper, or meetings, the GOJ will review the grace period for the exceptions and consider relaxing the requirements, while taking into account the trend in discussions on the international harmonization of patent systems, and draw a conclusion by the end of FY 2004.

(Ministry of Economy, Trade and Industry)

(3) Promoting Flexible Application of the Domestic Priority System

At universities and public research institutes, basic and fundamental inventions are often created, and they are likely to develop into inventions of improvement based on additional tests and secondary research activities. In order to increase the convenience and effectiveness of the domestic priority systems for the purpose of protecting all of these inventions without exception, in FY 2003, the GOJ will start reviewing the operation of domestic priority systems in terms of the description of the scope of claims in the initial patent application, while advertising the purposes and contents of the system.

(Ministry of Economy, Trade and Industry)

(4) Encouraging the Use of Laboratory Notebooks

i) In order to positively encourage the use of laboratory notebooks that will contribute to the clear identification of inventors, as well as clear proof of results of joint research, by the end of FY 2003, the GOJ will organize and publish important points regarding the significance of laboratory notebooks and how to use and manage such notebooks.

ii) In FY 2003 and beyond, universities and public research institutes will promote the use of laboratory notebooks by providing training and education programs regarding how to use and manage such notebooks.

iii) In FY 2003 and beyond, the GOJ will encourage companies to introduce laboratory notebooks by issuing laboratory notebooks in the training programs for companies and raising the awareness of such notebooks.

iv) In FY 2003 and beyond, the GOJ will consider the possibility of utilizing electronic media for the management and use of laboratory notebooks and consider the problems that would arise from such use.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

(5) Awarding Remarkable Activities Performed in Industry-Academic-Government Cooperation

In FY 2003 and beyond, the GOJ will continue to select successful cases from industry-academic-government cooperation activities and provide opportunities to publicize the details or factors of success. The GOJ will also enhance the systems for rewarding individuals, groups and organizations achieving remarkable results.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunication, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

(6) Further Intensifying Competition among Researchers to Improve Their Quality

In FY 2003 and beyond, for the purpose of intensifying competition among researchers, the GOJ will consider taking measures to improve systems for promoting research activities based on researchers' creativity, so that as many researchers as possible will be allowed to apply for such systems, whether they belong to universities, public research institutes or private companies.

(Council for Science and Technology Policy and Ministry of Education, Culture, Sports, Science and Technology)

(7) Enforcing the Japanese Bayh-Dole System

1) Ensuring the enforcement of the Japanese Bayh-Dole system

In FY 2003 and beyond, the GOJ will ensure the complete enforcement of Article 30 of the Law on Special Measures for Industrial Revitalization. Article 30 of the law provides that intellectual property rights obtained in R&D projects sponsored by the national government or special public corporations belong to those that actually carried out the R&D projects under contract. This is referred to as the "Japanese Bayh-Dole system."

(Council for Science and Technology Policy, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

2) Expanding the application of the Japanese Bayh-Dole system

By the end of FY 2003, the GOJ will consider taking measures to ensure that intellectual property rights for products that are invented in software development projects for government use will belong to the persons who created the products in principle.

(Council for Science and Technology Policy, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

(8) Reforming Awareness in Industry

i) Strengthening the ability to discern in business executives

In FY 2003 and beyond, the GOJ will encourage business executives to improve their ability to exploit intellectual property by strengthening their ability to appreciate the value of research results achieved at universities and public research institutes, or in other words, discerning ability. Furthermore, in order for business executives and personnel in charge of intellectual property affairs to properly understand the intellectual property-related activities that are carried out at universities and strategically protect and exploit the intellectual property of research results, the GOJ will take measures to increase awareness of intellectual property by holding seminars and symposiums regarding intellectual property strategy for business executives and personnel in charge of intellectual property affairs.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

ii) Clearly assigning contact sections

In FY 2003 and beyond, for the purpose of ensuring smooth and efficient negotiations between universities/research institutes and companies, the GOJ will encourage industry to clearly assign contact sections for industry-academic-government cooperation in individual companies.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

(9) Promoting the Creation of Attractive Designs

In FY 2003, the GOJ will take the following measures:

- i) Create an environment in which the strategic creation of designs will be promoted;
- ii) Support the development of human resources who will create attractive designs;
- iii) Design concrete measures for disclosing and providing JPO information regarding designs;
- iv) Create an environment for developing useful design information and make it broadly available for the purpose of encouraging the creation of attractive designs.

(Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

Chapter 2

Protection

I. Strengthening the Protection of Intellectual Property

In order to secure incentives for the creation of intellectual property and to utilize intellectual property effectively, its proper protection is indispensable, and the related systems and frameworks must be further developed. Therefore, the Government of Japan (GOJ) will strive to establish the foundations for sufficient protection of intellectual property by appropriately protecting any new intellectual property, while monitoring the trends in the global harmonization of the systems and in the progress made in technological innovation, as well as by developing frameworks for improving and expediting the procedures for acquiring patent rights and for engaging in litigation.

1. Expeditious examination of patent applications

(1) Enacting the Law for the Promotion of Expeditious Patent Examination (tentative)

Today, when companies are required to rapidly make business decisions amidst intensive international competition, more expeditious patent examination is indispensable for driving the commercialization of quality inventions and thereby revitalizing the economy. In order to examine patent applications more promptly, it is essential to reduce the 500,000 applications currently waiting to be examined (i.e. backlog) and to cope with the expected additional rapid increase in the number of requests for examination, which is estimated to be approximately 300,000. With the aim of achieving expeditious and accurate patent examinations exceeding the highest global standards, the GOJ will set a target to reduce the examination-waiting period and promote comprehensive measures to improve the examination system, including measures to secure the necessary number of examiners, utilize assistants with expertise, outsource prior art searches, review the Patent Law, and conduct structural reforms of the patent application/examination request by applicants. In addition, as a temporary measure to reduce the backlog, the GOJ will aim to employ fixed-term examiners from external human resources, and utilize these examiners as intellectual property experts after the fixed-term. Furthermore, it will submit a Law for the Promotion of Expeditious Patent Examination (tentative), which embraces the amendment of related laws and other necessary measures for accelerating patent examination, to the ordinary session of the Diet in 2004.

(Ministry of Economy, Trade and Industry)

(2) Developing and utilizing prior art search organizations

In FY 2004 and beyond, the GOJ will take measures to expand and improve the functions of private prior art search organizations, so that universities and companies can evaluate patentability of their inventions properly on the occasion of patent application/examination requests, as well as take measures to promote publication of prior art search tools of the Japan Patent Office and to transfer its know-how on prior art searches. Moreover, from the viewpoint of further enhancing efficiency while

achieving more expeditious and accurate patent examination, the GOJ will have discussions on developing an environment in which it is easier to designate new search organizations, on a system in which designated search organizations conduct prior art searches based on the requests of applicants and on a system that obligates prior art searches to the applicants. A conclusion will be drawn by the end of FY 2003.

(Ministry of Economy, Trade and Industry)

(3) Promoting structural reform of the patent application/examination request

i) In order to reform the patent application/examination request systems, the GOJ will consider measures, such as the improvement of the search environment and the expansion of the fee reduction/exemption measure for SMEs, along with the shift to a fee structure for rectifying the cost-bearing gaps among applicants and for encouraging appropriate examination requesting behavior. In FY 2003 and beyond, with the understanding and cooperation of applicants, the GOJ will promote measures for driving reform of the patent application/examination request systems, including the screening of requests for examination in order to raise the patent registration rate, withdrawal of applications for which acquisition of the patent right is no longer so necessary, and appropriate utilization of the utility model system.

ii) Since patent attorneys play a vital role in assuring the proper acquisition of rights and high-quality specifications, the GOJ will study the roles to be played by patent attorneys, with the understanding and cooperation of the Japan Patent Attorneys Association, and will draw a conclusion by the end of FY 2003.

(Ministry of Economy, Trade and Industry)

2. Promoting flexible patent examination according to applicant needs

(1) Ensuring flexible examination timing according to needs

i) In FY 2003 and beyond, the GOJ will continue to further disseminate the accelerated examination system, which preferentially examines applications by universities and SMEs, overseas-related applications, and applications of inventions soon to be commercialized, and it will utilize the system to properly deal with applications that need to be patented promptly.

ii) With regard to applications relating to international standards and applications on inventions that will take time to be commercialized, the GOJ will consider deregulation of the time period required for dividing applications (e.g., allowing division of applications even after the decision to grant a patent) or introduction of a system for delaying the start of the examination for a certain period upon request of the applicant, so as to grant a patent right at an appropriate time.

(Ministry of Economy, Trade and Industry)

(2) Improving communication with applicants

i) The GOJ will improve communication with applicants by providing them with information regarding the examination schedule, including the applications scheduled to be examined and the date of the examination, and in FY 2003 and beyond, action will be taken to promote the circuit offices for patent examination and appeals for SMEs and venture companies in local areas, which lack the opportunity to directly exchange opinions with the examiner.

ii) In FY 2003 and beyond, the GOJ will continue to disseminate the consolidated examination program for relevant applications, which is a system to examine patent applications in related technical fields as a whole, and encourage utilization of the system for companies' strategic patent acquisition.

(Ministry of Economy, Trade and Industry)

(3) Strengthening the examination capability with a focus on the field of cutting-edge technologies and international applications

i) In FY 2003 and beyond, the GOJ will strengthen the examination capability with a focus on applications in the field of cutting-edge technology and international applications, by taking such measures as tripling the number of examiners in the life-science field.

ii) In FY 2003 and beyond, the GOJ will increase dispatches of examiners and appeal/trial examiners to academic conferences and implement more training for them in order to cope with examination and appeals/trials on cutting-edge technologies, such as state-of-the-art bio-medical technologies, and to promote international cooperation in examination.

(Ministry of Economy, Trade and Industry)

(4) Improving the convenience of users, including the promotion of electronic payment means for fees

By the end of FY 2005, the GOJ will authorize application filing procedures and public inspection of various documents related to industrial property rights via the Internet. In addition, it will promote further digitization by considering desirable payment means for fees including money transfer through online banking, automatic debit transfer from a bank account, and the use of credit cards.

(Ministry of Finance and Ministry of Economy, Trade and Industry)

3. Strengthening the intellectual property protection systems

(1) Researching the desirable way of providing patent protection of medical treatment

i) While giving sufficient consideration so as not to have a bad influence on medical activities that should be equally performed under trustful relationships between patients and medical

practitioners, the GOJ will set up a forum for extensively discussing the treatment of medical activities under the Patent Law, from the viewpoint of driving progress of useful and safe medical technologies that will contribute to raising the level of citizens' health care, such as allowing patients to receive more advanced medical treatment. A conclusion will be drawn early in FY 2004.

(The Council for Science and Technology Policy, the Ministry of Health, Labor and Welfare and the Ministry of Economy, Trade and Industry)

ii) In FY 2003 and beyond, with the aim of promoting further progress in the latest frontiers of life sciences and their application to medical purposes, the GOJ will study the desirable patent protection for inventions using human embryonic stem cells (ES cells), embryonic germ cells (EG cells), etc. from viewpoints of bioethics, science and technology policies, and medical policies.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Health, Labor and Welfare and Ministry of Economy, Trade and Industry)

(2) Reviewing the utility model system

From the viewpoint of providing sufficient protection for technologies with short life cycles and technologies of which counterfeit products go on the market in a short time, such as computer software that is not protected under the current utility model system, the GOJ will consider the possibility of providing an option for more prompt and simpler protection under the utility model system. To this end, the GOJ will consider (i) abolition of requirement that the protectable subject matter should be shape or construction of articles or a combination of articles, (ii) extension of the 6-year-term of protection, and (iii) conversion between patents and utility models, among other matters. A conclusion will be drawn by the end of FY 2003

(Ministry of Economy, Trade and Industry)

(3) Upgrading the design system in order to enhance design protection

i) The GOJ will consider concrete measures for developing an environment for providing products of higher value by creating attractive designs, along with consideration of a desirable design protection system, and a conclusion will be drawn by FY 2005.

ii) The GOJ will also extensively study new subject matters, such as designs of operational screens (icons, etc.) used on computer networks, and will draw a conclusion during FY 2003.

(Ministry of Economy, Trade and Industry)

(4) Upgrading the trademark system in order to enhance brand protection

i) The GOJ will consider concrete measures for developing an environment for providing products and services of higher values by utilizing attractive brands, along with consideration of a desirable trademark protection system, and a conclusion will be drawn by FY 2005

ii) In FY 2003 and beyond, the GOJ will further promote unification of globally compatible designated products and services.

(Ministry of Economy, Trade and Industry)

(5) Strengthening the protection of trade secrets

1) Preventing the unintended leakage of die drawings

In FY 2003 and beyond, the GOJ will conduct a follow up survey related to the “Guidelines on the Prevention of Unintended Leakage of Die Drawings and Die Processing Data” (formulated in July 2002), which provides for management and protection of intellectual property contained in die drawings, etc., in order to understand the actual current situation, and will disseminate the above guidelines and the “Guidelines for Management of Trade Secrets” (formulated in January 2003).

(Ministry of Economy, Trade and Industry)

2) Considering the reinforcement of the protection of pharmaceutical test data

From the viewpoint of ensuring the quality, effectiveness, and safety of a new pharmaceutical after it has been placed on the market, the test data to be submitted for obtaining approval for a new drug from the Ministry of Health, Labor and Welfare is subject to a re-examination period of six years, which effectively protects the data from being used later for filing an application for equivalent drugs (generics) in a simplified manner. By the end of FY 2005, the GOJ will consider strengthening protection of such data in order to protect intellectual property and increase the incentive for the development of new drugs from broad perspectives, including the possibility of making the term of protection 10 years.

(Ministry of Health, Labor and Welfare and Ministry of Economy, Trade and Industry)

(6) Strengthening the protection of new varieties of plants

i) In FY 2003 and beyond, the GOJ will, while giving consideration to global trends, consider and draw a conclusion about the need for legal amendments with respect to the expansion of the effects of the plant breeder’s rights to products made from harvested materials of the protected variety and with respect to the desirable scope of exemption to the plant breeder's right that permits farmers to use protected varieties for propagating purposes on their holdings.

ii) In FY 2003 and beyond, the GOJ will promote development of prompt and precise DNA analysis technologies for identifying the plant variety to be used for the harvested material and/or processed goods made from the material, in order to determine infringing products more easily.

iii) In FY 2003 and beyond, the National Center for Seeds and Seedlings will conduct plant variety similarity tests (comparative cultivation and DNA analysis) for supporting determination of infringement upon the request of owners of plant breeder's rights.

(Ministry of Agriculture, Forestry and Fisheries)

(7) Strengthening the damage compensation system

In light of the quality of intellectual property rights in that they are easily infringed and that the owners of the intellectual property rights cannot prevent the infringement beforehand, the GOJ will extensively consider measures for strengthening the system of damage compensation for intellectual property and will draw a conclusion by the end of FY 2004, in order to properly remedy the owners of the intellectual property rights and to disallow infringers from easily benefiting from acts of infringement.

(Ministry of Justice, Ministry of Education, Culture, Sports, Science and Technology, the Ministry of Agriculture, Forestry and Fisheries and Ministry of Economy, Trade and Industry)

(8) Reviewing the penalties for the infringements of intellectual property rights

In order to raise deterrent effects against infringements of intellectual property rights, the GOJ will consider the necessity of raising the criminal penalties, while giving consideration to the balance between the respective intellectual property laws and other economic laws, and will draw a conclusion by the end of FY 2004.

(The Ministry of Justice, the Ministry of Education, Culture, Sports, Science and Technology, the Ministry of Agriculture, Forestry and Fisheries and the Ministry of Economy, Trade and Industry)

4. Strengthening the dispute settlement functions

(1) Aiming to establish an Intellectual Property High Court

It is highly regarded that the jurisdiction over intellectual property lawsuits related to patent rights, etc. became concentrated in the Tokyo High Court with the coming amendment of the Code of Civil Procedure. From the viewpoint of strengthening the competitiveness of intellectual property, which is decisively important for the Japanese economy to maintain its global edge, and in order to emphasize the intellectual property-oriented national policy both inside and outside of Japan, the GOJ will make necessary deliberations on the establishment of an Intellectual Property High Court, with the aim of submitting the necessary bills to the 2004 ordinary session of the Diet.

(The Judicial Reform Headquarters and Ministry of Justice)

(2) Enhancing expert knowledge in intellectual property lawsuits

The GOJ will enhance the use of expert knowledge in intellectual property lawsuits. To this end, it will consider the measures outlined below and will draw a conclusion by the end of FY 2003.

- i) Developing judges who have strong knowledge of technologies and intellectual property
- ii) Utilizing the expert committee system that will be newly introduced
- iii) Expanding and clarifying the role of the judicial research officials related to intellectual property (right to interrogate the parties, participation in the court's deliberations, etc.)

(The Judicial Reform Headquarters, Ministry of Justice, and Ministry of Economy, Trade and Industry)

(3) Expanding procedures for collecting evidence

In order to strengthen the functions of procedures for collecting evidence in intellectual property-related lawsuits, the GOJ will consider and take necessary measures with regard to review of the scope of documents containing trade secrets that are exempted from the obligation to produce documents, expansion of the scope of persons to which documents are disclosed in an "in-camera" procedure related to a motion for an order to produce documents and their duty of confidentiality, as well as implementation of unopened proceedings for cases involving trade secrets under the principle of public trial in the Constitution and establishment of rules of the proceedings by the end of FY 2004. Furthermore, it will conduct comprehensive study for strengthening the functions of procedures for collecting evidence, including the possibility of introducing a new procedure for collecting evidence, by referring to such procedures in other countries as the "discovery" procedure in the United States, and a conclusion will be drawn by the end of FY 2004.

(The Judicial Reform Headquarters, Ministry of Justice, Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

(4) Achieving reasonable resolution of disputes over infringements of patent rights

With the objective of achieving reasonable resolution of disputes, the GOJ will consider the matters below and take necessary measures with regard to the relationship between an infringement lawsuit and an invalidation procedure, etc., including strategies toward resolving a dispute in a single procedure.

- i) Allowing the court to judge invalidity of the patent right, etc. in question in an infringement lawsuit so as to promptly settle the dispute
- ii) Reviewing the relationships between an infringement lawsuit and a JPO trial for invalidation/trial for correction co-pending with the infringement lawsuit, from the viewpoint of reasonable dispute resolution

(The Judicial Reform Headquarters, Ministry of Justice, and Ministry of Economy, Trade and Industry)

(5) Reinforcement of alternative dispute resolution (ADR)

For the purpose of providing a variety of dispute resolution methods concerning intellectual property, the GOJ will request parties concerned, including the Japan Federation of Bar Associations and the Japan Patent Attorneys' Association, to have discussion on fields in which ADR could be utilized, such as valuation of intellectual property, testimony on patents, and dispute resolution related to technical standards, with the objective of reinforcing and revitalizing the functions of ADR organizations, and to take necessary measures by FY 2004. The GOJ will also draw a conclusion on appropriate role-sharing between the JPO's *Hantei* system (advisory opinion on the technical scope of a patent) and ADR organizations by FY 2005, based on the study of a desirable ADR conducted in the course of the justice system reform.

(Ministry of Justice and Ministry of Economy, Trade and Industry)

5. Promoting the international protection of and cooperation on intellectual property

(1) Promoting efforts to establish a global patent system

1) Promoting global cooperation in patent examination

The GOJ will drive cooperation in patent examination with the national patent offices of other countries toward reducing the procedural burden on applicants filing patent applications to multiple countries, reducing the workload on national patent offices and toward achieving mutual recognition of patent laws and patent examination guidelines through international harmonization . To this end, in FY 2003 and beyond, the GOJ will further promote projects utilizing mutual prior-art-search results and examination results in addition to examiner exchange among the trilateral patent offices of Japan, the United States, and Europe, as well as among other developed countries.

(Ministry of Foreign Affairs and Ministry of Economy, Trade and Industry)

2) Promoting the reform of the Patent Cooperation Treaty (PCT)

In FY 2003 and beyond, the GOJ will continue to promote the establishment of a system that will facilitate the international acquisition of rights by vigorously committing to discussions aimed at improving the convenience of users and further utilizing prior art searches and preliminary examinations conducted by international search authorities and international preliminary examination authorities, in the discussions on PCT reform in the World Intellectual Property Organization (WIPO).

(Ministry of Foreign Affairs and Ministry of Economy, Trade and Industry)

3) Facilitating the acquisition of rights in developing countries

In FY 2003 and beyond, with the objective of facilitating the acquisition of rights overseas by Japanese and ensuring sufficient protection of those rights, the GOJ will continue to strategically promote developing countries' joining the PCT as well as developing countries' institutional or operational adoption of the modified substantive examination (MSE) system, which is a system of patenting applications based on the search/examination results of Japan, in cases in which the applications have been patented in Japan through bilateral and regional frameworks. The GOJ will also continue its cooperation in human resources development and computerization in order to contribute to developing patent law systems and improving their operations in developing countries. (Ministry of Foreign Affairs and Ministry of Economy, Trade and Industry)

4) Promoting international harmonization of patent systems

i) In FY 2003 and beyond, the GOJ will continue to engage vigorously in the discussions on the Substantive Patent Law Treaty in WIPO and promote debates toward international harmonization of the patent systems, including discussions about having the United States fully introduce 18-month-publication review the first-to-invent system, and the global adoption of a unified grace period.

ii) In FY 2003 and beyond, with the objective of facilitating the international acquisition of rights, the GOJ will promote discussions for making international rules in WIPO and other regions,, encouraging countries to adopt a system that allows original language applications and correction of translations based on application documents written in the original language , while considering the interests of third parties.

(Ministry of Foreign Affairs and Ministry of Economy, Trade and Industry)

5) Establishing international networks for exchanging information on patent examination

i) In FY 2003 and beyond, the GOJ will encourage the establishment of an information network that enables mutual access to information on examinations among the JPO, the United States Patent and Trademark Office (USPTO), and the European Patent Office (EPO), in order to send out the JPO's examination results overseas and enhance cooperation in the examination process among the trilateral offices. In addition, the GOJ will promote the establishment of the Asian Industrial Property Information Network to cooperate examination in developing countries.

ii) In FY 2003 and beyond, the GOJ will reinforce the functions of machine translation from Japanese to English, in order to ensure that the JPO's examination information is effectively utilized in examinations conducted in other countries as well as to expedite the overseas acquisition of rights of Japanese applicants and to reduce their burden of translation.

(Ministry of Foreign Affairs and Ministry of Economy, Trade and Industry)

(2) Promoting the international harmonization of copyright systems

i) In FY 2003 and beyond, in order to protect copyrights appropriately by responding to the digitization and networking trends, the GOJ will continue to make active contributions to discussions aimed at the protection of audiovisual performances and the early adoption of the new treaty on broadcasting organizations that are currently being deliberated in WIPO.,.

(Ministry of Economy, Trade and Industry, Ministry of Foreign Affairs and Ministry of Education, Culture, Sports, Science and Technology)

ii) In FY 2003 and beyond, the GOJ will continue to approach other countries, mainly Asian nations, to join the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) that were adopted in 1996.

(Ministry of Foreign Affairs and Ministry of Education, Culture, Sports, Science and Technology)

(3) Promoting cooperation in examination for the global protection of designs

With the objective of internationally protecting the designs created in Japan, the GOJ will continue to extend cooperation in examination and cooperation in developing relevant protection system in Asian nations.

(Ministry of Foreign Affairs and Ministry of Economy, Trade and Industry)

(4) Promoting the use of the international trademark registration system

Since the international trademark registration system based on the Madrid Protocol facilitates international acquisition of trademark rights, the GOJ will continue to approach the non-members in the Asia-Pacific region through bilateral and regional frameworks to join the Protocol, and it will promote the use of the system among Japanese applicants in FY 2003 and beyond. Furthermore, it will continue to extend cooperation in the areas of human resources development and digitization in order to contribute to developing trademark law systems and improving their operations in developing countries.

(Ministry of Foreign Affairs and Ministry of Economy, Trade and Industry)

(5) Promoting cooperation in examination and the development of systems related to the protection of rights on new plant varieties

i) In FY 2003 and beyond, with the objective of achieving prompt and precise protection of rights in the Asia-Pacific region, the GOJ will implement regular discussions among examiners with China, the Republic of Korea, and other countries to promote cooperation in conducting examinations. In addition, it will consider the future introduction of a mutual recognition system on the premise of accumulating experiences in examination cooperation.

ii) In FY 2003 and beyond, with the objective of enhancing the development of systems for protecting rights on new plant varieties in the Asian region, the GOJ will continue to provide assistance for developing such systems and conduct training for developing experts through the International Union for the Protection of New Varieties of Plants (UPOV).

(Ministry of Foreign Affairs and Ministry of Agriculture, Forestry and Fisheries)

(6) Promoting the development of international rules on dispute settlement

With the objective of clarifying international rules on intellectual property enforcement and dispute settlement across national borders pertaining to Internet-related incidents etc., the GOJ will actively engage in discussions concerning the international jurisdiction of lawsuits related to validity or infringement of intellectual property rights in FY 2003 and beyond.

(Ministry of Justice, Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

II. Measures Against Counterfeits and Pirated Copies

Every year, the number of Japanese companies harmed by products that infringe intellectual property rights, such as counterfeits and pirated copies, and the amount of damage are constantly growing. For example, according to an estimate by a related organization, the annual amount of Japanese Internet contents infringed in China has reached approximately two trillion yen, and the annual amount of trademark infringements by counterfeit brand products in Japan exceeds 500 billion yen.¹

In recent years, the proportion of products infringing design rights and infringing patent rights has increased, not to mention products infringing trademark rights, such as counterfeit brand products. While the advancement of the technical levels on the infringing side has been demonstrated, it has also been indicated that companies' efforts regarding intellectual property management and measures against counterfeits have been insufficient. Moreover, new types of infringements requiring new countermeasures, such as a large number of unauthorized copies of music files being distributed on the Internet due to the progress of information technology, have been emerging.

Counterfeits and pirated copies are the theft of the intangible property rights of companies, which are deceiving consumers and causing enormous damages to Japan, so they must be addressed promptly. In order to resolve the problem of counterfeits and pirated copies, which presents a great hindrance to Japan in aiming to become a "an intellectual property-based nation," to protect the interests of the Japanese people and companies, and to provide incentives for creating new intellectual property rights, the GOJ should (1) strengthen the measures in overseas markets, (2) strengthen border and domestic regulations, and (3) strengthen frameworks in the public and private sectors.

1. Strengthening measures in overseas markets

(1) Supporting the acquisition and enforcement of rights by Japanese companies in other countries

i) In FY 2003 and beyond, the GOJ will continue to gather the know-how and related information needed by Japanese companies to enforce their rights in infringing countries by filing lawsuits and taking other action, and to distribute compiled material to companies about topics including how to cope with and examples of counterfeit and piracy incidents .

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

ii) In FY 2003 and beyond, the GOJ will continue to support the overseas activities of the International Intellectual Property Protection Forum, the Organization for Promotion of Overseas Distribution of Contents, the Anti-Counterfeiting Association, and other private organizations in order to assist Japanese companies' efforts overseas against counterfeits and pirated copies.

(National Police Agency, Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

¹ The amount of Internet contents infringements is based on a survey by the Copyright Research and Information Center (CRIC) and the amount of damages of trademark infringements is based on a survey by the Union des Fabricants, a French corporation in the public interest. Both infringement amounts were derived by: the estimated market size of the infringing product x the average price for the authentic product.

iii) With the cooperation of the public and private sectors, the GOJ will compile the “White Paper on Fakes Overseas” (tentative) for FY 2004. Cooperation will be carried out between the public and private sectors in order to include in the white paper information which will contribute to Japanese companies’ measures against counterfeits and pirated copies, such as the ranking of countries in terms of measures taken against counterfeits and pirated copies, so that companies will be able to recognize which countries pose high risks of intellectual property infringement, and the white paper will also include successful examples of protective measures that have actually been taken.

(Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

(2) Strengthening cooperation between the public and private sectors

1) Establishing information networks concerning counterfeits and pirated copies

i) In FY 2003 and beyond, the GOJ will reinforce activities of overseas offices of related organizations, including the Japan External Trade Organization (JETRO) and Japanese embassies and consulates general, in order to understand the status of damages to Japanese companies by counterfeits and pirated copies and the status of regulations executed by the local government regarding counterfeits and pirated copies in countries where a large number of intellectual property infringements have been exposed, as well as to promote information exchanges with industrial organizations in developed countries.

(Ministry of Foreign Affairs, Ministry of Economy, Trade and Industry, Ministry of Education, Culture, Sports, Science and Technology and other ministries and agencies concerned)

ii) In FY 2003 and beyond, the GOJ will further enrich the information on counterfeits and pirated copies that is published via the Internet by the ministries and agencies concerned, and it will establish a portal site (the general entrance site on the Internet) on measures against counterfeits and pirated copies. The GOJ will improve convenience for users by putting together and providing domestic and overseas information on counterfeits and pirated copies .

(National Police Agency, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

2) Taking measures against counterfeits and pirated copies with the cooperation of the public and private sectors

i) By utilizing the information provided by the public and private sectors through the above networks, in FY 2003 and beyond, the GOJ will continue to promote measures against counterfeits and pirated copies in concerted efforts with the private sector by requesting those countries, in which a large number of infringements have been exposed, to strengthen their regulations, and by assisting with the communication and cooperation between Japanese companies overseas and the local governments.

(National Police Agency, Ministry of Foreign Affairs, Ministry of Economy, Trade and Industry, Ministry of Education, Culture, Sports, Science and Technology and the other ministries and agencies concerned)

ii) The GOJ will take appropriate follow-up actions related to the cross-industrial joint mission between the public and private sectors, the “Public/Private Joint Delegation to China for the Protection of Intellectual Property,” which was implemented in December 2002, and in FY 2003 and beyond, it will reinforce joint approaches by the public and private sectors to infringing countries through the implementation of missions for individual industries or other measures.

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

(3) Strengthening government actions on countries where infringements have been exposed

1) Reinforcing actions on a bilateral basis

i) In FY 2003 and beyond, with the aim of promoting measures against counterfeits and pirated copies, the GOJ will actively request other countries to make efforts to strengthen regulations of intellectual property infringements by using various bilateral negotiation opportunities, such as trying to include provisions that contribute to the reinforcement of the regulations and information exchanges in free trade agreements (FTA), economic partnership agreements (EPA) and bilateral customs cooperation agreements.

(Ministry of Foreign Affairs, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

ii) In FY 2003 and beyond, the GOJ will continue to make strong approaches, on various levels including ministerial levels, to countries and regions, where a large number of intellectual property infringements regarding Japan have been exposed, particularly in the Asian region, in order to strengthen their regulations on infringing products.

(National Police Agency, Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

iii) In order to promote bilateral actions more effectively, the GOJ will continue to strengthen its partnerships with the United States and Europe in FY 2003 and beyond.

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

iv) In FY 2004 and beyond, the GOJ will reinforce its actions to the central/local governments and authorities in the respective countries in which infringements have occurred by allocating

personnel in charge of intellectual property rights to Japanese embassies and consulates general located in the Asian region.

(Ministry of Foreign Affairs and other ministries and agencies concerned)

2) Reinforcing actions on a multilateral basis

i) In FY 2003 and beyond, the GOJ will continue to strongly request Asian countries and regions to regulate counterfeits and pirated copies by actively utilizing the World Trade Organization's (WTO) Transitional Review Mechanism (TRM) for China, the WTO review of the implementing legislation for the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), and the WTO Trade Policy Review Mechanism (TPRM).

ii) In FY 2003 and beyond, the GOJ will actively utilize the WTO dispute settlement procedure and resolve the issues when other WTO members are considered to be violating the WTO's TRIPS Agreement by failing to protect Japanese intellectual property rights appropriately, based on the requests from Japanese industry.

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

iii) In FY 2003 and beyond, the GOJ will continue to take up the issue of enforcement against counterfeits and pirated copies as a main topic on the agenda in the World Intellectual Property Organization (WIPO) and make active efforts to have the WIPO members share the common recognition that regulation of counterfeits and pirated copies is a problem that must be addressed through united efforts of WIPO members.

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

iv) With regard to the establishment of intellectual property right (IPR) service centers, which has been supported in the Asia-Pacific Economic Cooperation Conference (APEC), in FY 2003 and beyond, the GOJ will start preparations toward prompt establishment of the centers in Japan and will actively approach other countries and regions to also establish similar centers at an early date. In addition, it will also make efforts to reach agreement on the Japan-proposed comprehensive strategy on IPR protection in APEC.

(Ministry of Foreign Affairs and Ministry of Economy, Trade and Industry)

3) Strengthening the position of support for reinforcing development/enforcement of intellectual property systems in ODA policy

Given that the appropriate protection of intellectual property rights is indispensable for the expansion of trade investments and economic development in developing countries, in FY 2003 and beyond, the GOJ will strengthen of its position of support for reinforcing development/enforcement of developing countries' intellectual property systems in ODA policy.

(Ministry of Foreign Affairs and other ministries and agencies concerned)

4) Supporting Asian nations to increase their capacity and activities to eliminate counterfeits and pirated copies

i) Based on the current efforts of the ministries and agencies concerned with building Asian nations' regulation capacities, including conducting various seminars for the officials in charge of intellectual property regulations in the governments of Asian countries, the GOJ will, under the collaboration of the ministries and agencies concerned, examine even more effective methods and proceed with those methods from FY 2004, after understanding the current status of the regulations pertaining to products infringing intellectual property rights that are implemented by the respective Asian countries.

(National Police Agency, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

ii) In FY 2003 and beyond, the GOJ will implement capacity building activities for the protection of intellectual property rights, which are to be administered by the ministries and agencies concerned with Asian nations' government officials and private organizations/companies even more effectively in collaboration with Japanese companies and related organizations such as JETRO.

(National Police Agency, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Agriculture, Forestry and Fisheries and Ministry of Economy, Trade and Industry)

2. Strengthening border and domestic regulations

(1) Developing domestic laws to restrain the private import of products infringing intellectual property rights

With the objective of restraining the import of products infringing intellectual property rights, such as counterfeit brand products, by individuals, the GOJ will consider amendment of intellectual property right related laws or other measures and will draw a conclusion early in FY 2004.

(National Police Agency, Ministry of Justice, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

(2) Strengthening measures for effective border and domestic regulations

i) In order to prevent recommitment of intellectual property infringements in cooperation with companies that are the owners of rights, the GOJ will enable Customs to disclose information including the names of the importer and exporter to the owner of the right when a counterfeit product or a pirated copy is stopped at Customs. To this end, the GOJ will submit bills for amending the Customs Tariff Law and other related laws to the 2004 ordinary session of the Diet as

required. In addition, the GOJ will also consider amending related laws so as to enable disclosure of information on the manufacture to the owner of the right.

(Ministry of Finance, Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

ii) In FY 2003 and beyond, the GOJ will develop information systems for supporting border regulations of products infringing intellectual property rights, reinforce inspections of small-lot air cargos, and secure a necessary number of customs officials in charge of intellectual property, in order to strengthen the border measures against counterfeits and pirated copies at Customs.

(Ministry of Finance)

iii) In FY 2003 and beyond, with the objective of cutting off the supply routes of counterfeits and pirated copies, the GOJ will continue to precisely clarify the actual status of criminal organizations that enjoy illicit gains through illegal sales of counterfeits and pirated copies and to strengthen their regulation.

(National Police Agency)

iv) In FY 2003 and beyond, the GOJ will continue to strengthen regulations for such crimes as sales of counterfeits and pirated copies on the streets.

(National Police Agency)

v) In FY 2003 and beyond, the GOJ will continue to strengthen the ties between industry organizations such as the Anti-Counterfeiting Association and the police authorities to implement effective regulations based on highly accurate information.

(National Police Agency)

vi) In order to conduct both border regulations and domestic regulations more effectively, the GOJ will hold information exchange meetings on measures against counterfeits and pirated copies between the police and Customs from FY 2004.

(National Police Agency and Ministry of Finance)

vii) In FY 2003 and beyond, the GOJ will continue to closely cooperate with the regulatory authorities of Asian nations and widely acquire/provide information on counterfeits and pirated copies by exchanging information through the Regional Intelligence Liaison Office (RILO) of the World Customs Organization (WCO) and by holding information exchange meetings with the customs authorities and police authorities of Asian nations, and implement effective border regulations and domestic regulations.

(National Police Agency and Ministry of Finance)

(3) Early establishment of a system that allows prompt determination on infringements at the border based on the claims of the parties involved

By referring to the systems of the U.S. International Trade Commission (ITC) and the systems utilizing courts that are adopted by European nations, the GOJ will extensively consider matters including the establishment of a new organization engaging in administrative judicial proceedings, the utilization of courts, and the amendment of customs procedures, in order to make expeditious determination on infringements based on the claims of the parties by utilizing experts who have technical knowledge, a grounding in law, and other related knowledge. A conclusion will be drawn during FY 2004

(Ministry of Finance, Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

(4) Strengthening regulations of infringements on the Internet

i) In light of the size of the adverse impacts on the rights of copyright owners and the entire economy, the GOJ will continue in FY 2003 and beyond to strengthen the regulation of counterfeits and pirated copies that are sold on online auction sites on the Internet, by mutually extending necessary cooperation with those concerned, such as the administrators of those websites and the Internet service providers. To this end, it will also further expand means for collecting information on intellectual property infringements.

(National Police Agency)

ii) In FY 2003 and beyond, the GOJ will continue to strengthen regulations for unauthorized uploading of (making transmittable) works on the Internet, which enables any person in the world to download such uploaded works. (National Police Agency)

iii) In FY 2003 and beyond, the GOJ will support utilization of systems for constantly and automatically monitoring illegal contents on the Internet.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

(5) Strengthening public awareness activities

In FY 2003 and beyond, the GOJ will continue to make an effort to increase public awareness of counterfeits and pirated copies through various existing promotional and educational activities in order to counter the purchases of counterfeit brand products and illegal downloading of pirated copies on the Internet that are attributable to lack of public awareness of the infringement of rights.

(National Police Agency, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Agriculture, Forestry and Fisheries, Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

3. Reinforcing the frameworks against counterfeits and pirated copies in the public and private sectors

(1) Reinforcing the framework against counterfeits and pirated copies in the government

The GOJ will consider a framework in which specialized officials in charge in the ministries and agencies concerned can responsibly implement anti-infringement measures and in which the ministries and agencies concerned can collaborate effectively in a united efforts as the government to counter intellectual property right infringements. It will establish the framework during FY 2004.

(National Police Agency, Ministry of Finance, Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Agriculture, Forestry and Fisheries and Ministry of Economy, Trade and Industry)

(2) Reinforcing the frameworks against counterfeits and pirated copies in private companies

i) In FY 2003 and beyond, the GOJ will hold seminars on measures against counterfeits and pirated copies in Tokyo, Osaka, and other major cities, under even closer cooperation among the ministries and agencies concerned, in order to share with companies information about the importance of measures against counterfeits and pirated copies and the need to reinforce the in-house framework .

(National Police Agency, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

ii) In FY 2003 and beyond, the GOJ will encourage major industrial organizations to make organizational improvement/reinforcement efforts, such as establishing a committee on measures against counterfeits and pirated copies, and encourage Japanese companies to reinforce the framework for countering counterfeits and pirated copies in their overseas operation bases.

(Ministry of Economy, Trade and Industry and Ministry of Education, Culture, Sports, Science and Technology)

Chapter 3

Intellectual Property Exploitation

Even though outstanding results are produced from intellectual creation activities and proper protection is given to such results, it will be a “waste of treasures,” and the revitalization of the economy will not be achieved, if these results are not utilized effectively. However, in Japan, there are a number of patents that are not in use. It has also been indicated that R&D investments in the private sector do not always contribute to economic growth. In order to make Japan “an intellectual property-based nation,” owners of intellectual property including private companies are expected to exploit such assets in their business activities to the greatest extent, and it is also necessary for the GOJ to develop the business environment to this end.

In such light, by taking the following measures, the GOJ will support companies in promoting the strategic exploitation of intellectual property and develop necessary environments for such exploitation of intellectual property. The GOJ will also support companies in carrying out the international standardization of activities for the purpose of increasing the value of their technologies to the maximum.

1. Support for the Strategic Exploitation of Intellectual Property

(1) Promoting Management Strategy Emphasizing Intellectual Property for Private Companies

i) Companies should consider intellectual property “as a source of competitiveness that will produce economic benefits in the future” and position it as the core of their management strategy. Some companies are taking a progressive approach to deal with business strategy, R&D strategy and intellectual property strategy all in one at their management strategy conferences. In order to promote such an approach, in FY 2003 and beyond, the GOJ will encourage companies to formulate a management strategy under the “Guidelines for Obtaining and Managing Intellectual Property,” “Guidelines for the Management of Trade Secrets” and “Guidelines for the Prevention of Leakage of Technology” (published by the Ministry of Economy, Trade and Industry in January and March 2003). Furthermore, in formulating company strategies focusing on intellectual property, due consideration should be given to the independence of companies.

(Ministry of Economy, Trade and Industry)

ii) For the purpose of generally encouraging companies to manage their trade secrets and prevent the leakage of their technologies, the GOJ will initiate discussion by the end of FY 2003 with the aim of including organizational management, which is described in the guidelines, in the Japanese Industrial Standards (JIS), and draw a conclusion by the end of FY 2005.

(Ministry of Economy, Trade and Industry)

(2) Promoting Disclosure of Information on Intellectual Property

It is necessary to consider an ideal disclosure system in which the securities markets would

be able to properly evaluate how individual companies recognize intellectual property in connection with their business. Accordingly, the GOJ will take the following measures to encourage companies to voluntarily disclose information on intellectual property, following the examples of environmental reporting and accounting. However, whether or not to disclose information should be decided by individual companies based on their own judgments.

i) For the purpose of improving interaction between intellectual property and securities markets, by the end of FY 2003, the GOJ will formulate feasible guidelines for promoting disclosure of information on intellectual property according to the “Pilot Model for Disclosure of Patent and Technology Information” prepared by the Ministry of Economy, Trade and Industry.

(Ministry of Economy, Trade and Industry)

ii) In FY 2003, the GOJ will start discussing an ideal way of including statements regarding intellectual property in securities reports and of disclosing accounting information.

(Ministry of Economy, Trade and Industry)

(3) Developing Guidelines for Formulating Intellectual Property Strategy Indicators

In light of the fact that Japan’s international competitiveness is not so strong in terms of intellectual property, the GOJ will consider formulating intellectual property strategy indicators by the end of FY 2004 for the purpose of strengthening such international competitiveness. In this process, the GOJ should develop guidelines so that individual companies will be able to clearly identify and utilize intellectual property strategy indicators to establish targets of their own accord and desire to achieve, rather than formulating indicators under uniform rules.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

(4) Establishing a Method of Intellectual Property Evaluation

By FY 2004, the GOJ will consider and organize ideas about the ideal criteria for objectively evaluating intellectual property (quantitative analysis through conversion to the amount of money or qualitative analysis), with reference to evaluating methods applied by private rating firms and according to the characteristics of each type of intellectual property. The GOJ will also make efforts to establish a market for the assignment of patents and other intellectual property by organizing and disclosing example cases in which such property has been evaluated for mergers or acquisitions of companies, which are expected to increase in the future. In regard to the evaluation of intellectual property, the GOJ should secure flexibility by entrusting companies with intellectual property evaluation according to their independent judgment and ideas.

(Ministry of Economy, Trade and Industry)

(5) Utilizing Trust Systems to Promote the Management and Mobility of Intellectual Property

1) Management Trust

For the purpose of promoting the consolidated management of patents and brands in the case of a business group consisting of multiple affiliated companies, services for management and distribution of patents and brands on behalf of SMEs and venture companies that own such property, and transfer of university-launched patents to private companies through TLOs, by the end of FY 2003, the GOJ will take necessary legislative measures with the aim of developing ideal trustees that will be able to properly undertake management business in accordance with the characteristics of individual intellectual property rights, while sufficiently discussing ideal trustees that will undertake such business and desirable regulations under the Law on Management Business of Copyright and Neighboring Rights. The GOJ will allow companies in charge of management in business groups or TLOs, without restriction in principle, to enter the management trust business, while taking into account the entry needs of non-profit corporations engaging in the development of local companies such as Regional Advanced Technology Centers. Consideration should be given to ensure that sound business activities will not be disturbed due to the abuse of rights by trustees in charge of management business, and so on. Furthermore, with the aim of including the rights to obtain patents in the scope of intellectual property to be managed by trustees, the GOJ will consider how to place public announcements regarding trust for the rights to obtain patents and consider the connection between such trust business and the Lawyers Law and the Patent Attorneys Law.

(Financial Service Agency and Ministry of Economy, Trade and Industry)

2) Mobility (Financing) Trust

The Law on Securitization of Assets provides for the special purpose trust system and enables securitization of beneficial interests in trusts. In order to further promote securitization of intellectual property, the GOJ will amend the Trust Business Law by the end of FY 2003 to (i) include intellectual property in the scope of subjects in trust and (ii) allow entry of general purpose companies in the trust business. Consideration should be given to ensure that sound business activities and investors' interests will not be disturbed due to abuse of rights by trustees in charge of management business, and so on.

(Financial Service Agency and Ministry of Economy, Trade and Industry)

3) Other Financing Methods Using Intellectual Property

In FY 2003 and beyond, the GOJ will make efforts to diversify systems for financing with the use of intellectual property, including equity investments, project finance, and financing for SMEs.

(Financial Services Agency and Ministry of Economy, Trade and Industry)

2. Support for International Standardization Activities

(1) Reinforcing Strategic International Standardization Activities

1) Promoting R&D, obtaining intellectual property rights, and standardization in national R&D projects

i) With respect to R&D projects of which the results are expected to spread and have a broad influence on society in the future, the GOJ will commence work on a strategy or vision for the standardization at an early stage of such R&D projects in FY 2003.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

ii) With respect to national R&D projects to be conducted while taking standardization strategies into account, the GOJ will clearly include not only strategies for obtaining intellectual property rights but also strategies for standardization in the implementation plans for such R&D projects, and start securing financial sources for such standardization activities in FY 2004. The persons in charge of R&D projects should deal with these strategies responsibly and consult with experts who have knowledge on intellectual property and standardization, if necessary.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

iii) In FY 2003, universities and public research institutes will start considering whether they should take standardization into account when they carry out R&D, according to their independent judgment and with the use of experts in this field. The GOJ will encourage universities and public research institutes to take measures toward standardization, such as voluntarily participating in activities for international standardization of R&D results, while respecting their individual characteristics and independent judgment as well as aiming at diffusing R&D results.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

2) Reinforcing strategic international standardization activities through industry-academic-government cooperation

i) By the end of FY 2003, the GOJ will take measures to accelerate deliberations of domestic standards in order to strategically use domestic standards as a step toward international standards, with the aim of achieving international standardization in R&D projects by the national government or private companies. The GOJ will also reinforce the relationship between domestic standardization and international standardization.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs,

Posts and Telecommunications, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

ii) The GOJ will promote international standardization of technologies created in Japan in a consistent and expeditious manner. To this end, the GOJ will interact with international standardization organizations such as the International Standardization Organizations (ISO), the International Electrotechnical Commission (IEC) and the International Telecommunication Union (ITU) while considering the roles of individual organizations. Furthermore, in order to reinforce cooperation, in the information communication field in particular, between the Ministry of Public Management, Home Affairs, Posts and Telecommunications, the Ministry of Economy, Trade and Industry and other ministries and agencies concerned as well as cooperation between industries, universities and the government in FY 2003 and beyond, the GOJ will promote exchange of information and opinions in a more consistent manner than previously. The GOJ will also make efforts to promote appropriate cooperation in domestic deliberations on international standardization.

In order to ensure that the human resources at universities, public research institutes and companies will enthusiastically and consistently participate in international standardization activities and be able to take charge of major secretariat works in such activities, the GOJ will start reinforcing national strategic action in FY 2003.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

iii) The GOJ will raise awareness of the importance of standardization activities, in particular among the top executives of universities and companies. To this end, the GOJ will start to hold seminars regarding the standardization of activities for executives and researchers at universities and companies in FY 2003.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

iv) From the perspective of promoting strategic international standardization activities, the GOJ will start to take measures to reinforce cooperation with Asian countries, which have close economic relationships with Japan, through joint development of international standards.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

3) Creating a favorable environment for the development of human resources specializing in standardization

In FY 2003, the GOJ will start to establish environments to promote the development of human resources specializing in standardization at universities and other educational institutions. In this regard, the GOJ will encourage universities in particular to take voluntary measures to provide educational programs regarding standardization in courses for the development of human resources specializing in standardization that will directly lead to business, existing courses for the development of intellectual property experts, and Management of Technology (MOT) courses.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

4) Conducting research on standardization

In FY 2003, the GOJ will start to conduct research on standardization including analysis of the economic effects of international standardization on industrial competitiveness.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

(2) Promoting Standardization Activities in the Private Sector

In order to reduce the legal risks of forum standards, after consulting with companies about their specific needs, the GOJ will consider establishing and clarifying rules that will ensure the balance between standardization and competition policy by the end of FY 2003, while taking into account the trend of international discussions. The GOJ will also encourage companies to positively utilize the prior consultation services provided by the Japan Fair Trade Commission.

(Council for Science and Technology Policy, Japan Fair Trade Commission, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

(3) Supporting Patent Pools Contributing to Technical Standards

1) Supporting the formation of patent pools

i) The formation and operation of patent pools is likely to raise the issue of violation of the Antitrust Law. For this reason, in FY 2003 and beyond, the GOJ will consider the necessity to review the “Guidelines for Patent and Know-How Licensing Agreements under the Antimonopoly Act” prepared by the Japan Fair Trade Commission in 1999, while taking into account specific needs from companies, the trend of international discussions, and specific problems obtained from the prior consultation services by the Japan Fair Trade Commission.

(Japan Fair Trade Commission)

ii) In order for patent pools to function smoothly, the GOJ will consider systems and mechanisms with respect to measures against excessively high license fees, expert testimony on patents that

are essential for technical standards, and the methods to evaluate such essential patents, while taking into account the specific needs of companies and the trend of international discussions, with the aim of identifying the direction to undertake by the end of 2003.

More specifically, with respect to expert testimony on essential patents and smooth evaluation, the GOJ should consider measures for the effective use of human resources specializing in patent evaluation, for the purpose of promoting the use of alternative dispute resolution (ADR), and for ensuring that companies participating in patent pools will be able to easily consult with third party experts such as lawyers and patent attorneys for such testimony.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

2) Dealing with patents owners who do not participate in patent pools

It is important to consider (i) whether it is appropriate for the owner of an essential patent that is contributable to a technical standard to exercise his right against the person who manufactures products according to the standard and (ii) what measures should be taken toward such a patent owner. In this case, it is necessary to take into account various matters such as the existence of a patent pool and the type of such pool relating to such technical standard and the process that leads to the exercise of the patent right. In light of this, by the end of FY 2003, the GOJ will consider measures by the Patent Law (compulsory license) to amend or improve the Patent Policy for Standardization Organizations, as well as the possibility of applying the Antitrust Law in the case above, according to the specific needs of companies and the trend of international discussions, and draw a conclusion.

(Council for Science and Technology Policy, the Japan Fair Trade Commission, Ministry of Public Management, Home Affairs, Posts and Telecommunications, and Ministry of Economy, Trade and Industry)

3. Development of Environments for Intellectual Property Exploitation

(1) Reinforcing the Stability of Intellectual Property License Contracts

1) Protection of an intellectual property license in the case of the bankruptcy of a licensor

By the end of FY 2003, the GOJ will make necessary amendments to the Bankruptcy Law to protect a licensee by restricting the bankruptcy administrator's right of rescission in the case where a licensor in a license concerned contract regarding an intellectual property right has gone bankrupt, provided that the license is effective against a third party.

Taking the amendments to the Bankruptcy Law mentioned above into account, the GOJ will also consider reviewing the requirement that a license be effective against a third party under intellectual property laws, and draw a conclusion by the end of FY 2004, in terms of the possibility of protecting a license in the case where the license is not effective against a third party under the

existing laws (e.g. unregistered non-exclusive license) as well as in the case where the licensor has gone bankrupt or assigned his right to a third party.

(Ministry of Justice, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

2) Improving the legal stability of open-source software licenses

With the aim of promoting smooth development of businesses that use open-source software, by the end of FY 2003, the GOJ will design model license contracts by clarifying the scope and conditions of application of a license condition regarding open-source software, such as the General Public License (GPL), in order to improve the legal stability of such license.

(Ministry of Economy, Trade and Industry)

(2) Improving Accessibility to Intellectual Property-Related Information

In FY 2003 and beyond, the GOJ will continue to promote measures to improve accessibility to the JPO's Industrial Property Digital Library (IPDL) and establish a database of metadata on intellectual property rights and the details of the contents.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

(3) Promoting Businesses That Use Intellectual Property

For the purpose of assisting companies, universities, and public research institutes in conducting intellectual property management and intellectual property strategies, in FY 2003 and beyond, the GOJ will consider measures to promote intellectual property businesses such as patent information search, intellectual property evaluation, intellectual property accounting, patent mapping, intellectual property strategy planning, matching negotiation and licensing negotiation.

(Ministry of Economy, Trade and Industry)

(4) Introducing the system for registering the intention to grant a license (license of right)

With the aim of promoting exploitation and distribution of patents not in use, in FY 2003 and beyond, the GOJ will consider the possibility of introducing a system in which a patent holder may register his intention to grant a license for his patented invention to a third party.

(Ministry of Economy, Trade and Industry)

(5) Promoting the Smooth Use of Intellectual Property

- i) In order to promote the smooth use of intellectual property concerning upstream technology that is likely to be used for general purposes or few practical purposes (e.g. gene-related technology and research tools in the life science field), in FY 2003, the GOJ will conduct research

and study regarding the possibility of reviewing the Patent Law (e.g. limits of patent right for the purposes of experiment or research, compulsory license) and to take measures to ensure smooth conclusion of license contracts, taking into account specific needs from companies and the trend of international discussions. Furthermore, in FY 2003 and beyond, the GOJ will consider strict measures against violation of the Antitrust Law, if necessary, based on the results of such research.

(Japan Fair Trade Commission, the Health, Labor and Welfare Ministry, and Ministry of Economy, Trade and Industry)

ii) It is necessary to develop a system that enables the smooth distribution of R&D results as well as to properly manage such results. In light of this, in FY 2003 and beyond, the GOJ will continue its efforts to enhance the system for broadly collecting gene resources of plants, animals and microorganisms and relevant R&D results, evaluating the characteristics of and storing and providing such resources. Furthermore, in FY 2003 and beyond, the GOJ will also continue efforts to enhance the system for storing research materials that are important for the isolation and functional analysis of useful genes and for providing such materials to private companies.

(Ministry of Education, Culture, Sports, Science and Technology, Ministry of Agriculture, Forestry and Fisheries, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

(6) Stimulating SMEs and Venture Companies to Use Intellectual Property

i) By the end of FY 2003, the GOJ will consider and draw a conclusion about measures to provide financial support for SMEs and venture companies with respect to legal fees and intellectual property protection as well as the costs for filing patent applications.

(Ministry of Economy, Trade and Industry)

ii) In order to enable SMEs to easily use intellectual property owned by universities and public research institutes, in FY 2003 and beyond, the GOJ will continue to support the matching of SME needs with technical research at universities and institutes.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

iii) In order to support spin-off ventures that exploit intellectual property that is not in use, in FY 2003 and beyond, the GOJ will consider measures to smoothly supply intellectual property to such ventures.

(Ministry of Economy, Trade and Industry and Ministry of Justice)

iv) With the aim of enabling SME managers to increase their knowledge of intellectual property and use it for management strategies, in FY 2003 and beyond, the GOJ will enhance training programs regarding intellectual property at SME universities.

(Ministry of Economy, Trade and Industry)

v) In FY 2003 and beyond, the GOJ will develop environments by encouraging the diffusion of confidentiality agreements, so that SMEs and venture companies that own intellectual property will be able to smoothly engage in joint technical development projects with other companies including large companies, based on the Plan for Industrial Cluster.

(Ministry of Economy, Trade and Industry)

vi) In order for local governments to design independent measures for the creation, protection and exploitation of intellectual property while using regional characteristics, in FY 2003 and beyond, the GOJ will encourage them to establish intellectual property headquarters and to develop intellectual property policy outlines, and so on.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

(7) Promoting the Transnational Use of Intellectual Property through Tax Treaties

In FY 2003 and beyond, the GOJ will continue to make efforts for the early conclusion of the new Japan-US Tax Treaty for which a basic agreement has been made to grant immunity from taxation for royalties for intellectual property and other intangible property at a source country.

(Ministry of Finance)

Chapter 4 The Dramatic Expansion of Content Business

With the aim of becoming “an intellectual property-based nation,” it is absolutely necessary for Japan to dramatically expand businesses that utilize intellectual property contents; i.e. works such as movies, animated cartoons and game software, in which Japan holds the dominant position in the world.

Japan’s content business amounts to approximately 11 trillion yen for the entertainment field alone. Furthermore, since the content business involves various industrial fields, much is expected from the activation of this business as a key for the revitalization of the Japanese economy.

In order to achieve the dramatic expansion of the content business, it is necessary to first create and properly protect attractive contents and then to promote the broad distribution of such contents at home and abroad. Activation of the content creation cycle or “reproduction of culture” is an urgent task. At present, however, it cannot be said that sufficient measures have been taken toward the recent rapid trend of digitalization and networking. Besides, delay in protective measures is reflected in the particular practices in this industry as are a lack of human resources and the existence of pirated copies.

Under these circumstances, there is a pressing need to properly settle and solve these problems, and people engaged in the content business are required to make constant efforts toward making Japan “an intellectual property-based nation”. Accordingly, the GOJ will promote the following measures with concerted efforts from ministries and agencies concerned in an expeditious manner, based on the “Basic Guidelines for the Promotion of Culture and Art” under the Basic Law on the Promotion of Culture and Art.

1. Creating Attractive Contents

(1) Developing Human Resources

1) Supporting universities in designing educational courses to develop content producers

For the purpose of developing skilled human resources specializing in performing the “functions as producers” with fund-raising ability for content production, the legal knowledge required for dealing with overseas transactions and contracts, and business expertise, in FY 2004 and beyond, the GOJ will support humanities universities in designing educational programs.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

2) Supporting the establishment of institutions for creator development

i) With the aim of improving creators’ skills, in FY 2004 and beyond, the GOJ will support parties concerned with establishing advanced educational institutions for creator development. The GOJ will also assist such parties in inviting content creators who currently play an active role in this field, building cooperation with their foreign counterparts (e.g. University of Southern

California), and providing advanced education by exercising their own ingenuity, such as utilizing the internship system.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

ii) The GOJ will support such educational institutions in introducing image editing equipment, and in FY 2004 and beyond, will promote the use of cutting-edge studios among them for editing, processing and finishing films.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

3) Supporting promising creators in overseas training

In order to ensure that young creators with excellent talent and skills will be able to experience advanced trends abroad and improve their abilities, in FY 2003 and beyond, the GOJ will continue to support them in overseas training.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

4) Inviting first-class content creators and producers from abroad

For the purpose of increasing motivation and abilities in Japanese creators, in FY 2004 and beyond, the GOJ will invite “successful” first-class content creators and producers who play an active role in the world to seminars and symposiums.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

(2) Diversifying Financing Means and Providing Various Supports

1) Ensuring the smooth establishment of “movie funds” under the Law regarding Regulation of Business concerning Commodities Investment (“Commodity Fund Law”)

For the purpose of ensuring smooth financing for the production of movies and other contents, the GOJ will discuss relaxation of requirements for permission under the Commodity Fund Law while giving due consideration to the protection of investors, which is intended in the law, and will draw a conclusion and take necessary measures by the end of FY 2003.

(Financial Services Agency and Ministry of Economy, Trade and Industry)

2) Designing a framework of securitization of copyrights as assets in trust

For the purpose of reducing restrictions imposed by sponsors on content production and promoting securitization of copyrights, the GOJ will make amendments to the Trust Business Law by the end of FY 2003 in order to (i) include intellectual property in the scope of subjects in trust and (ii) allow entry of general purpose companies in the trust business.

(Financial Services Agency and Ministry of Economy, Trade and Industry)

3) Considering the establishment of the guarantee system

In order to support financing for content production, the GOJ will consider establishing a credit guarantee system (completion guarantee system) for loans provided for small and medium-sized content production companies, and will take necessary measures by the end of FY 2004.

(Ministry of Economy, Trade and Industry)

4) Enhancing financing for content production in the culture and art fields

For the purpose of promoting production of outstanding contents for which financing is not immediately expected from the private sector, the GOJ will consider including the low-interest loan business, investment business, and completion guarantee business for content production in the culture and art fields in the scope of businesses to be handled by the Development Bank of Japan in order to enable producers of such contents to utilize public finance for a certain period until they make sufficient profits, and the GOJ will draw a conclusion by the end of FY 2004.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

5) Developing the environment for promoting content production and investment in such production

In order to promote the production of contents such as movies and to promote investment in such production, the GOJ will consider developing necessary conditions, including tax measures in FY 2003 and beyond.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

(3) Developing a Favorable Environment

1) Improving the brand image of Japan by utilizing contents made in Japan

In order to improve the national image of Japan by utilizing contents made in Japan, in FY 2003 and beyond, the GOJ will promote various support for: creation of outstanding works as well as pioneering or experimental works under the “Basic Policy” in the Basic Law on Promotion of Culture and Art; the Tokyo International Film Festival; overseas public relations through international trade fairs and other events; efforts to implement comprehensive brand strategies featuring particular characters; and overseas publication of contents made in Japan through situations such as the Japan Foundation.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of

Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

2) Providing content creators with opportunities to present their works

In order to discover outstanding contents such as movies and game software and promote further development of young talented creators of such contents, in FY 2004 and beyond, the GOJ will provide such creators with opportunities to present their works and promote the holding of competitions, with the cooperation from content industries.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

3) Supporting the activities of film commissions to promote location shooting (non-profit organizations that are established by local governments)

i) In order to promote activities to promote location shooting for the production of movies, in FY 2003 and beyond, the GOJ will provide film commissions with necessary support for carrying out procedures to use appropriate roads and for integrating consultation services to obtain understanding and cooperation from local residents.

(Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

ii) In FY 2004 and beyond, the GOJ will encourage managers of buildings to cooperate with film commissions and will support the establishment of a database of buildings.

(Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

4) Enhancing the Film Center of the National Museum of Modern Art, Tokyo

For the purpose of further promoting environmental development for the production of film contents, in FY 2003 and beyond, the GOJ will consider improving the film center's functions to store and show film contents and giving the center additional functions such as developing human resources and supporting content production, drawing a conclusion by the end of FY 2004.

(Ministry of Education, Culture, Sports, Science and Technology)

5) Developing a favorable environment for the activities of performers

i) In order to develop environments where performers who do not belong to production firms will be able to engage in performing activities in a safe and secure manner, the GOJ will consider ideal accident/disaster compensation for performers, as well as the promotion of performance contracts in writing to be concluded in the absence of employment contracts, and will take necessary measures in FY 2004 and beyond.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Health, Labor and Welfare)

ii) The GOJ will discuss the means for diversifying the time in which children may give

performances and the ideal ways to protect performers' rights of portrait and will take necessary measures in FY 2004 and beyond.

(Ministry of Justice, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Health, Labor and Welfare and Ministry of Economy, Trade and Industry)

2. Protecting of Contents While Taking the “Intellectual Creation Cycle” into Account

(1) Establishing a Foundation to Return Profits to Right Holders

1) Providing substantial technical protection for right holders

a) Support for the development, diffusion and standardization of technologies such as digital watermarks, digital rights management (DRM), and charging systems

In order to promote practical application of technologies for substantially protecting rights and properly returning profits to right holders, in FY 2003 and beyond, the GOJ will continue to support the development and diffusion of low-cost and effective technical means for such protection through empirical experiments promoting standardization of the necessary metadata formats by FY 2004.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

b) Establishment of a comprehensive system for management and distribution of contents

In order for right holders to comprehensively manage and operate the process from distributing, certifying and charging contents to sharing profits and controlling illegal contents, in FY 2003 and beyond, the GOJ will continue to support the development through empirical experiments of a “content management and distribution system” that combines various technologies.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

2) Reinforcing legal protection

a) Right of lending of books

In light of the influence of rental bookstores on the market for newly published comic books, the parties concerned are discussing the abolition of Article 4bis of the Supplementary Provisions for the Copyright Law (transitional provision on right of lending of books). Following the conclusion of such discussion, the GOJ will submit a bill to the Diet to amend the Copyright Law if necessary in FY 2004 and beyond.

(Ministry of Education, Culture, Sports, Science and Technology)

b) Limitation on non-profit, free or unpaid showing of film contents that is exceptionally permitted without consent of right holders

In order to promote various uses of film contents while properly returning profits to right

holders of such contents, in FY 2004 and beyond, the GOJ will submit a bill to the Diet to amend the Copyright Law for permitting “showing of videos to the public” at only limited places such as schools.

(Ministry of Education, Culture, Sports, Science and Technology)

c) Compensation system for private recording

In light of the present situation in which various devices and media for digital audio or video recording are commercially used, such as personal computers with the function to copy music CDs and CDs with technically protective means, the parties concerned are discussing the review of the compensation system for private recording to make it more suitable for the actual situation. Following the conclusion of such discussion, the GOJ will amend the system if necessary in FY 2004 and beyond.

(Ministry of Education, Culture, Sports, Science and Technology)

d) Right of importing records

For the purpose of encouraging the conclusion of official license contracts with foreign companies as an effective measure against pirated copies, the parties concerned are discussing the appropriateness of the “right of importing records,” which is intended to prevent music CDs from being re-imported into Japan. Following the conclusion of such discussion, the GOJ will comprehensively consider this issue in light of consumer interests and will submit a bill to the Diet to amend the Copyright Law if necessary in FY 2004 and beyond.

(Ministry of Education, Culture, Sports, Science and Technology)

e) Term of protection under copyright

The term of protection for movies under copyright will be extended from 50 years to 70 years after the making the work public, and the parties concerned are expected to also discuss the ideal term of protection for works other than movies. Following the conclusion of such discussion, the GOJ will submit a bill to the Diet to amend the Copyright Law if necessary in FY 2004 and beyond.

(Ministry of Education, Culture, Sports, Science and Technology)

f) Desirable way of distributing used products such as game software

In light of the opinion that used products such as game software that are broadly traded by dealers have an impact on the market for new products immediately after release, the parties concerned are discussing a desirable way of returning profits to right holders, which will promote the creation of outstanding works. Following the conclusion of such discussion, the GOJ will consider this matter, while taking consumer interests into account, and take necessary measures in FY 2004 and beyond.

(Ministry of Education, Culture, Sports, Science and Technology)

g) “Right for edition” of publications

In light of the publisher's role in distributing creative works to the public, the parties concerned are discussing the appropriateness of granting publishers the right to claim remuneration for copies of publications. Following the conclusion of such discussion, the GOJ will submit a bill to the Diet to amend the Copyright Law if necessary in FY 2004 and beyond. (Ministry of Education, Culture, Sports, Science and Technology)

(2) Expanding the Scope of Legal protection against circumvention of Means of Technical Protection

For the purpose of assuring the effectiveness of technical protection means, the GOJ will consider establishing criminal punishments for the avoidance of access control and regulations on services for avoiding access control (e.g. publishing books about how to remove access control and providing the public with specific information such as serial numbers that can be used to remove or avoid technical protection means), while taking into account the impact of such regulations on the future development of access control technology, and will submit a bill to the Diet if necessary in FY 2004 and beyond.

(Ministry of Justice, Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

(3) Promoting the International Harmonization of Copyright Systems

See Chapter 2: "Protection Field: I. Strengthening of the Protection of Intellectual Property"

(4) Reinforcing the Measures against Pirated Copies

See Chapter 2: "Protection Field II. Measures Against Counterfeits and Pirated Copies"

(5) Enhancing Education and Raising Awareness on Copyrights

See Chapter 5: "Development of Human Resources and Improvement of Public Awareness."

(6) Simplifying the Provisions of the Copyright Law

Due to the rapid diffusion of means to produce and use creative works along with the progress of "information technology," including the wide use of personal computers and the Internet, everybody requires knowledge of copyrights. Accordingly, in order to make the provisions of the Copyright Law more easily understandable to the public, the GOJ will consider the possibility of simplifying the style of the provisions separately from the possibility of expanding or narrowing the scope of right, through "integration of rights" and "review of the provisions on contract," and will draw a conclusion by the end of FY 2005.

(Ministry of Education, Culture, Sports, Science and Technology)

3. Promoting Distribution

(1) Expanding Markets through Establishing New Distribution Channels

1) Supporting Entry into Overseas Markets

i) In FY 2003 and beyond, the GOJ will continue to support the placing of Japanese contents on overseas markets through expanding the functions of the Organization for the Promotion of the Overseas Distribution of Contents.

ii) In FY 2004 and beyond, by carrying out research on overseas markets and developing manuals on various legal provisions and regulations as well as case laws that should be noted when companies intend to start business abroad, the GOJ will provide necessary information on industries related to contents such as broadcast programs, animated cartoons, music and game software.. The GOJ will also provide support for participating in various exhibitions and for obtaining business inquiries through local coordinators to promote the export of contents.

iii) With respect to movies, in FY 2004 and beyond, the GOJ will provide assistance for Japanese contents to be launched into overseas markets, by granting subsidies for the expenses necessary for showing works in overseas film festivals (e.g. expenses for preparing subtitles and reprinting films), establishing Japanese exhibition booths at such festivals, and reforming the Tokyo International Film Festival into an international content market.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

2) Developing and distributing contents that are suitable for new distribution media

In light of the necessity to develop contents that are suitable for new distribution media such as broadband networks and digital TV, the GOJ will promote voluntary development by businesses. Furthermore, the GOJ will carry out development of technology and empirical experiments for a copyright control system and mass content distribution as well as development of technology for the distribution of broadband contents, including appropriate content distribution technology for private use, with the aim of putting such technology into practical use by the end of FY 2005.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

3) Promoting the development and distribution of contents on cultural heritage

In FY 2003 and beyond, the GOJ will promote the “Plan for Online Access to Cultural Heritage” in order to encourage the positive production of tangible and intangible cultural heritage, which is a precious national asset, available to the public with the use of information and communication technology, and will take measures to develop systems to promote the utilization of

such heritage.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Education, Culture, Sports, Science and Technology)

4) Carrying out the development and empirical experiments for intermediation systems with the use of digital technology

In order to establish, with the use of digital imaging technology, new local channels for showing contents in regions where there are not sufficient facilities for such display, the GOJ will conduct development and empirical experiments of intermediate systems between right holders for contents and facilities for showing contents including movie theaters, and will take measures to put such systems into practical use by FY 2005.

(Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

5) Forming content distribution markets

In order for content creators to select from various distribution channels to provide their own contents, the GOJ will conduct research on advanced overseas examples, where distribution markets are formed by parties with the “ability to discern” and who function as brokers and price makers for contents.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

6) Carrying out R&D on a “distribution system” in which contracts can be concluded directly on the network

By the end of FY 2003, the GOJ will carry out R&D on a “virtual market for creative works,” in which content creators can conclude contracts directly with network users, and will promote the distribution of contents that have been left unused.

(Ministry of Education, Culture, Sports, Science and Technology)

(2) Developing the Environment for Promoting the Distribution of Contents

1) Developing systems for the distribution of contents

i) In order to ensure that parties who use rights related to contents will be able to search for information in an expeditious and simple way, by the end of FY 2004, the GOJ will promote the establishment of a database on the rights and details of image contents, in particular, for which various rights are complexly involved. Furthermore, in FY 2003 and beyond, the GOJ will support efforts to establish the central control of movies and other image materials by providing the necessary information.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry,

and other ministries and agencies concerned)

ii) In FY 2003 and beyond, the GOJ will provide support for establishing archives of useful digital information, including web information that exists in a form in which it is easily scattered and lost, and for promoting the use of such information.

(Ministry of Public Management, Home Affairs, Posts and Telecommunication)

iii) In order to realize an environment, in which right holders and owners/managers of contents will be able to provide contents on broadband networks without anxiety and consumers will be able to use such contents easily, the GOJ will carry out empirical experiments in FY 2003 and promote standardization of functions of “safe dedicated terminals” (terminal devices).

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

2) Promoting the development and diffusion of systems for using contents without anxiety

In order to ensure that people who intend to use contents will be able to identify rights related to the contents promptly and precisely and use them without anxiety, the GOJ will take the following measures.

i) With respect to the system where right holders “declare their intentions” in advance about the scope of contents to be available to users, the GOJ will make efforts to diffuse a “free use mark” that indicates such intention. Furthermore, by FY 2004, the GOJ will develop a standard “system of declaration of intention” by which right holders will be able to indicate their various intentions in details.

(Ministry of Education, Culture, Sports, Science and Technology)

ii) In order for users to easily choose safe contents, the GOJ will consider designing a “content safety mark” and draw a conclusion by FY 2005.

(Ministry of Public Management, Home Affairs, Posts and Telecommunication)

3) Promoting the establishment of consensus between parties concerned with the utilization of new distribution channels

i) The GOJ will provide support so that a conclusion will be drawn by FY 2004 with respect to the current coordination for the handling of rights between right holders and users, regarding the utilization of contents via new distribution channels including the Internet.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

ii) In order to avoid business operations through new distribution channels from being disturbed, the GOJ will consider procedures for settling disputes in cases in which consensus has not been not built regarding the details of contracts. More specifically, the GOJ will consider flexible combinations of various means, including the establishment of places of discussion/coordination

and the mediation and arbitration systems, and will draw a conclusion by the end of FY 2004.
(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Technology and Ministry of Economy, Trade and Industry)

4) Supporting the development of business models

In light of the fact that the diffusion rate of the Internet has reached almost 100% for companies and exceeded 80% for households, and for the purpose of activating the “creation cycle” more dynamically, the GOJ will support efforts in industries to develop new business models that combine technology for protecting and managing contents with systems for concluding contracts in network environments. Furthermore, in FY 2003 and beyond, the GOJ will provide support for industries concerned so that they will continue to discuss “model contracts” to be used to promote the distribution of image contents and finish discussion by the end of FY 2004.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

5) Ensuring proper transactions and carrying out structural reforms in the content industry

i) Taking into account the particular practices and distribution forms in the content industry, the GOJ will review the guidelines for transactions on services by the end of FY 2003 and will strictly apply provisions of the Antitrust Law and the Act against Delay in Payment of Subcontract Proceeds to subcontractors in case of violations of these laws.

(Japan Fair Trade Commission)

ii) In FY 2003 and beyond, the GOJ will continue to promote complete compliance of broadcasting businesses with their “self-imposed regulations” for subcontracts for content production.

(Ministry of Public Management, Home Affairs, Posts and Telecommunication)

iii) In order to provide opportunities to show a diversity of movies, in FY 2004 and beyond, the GOJ will take the following measures: provide support for movie theaters and other businesses that show movies; facilitating the introduction of the simple POS system for managing ticket agency services; and lending digital projectors to encourage movie shows in facilities other than movie theaters such as public cultural facilities and community halls.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

6) Promoting the effective use of existing contents

i) By the end of FY 2003, the GOJ will establish a place for discussion and encourage discussion among the parties concerned, including broadcasting associations, performers associations, and record producers associations, toward building a framework for promoting the conclusion of contracts on the secondary use of broadcast programs that have already been aired.

(Ministry of Education, Culture, Sports, Science and Technology)

ii) In FY 2003 and beyond, the GOJ will also continue to encourage discussion at workshops among existing associations concerned with building the framework for promoting the conclusion of contracts on the secondary use of broadcast programs that have already been aired. (Ministry of Public Management, Home Affairs, Posts and Telecommunication)

iii) For the purpose of promoting the effective secondary use of existing educational programs, in FY 2003 and beyond, the GOJ will identify the demand for and actual use of such programs in the education fields, while taking the utilization of NPOs into account, and consider how businesses should retain their programs. Accordingly, the GOJ will take necessary measures by FY 2005. (Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Education, Culture, Sports, Science and Technology)

iv) In FY 2004 and beyond, the GOJ will promote the creation of common rules pertaining to the contents in each field, which are sponsored by entities such as national and local governments, so that such contents will be available to the general public. (Ministries and agencies concerned)

7) Promoting the use of contents in local areas

i) In order to make useful contents which exist in local areas available to the general public, in FY 2003 and beyond, the GOJ will promote efforts to establish intellectual property headquarters in local governments. (Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

ii) While promoting the enhancement of digital archives of traditions and cultures and the use of digital networks in local areas, in FY 2004 and beyond, the GOJ will verify the effectiveness of aggressive measures to produce and distribute digital contents in local areas and will promote the use of know-how throughout Japan. (Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

4. Implementation of the Measures

For the purpose of promptly carrying out the measures for the development of the content business, the GOJ will conduct research and study on important matters concerning the development of the content business in general including overall amendments to content-related laws. In FY 2004 and beyond, the ministries and agencies concerned will design and immediately implement measures with respect to the matters for which conclusions are drawn in such research and study.

(Financial Services Agency, Ministry of Public Management, Home Affairs, Posts and

Telecommunications, Ministry of Justice, Ministry of Finance, Ministry of Education, Culture, Sports, Science, Technology and Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

Chapter 5 Developing Human Resources and Improving Public Awareness

It is people that support all forms of a system. Thus, in order to achieve a “an intellectual property-based nation,” it is an urgent task not only to develop those who will lead in the creation of intellectual property, but also to increase and develop experts who will provide advanced, specialized services, such as acquiring rights for the created intellectual property, settling disputes, and concluding intellectual property licensing agreements.

Therefore, the GOJ will implement the measures below to increase the number of attorneys at law, patent agents, and other experts who are well-established in intellectual property and have international competitiveness. In addition, with the objective of developing highly competent intellectual property experts, the GOJ will promote intellectual property education that is rich both in terms of quality and quantity, and advance development of “human resources with combined areas of expertise,” who are well-acquainted with knowledge of multiple fields, such as law, technology, and business management. Furthermore, the GOJ will aim to develop a large number of scholars and researchers who are well versed in intellectual property affairs in order to promote intellectual property education.

In addition, the GOJ will respectively provide detailed education on intellectual property to researchers, students at elementary, junior and high schools, university students, and adults, in order to increase public understanding of intellectual property.

1. Promoting the development of human resources related to intellectual property and education/research/training on intellectual property

(1) Developing experts

1) Dramatically increasing the number and raising the quality of attorneys at law and patent agents in order to develop attorneys at law and patent agents who are well versed in intellectual property and have international competitiveness

i) In FY 2003 and beyond, the GOJ will increase the number of attorneys at law who are well versed in intellectual property and in the process dramatically increase the overall number of legal professionals.

(Office for Promotion of Justice System Reform and Ministry of Justice)

ii) With regard to the current system in which patent agents with the authority can act as counsels in intellectual property infringement lawsuits (limited to cases in which a attorney at law serves as a representative in the litigation), the GOJ will consider active utilization of patent agents, including the possibility of allowing them to independently undertake the trials of specific intellectual property right infringement lawsuits in FY 2003 and beyond. This will be done by also giving consideration to the actual operation status of the system and the actual activities of attorneys at law and patent agents.

(Office for Promotion of Justice System Reform, Ministry of Justice and Ministry of Economy, Trade and Industry)

iii) In FY 2003 and beyond, the GOJ will enhance the quantity and quality of patent agents by considering a desirable patent attorney examination and devising measures for guaranteeing the practical abilities of those who passed the examination, while also taking into account the

relationship with the professional schools specializing in intellectual property and so forth.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

iv) In FY 2003 and beyond, the GOJ will consider desirable training programs for patent agents and patent agents acting as counsels, which utilize professional schools specializing in intellectual property and so forth in order to develop many patent agents with high expertise and international capabilities.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

v) In FY 2003 and beyond, the GOJ will survey the relationship between the attorney-client privilege in the United States and the operations of Japanese patent agents with the cooperation of the Japan Patent Attorneys Association (JPAA), and it will consider future measures including the possibility of responding to situations by related laws.

(Ministry of Economy, Trade and Industry)

2) Making intellectual property laws optional subjects for the national bar examination

By the end of FY 2005, the GOJ will review the optional subjects in the national bar examination by considering the importance of intellectual property laws and the status of availability of subjects related to intellectual property laws at law schools.

(Office for Promotion of Justice System Reform and Ministry of Justice)

3) Achieving linkage between education at law schools and the national bar examination

In order to develop legal professionals who are well versed in intellectual property in law schools, the GOJ will continue to secure organic linkage between the educational curriculum at law schools and the national bar examination in FY 2003 and beyond.

(Office for Promotion of Justice System Reform, Ministry of Justice and Ministry of Education, Culture, Sports, Science and Technology)

(2) Promoting the establishment of graduate courses, undergraduate courses and subjects on intellectual property and making intellectual property education attractive

1) Improving the environment for intellectual property education, such as establishing an evening law school

i) In FY 2003 and beyond, the GOJ will encourage schools' efforts to facilitate adult education and the participation of practitioners as instructors, including the establishment of evening law graduate school courses and other evening classes at law schools, professional schools of management of technology (MOT), professional schools specializing in intellectual property, and undergraduate departments and faculties on intellectual property.

(Ministry of Education, Culture, Sports, Science and Technology)

ii) In FY 2003 and beyond, the GOJ will consider and implement necessary measures for reducing the economic burden on students at law schools, professional schools specializing in intellectual property, and professional schools of MOT.

(Ministry of Education, Culture, Sports, Science and Technology and other ministries and agencies concerned)

iii) In FY 2003 and beyond, the GOJ will encourage schools to introduce the joint-degree program in order to increase the number of people with expertise in both humanities and sciences, such as technology, law and business management, and people who have comprehensive understanding of the respective courses of law schools, professional schools specializing in intellectual property, and professional schools of MOT.

(Ministry of Education, Culture, Sports, Science and Technology)

iv) In FY 2003 and beyond, the GOJ will encourage active utilization of people in private companies, who are well versed in the intellectual property field and who have rich knowledge and experience of R&D, business management, and business startups, as instructors at law- schools, professional schools specializing in intellectual property, professional schools of MOT, and undergraduate departments and faculties on intellectual property.

(Council for Science and Technology Policy, Cabinet Office and Ministry of Education, Culture, Sports, Science and Technology)

2) Promoting intellectual property education in all levels of education, including law schools, professional schools specializing in intellectual property, and professional schools of MOT

a) Promoting intellectual education at law schools

i) In FY 2004 and beyond, the GOJ will choose full-time instructors at law schools with a focus on practical experience, not only educational experience in law faculty.

(Ministry of Education, Culture, Sports, Science and Technology)

ii) In FY 2003 and beyond, with regard to review of the establishment of universities, the GOJ will respect the original and creative subject varieties and credit requirements proposed by individual universities, including the schools of science and engineering, in order to enable the establishment of law schools specializing in intellectual property.

(Ministry of Education, Culture, Sports, Science and Technology)

iii) In FY 2004 and beyond, the GOJ will encourage the autonomous efforts of the respective law schools, such as giving consideration to those with bachelor of science degrees in the entrance examination in their screening policy or allowing their students to take technology-related subjects at other graduate schools.

(Office for Promotion of Justice System Reform and Ministry of Education, Culture, Sports, Science and Technology)

iv) The GOJ will encourage law schools to conduct autonomous efforts to upgrade the education of intellectual property experts by also referring to the U.S. LLM (Master of Laws courses).

(Ministry of Education, Culture, Sports, Science and Technology)

b) Promoting MOT programs

i) In FY 2003 and beyond, the GOJ will encourage the autonomous efforts of schools providing MOT programs to conduct practical education combining humanities and sciences by principally targeting graduates from universities of technologies as well as engineers, in order to develop experts who can strategically manage the commercialization of science and technology and who have international capabilities.

(Ministry of Education, Culture, Sports, Science and Technology)

ii) In FY 2003 and beyond, with the objective of enriching the MOT programs in universities, the GOJ will support development of MOT educational programs in universities. In doing so, it will encourage the autonomous efforts of the universities to include content related to technological standardization and intellectual property management in the program.

(Ministry of Economy, Trade and Industry)

c) Promoting intellectual property education in professional schools specializing in intellectual property and so forth

In FY 2004 and beyond, the GOJ will encourage the autonomous efforts of universities to establish professional schools specializing in intellectual property, which develop intellectual property experts by providing education that covers practical affairs, business, intellectual property policies, and international aspects not only directed at those becoming attorneys at law or patent agents, but also at those who want to become experts engaged in intellectual property affairs.

(Ministry of Education, Culture, Sports, Science and Technology)

d) Promoting intellectual property education in universities

In FY 2003 and beyond, the GOJ will promote high-quality intellectual property education at undergraduate department/faculty levels in order to provide knowledge of intellectual property not only to highly professional people such as attorneys at law or patent agents, but also to people engaged in intellectual property affairs and researchers in companies and universities. To this end, it will consider the possibility of providing incentives to university entrants and a desirable index for evaluating the capabilities of intellectual property professionals.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

(3) Establishing the groundwork for intellectual property education and research

1) Promoting intellectual property education for students at elementary, junior and high schools and providing training to teachers

In FY 2003 and beyond, with the objective of developing intellectual property awareness and making children realize from the early stages of elementary school the importance of respecting intellectual property rights, such as patent rights and copyrights, the GOJ will formulate intellectual property educational programs on patent rights and copyrights. In addition, in order to support intellectual property education in schools, the GOJ will implement educational projects related to intellectual property, such as creating and providing educational materials for elementary and secondary schools, providing training to teachers and educational guidebooks, and conducting R&D on concrete methods of intellectual property education in schools.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

2) Enhancing international research/training functions

In FY 2003 and beyond, the GOJ will continue to make efforts to enhance the intellectual property research/training functions under appropriate role-sharing between the public and private sectors in order to promote the development of human resources related to intellectual property in Asia and to increase the international competitiveness of Japanese practitioners.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

3) Promoting comprehensive and interdisciplinary research on intellectual property

Given that the information technology (IT) industry and the environment-related industry have developed with the progress of IT and environmental studies, the GOJ will promote comprehensive and interdisciplinary research on intellectual property based on various approaches including law, technology, and economics in FY 2003 and beyond.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

4) Utilizing intellectual property-related statistics

In addition to promoting research under (3) above, in FY 2003 and beyond, the GOJ will broadly utilize the intellectual property-related statistics, which serve as the basis for planning and proposing intellectual property policies, so as to develop policies that meet diverse user needs.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

2. Increasing public awareness of intellectual property

(1) Unifying the use of “*chiteki zaisanken* (intellectual property rights)” and “*sangyo zaisanken* (industrial property rights)”

Compared to laws that provide for ownership of tangible articles, intellectual property laws deal specifically with information and are therefore coming to require independent legal systems. In

order to disseminate this fact among the public, the GOJ will make every effort to replace the term *chiteki shoyuken* (literally meaning “intellectual ownership rights”) that is used in laws and treaties with the terms *chiteki zaisan* (intellectual property) and *chiteki zaisanken* (intellectual property rights). To achieve this, it will amend the Japanese translations of as many relevant laws, treaties and agreements as possible in FY 2003 and beyond. Furthermore, with regard to treaties and agreements originally written in Japanese, the GOJ will replace the terms as much as possible when there are opportunities to amend those treaties and agreements.

In addition, the GOJ will use the terms *sangyo zaisan* (“industrial property” with “industry” in a broad sense)” and *sangyo zaisanken* (industrial property rights) instead of the conventional *kogyo shoyuken* (literally meaning “industrial ownership rights” with “industry” in a narrower sense)” as much as possible in FY 2003 and beyond.

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

(2) Reinforcement of awareness activities

i) In FY 2003 and beyond, the GOJ will continue to enrich diffusion and awareness activities aimed at students at elementary, junior and high schools, university students, adults in general, and practitioners by holding intellectual property seminars suitable for the respective attributes, also using intellectual property experts in the private sector, and by conducting campaigns on a slogan chosen from public ideas.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

ii) In FY 2003 and beyond, the GOJ will carry out projects including the holding of copyright workshops (for the general public, officials in charge of administrative affairs in prefectural governments, and library staff) and the establishment of a system for answering various inquiries from diverse work fronts via the Internet.

(Ministry of Education, Culture, Sports, Science and Technology)

Glossary

In-camera proceedings	Trial proceedings that are carried out behind closed doors
Equity	Shareholder's interest (owner's capital) for which a shareholder is entitled to a dividend according to the profits over a certain period of time; the financial value of a property
Open software license	Licensing of open-source software, of which the source codes (program contents that are readable) are disclosed and made available to free reproduction and modification
Grace period	A period in
Joint degree	Allowing the obtainment of two academic degrees at the same time
Spin-off venture	Venture company that is established by a person who has left his company and started his business independently based on his own R&D results
Discovery	The U.S. procedures for the opposing parties of a civil action to collect and require disclosure of information from each other out of court
Bayh-Dole system	System for attributing intellectual property rights resulting from R&D funded by a national government to the entities that received the fund
Patent pool	Agreement between two or more patent owners to license one or more of their patents to one another or third parties
Film commission	Non-profit organization that is established under the leadership of a local government to promote location shooting
Project finance	Financing method for repaying the principal and interest of loans with profits from the operation of finished facilities
ADR	Alternative Dispute Resolution
APEC	Asia-Pacific Economic Cooperation Conference
Attorney-client privilege	Right to confidentiality between an attorney and client in the United States
DRM	Digital Rights Management
EG cell	Embryonic germ cell
EPA	Economic Partnership Agreement
ES cell	Embryonic stem cell
FTA	Free Trade Agreement
IEC	International Electrotechnical Commission
IPDL	JPO's Industrial Property Digital Library
ISO	International Standardization Organization
ITU	International Telecommunication Union
License of right	System for registering the intention of licensing
MOT	Management of Technology
NIH	National Institute of Health
PCT	Patent Cooperation Treaty
RILO	Regional Information Liaison Office
TLO	Technology Licensing Organization
TPRM	Trade Policy Review Mechanism
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
UPOV	Union For The Protection of New Varieties of Plants
WCO	World Customs Organization
WCT	World Intellectual Property Organization Copyright Treaty
WIPO	World Intellectual Property Organization
WPPT	The World Intellectual Property Organization Phonograms and Performances Treaty
WTO	World Trade Organization

