



EU-JAPAN CENTRE FOR INDUSTRIAL COOPERATION 日欧産業協力センター

Seminar Report

Recent Developments in Intellectual Property in the EU and Japan Tokyo 6 October 2015

Having in mind the importance of the topic for business development and technological cooperation, the EU-Japan Centre and Sonderhoff & Einsel Law and Patent Office co-organized a seminar on intellectual property on October 6, 2015 in Tokyo (agenda annexed). The Seminar enjoyed a large audience (more than 130 people) of legal professionals, which in itself proves the importance and the interest in the topic.

The seminar consisted of two sessions. The first session was on the recent developments of intellectual property in Europe and Japan, covering a wide variety of topics including European Unitary Patent, revision of Japan's patent law and the standard essential patent and competition law. Mr. Gergely Sulyok of EU Delegation gave a brief overview on the current situation of European Unitary Patent system. As for the timing of the enforcement of the new system, Mr. Sulyok indicated sometime between 2016 and 2017 was realistic.

Mr. Felix-Reinhard Einsel of Sonderhoff & Einsel explained that in recent years, European companies tend to place more importance on China than Japan in terms of the number of patent applications submitted. According to Mr. Einsel, European companies became more cost conscious and selective in patent application in order to cope with an economic slowdown after the bankruptcy of the Lehman Brothers in 2008. He emphasized that because of lingering dissatisfaction of EU based companies towards the Japanese examination procedure, there is the need for Japan to become more "pro-patent" to attract more interest from European companies, which eventually would lead to more investment into Japan.

Mr. Yutaka Nakamura of NTT Docomo explained his company's information technology strategy and the importance of intellectual property protection. He explained from a patent holder's view on the "FRAND" (Fair, Reasonable and Non-discriminatory) condition for transferring standard essential patents. Mr. Nakamura emphasized the importance of Europe in setting technological standards and guidelines.

Dr. Gunnar Paesold of Sonderhoff & Einsel (Beijing) explained the important points of European Unitary Patent System from an European patent lawyer's view. He stressed the necessity of thorough preparation, prior to the new system coming into force. He explained in detail what to consider when patent holders choose to "opt out" from the Unitary System.

Discussions in the second session were focused on the importance of trade secrets protection. Before the panel discussion, two Japanese government officials explained the trade secrets protection system in Japan. Mr. Zensho Imari of the Ministry of Economy, Trade and Industry (METI) explained the purpose and content of recent revision of the Unfair Competition Prevention Act which regulates trade secrets infringement. In order to increase deterrents against infringements, amendments were made to both the civil and the criminal articles. Mr. Imari indicated that the revision will come into force around next January.*

*The Japanese government announced on October 9 that the revision would come into force on January 1, 2016.

Mr. Toshinao Yamazaki of Japan Patent Office (JPO) explained the governmental support program for protecting trade secrets and establishing IP strategy. The JPO introduced this program in February 2015 in order to cope with sophistication of company strategies to protect their intellectual property, using both patent (disclosure) and trade secrets (confidentiality). One of the main services provided is the free consultation. It is used not only by small and medium sized enterprises (SMEs) but also larger companies whose experience in intellectual property right protection is rather limited.

A panel discussion proceeded with moderation by Dr. Luca Escoffier, Project Manager for the Japan Technology Transfer Helpdesk of the EU-Japan Centre for Industrial Cooperation.

One of the main topics of the panel discussion was an EU draft Trade Secrets Directive which the European Commission proposed in November 2013. Dr. Paesold indicated that some parts of the directive were regarded as controversial, e.g. relation between trade secrets protection and public interest, including freedom of speech. Mr. Einsel pointed out that unlike in Japan, there was no unified protection of trade secrets on the EU level until now. Therefore, enterprises were obliged to seek protection on a country basis, which resulted in higher cost. Mr. Einsel indicated that if an EU wide protection was to be granted, companies would welcome such developments.

Mr. Nakamura stated that, due to the extremely fast technological developments in the ICT (Information and Communication Technology) industry, technologies can easily go “out of fashion” in a short period of time. Therefore, it is essential to judge which technology should be protected as trade secrets.

Following the seminar, some participants from Japanese companies expressed their hope that an intellectual property rights protection system at the EU level should be accomplished not only for patents, but for trade secrets as well.

Prepared by Toshiro Fukura, Manager, Policy Seminars and Analysis



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Programme

14:00-14:05 Opening Remarks by Mr. Silviu Jora, General Manager, EU-Japan Centre for Industrial Cooperation

<Session 1: Presentations on Recent Developments in Intellectual Property>

- 14:05-14:25 “European Unitary Patent – Recent Developments”
Speaker: Mr. Gergely Sulyok, First Secretary, Trade Section, Delegation of the European Union to Japan
- 14:25-14:55 “Recent Changes of Japanese Patent Law and Practice from a European Point of View”
Speaker: Mr. Felix-Reinhard Einsel, Managing Partner, Sonderhoff & Einsel Law and Patent Office
- 14:55-15:25 “NTT Docomo’s IT Strategy and Importance of EU Patents”
Speaker: Mr. Yutaka Nakamura, General Counsel and Managing Director of Legal Department (Admitted in New York), NTT DOCOMO, INC.
- 15:25-15:55 “European Unitary Patent System: A Unitary System? Opt-Out or Not”
Speaker: Dr. Gunnar Paesold, European Patent Attorney, Sonderhoff & Einsel (Beijing) Intellectual Property Agency
- 15:55-16:05 Questions and Answers
- 16:05-16:20 Coffee Break

<Session 2: “Trade Secrets”>

- 16:20-16:30 “Trade Secret Protection in Japan”
Speaker: Mr. Zensho Imari, Deputy Director, Intellectual Property Policy Office, Economic and Industrial Policy Bureau, Ministry of Economy, Trade and Industry
- 16:30-16:40 “Support for Protecting Trade Secrets and Establishing IP Strategy”
Speaker: Mr. Toshinao Yamazaki, Deputy Director, Policy Planning and Research Division, General Affairs Department, Japan Patent Office
- 16:40-17:40 Panel Discussion on “Recent Trends in Trade Secrets” followed by Questions and Answers
Moderator: Mr. Luca Escoffier, Japan Technology Transfer Helpdesk Project Manager, EU-Japan Centre for Industrial Cooperation
- Panelists: ■ Mr. Zensho Imari, Deputy Director, Intellectual Property Policy Office, Economic and Industrial Policy Bureau, Ministry of Economy, Trade and Industry
- Mr. Toshinao Yamazaki, Deputy Director, Policy Planning and Research Division, General Affairs Department, Japan Patent Office
- Mr. Felix-Reinhard Einsel, Managing Partner, Sonderhoff & Einsel Law and Patent Office
- Mr. Yutaka Nakamura, General Counsel and Managing Director of Legal Department (Admitted in New York), NTT DOCOMO, INC.
- Dr. Gunnar Paesold, European Patent Attorney, Sonderhoff & Einsel (Beijing) Intellectual Property Agency
- 17:40-17:50 Closing Remarks by Mr. Toshiro Fukura, Manager, Policy Analysis & Seminars, EU-Japan Centre for Industrial Cooperation
- 18:00-19:00 Networking Reception