

JAPAN ECONOMIC CURRENTS

A COMMENTARY ON ECONOMIC AND BUSINESS TRENDS

Speaking About Japan's Future

A December 6, 2004 discussion between Japan's Prime Minister Junichiro Koizumi and Nippon Keidanren Chairman Hiroshi Okuda, and moderated by Fumi Fujisawa, Sophia Bank



Japan's Prime Minister
Junichiro Koizumi



Nippon Keidanren
Chairman Hiroshi Okuda

Japan's Future

Fujisawa: Faced with Japan's depressed birth rate and its aging society, and seen through the paradigm of intensifying global competition, what are the prospects for Japan's future?

Koizumi: In Japan there exists always a tendency toward pessimism, with everybody making judgments within a context that things are not going well. When I became Prime Minister in April 2001, people said the business climate is going to get even worse. But these dire predictions were not realized: Japan is finally regaining

confidence. If you try, you will succeed. Large corporations have created a system in which performance will be enhanced through their own efforts and with the cooperation of medium and small companies.

Take the example of agriculture. Farmers focus on expanding exports, not simply to protect themselves against imports. Formerly unprofitable apple growers in Aomori Prefecture are now producing apples that sell in China for more than ¥2,000 each. Chinese yams from Hokkaido and rice from Shimane Prefecture have been exported to Taiwan, while cedar from Miyazaki Prefecture is being sold in China in response to a building boom there. Be it agricultural products or industrial products, high quality items can be

sold in the world market even if they are expensive. There are things that can be made only by Japanese, so we need to face the new era with confidence.

Okuda: I dread to think what Japan's economy would look like had Prime Minister Koizumi not instituted necessary reforms. The situation is subject to constant change, so no matter what, we must go forward in instituting reform, even if only a step or two at a time. Sometimes change can only succeed when things are going well. It would be too late to privatize the postal service once it has broken down. The fact that such great advances have been made in structural reform is probably due to the fact that the Prime Minister seized the popular mandate, so we are in full support of the Koizumi administration.

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by Bruce A. Lehman, Esq., Akin
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Speaking About Japan's Future

Economics and politics go side by side like the wheels of a vehicle. In my opinion, the ideal situation is one in which politics establish a framework within which the economy can run smoothly. Japan should strive to be a nation possessed of virtue and worthy of international trust. In order to accomplish this, we must first of all deal with the issue of a depressed birthrate. However, even if the birthrate can be increased, the impact will not be visible for 20 to 30 years. In the meantime, to provide a labor force, we should ask women and senior citizens to take jobs. Should even that not prove sufficient, we may have to accept foreigners. Doing so would do more than simply supplementing the shortage in the labor force; in order to make Japanese society more heterogeneous, we need to take advantage of their wisdom and strength. Otherwise, I will be much concerned about Japan's future 20 or 50 years from today.

Koizumi: Every effort should be made so that politics and economics work together to enrich the life of the people. As in the case of East and West Germany, as well as of North and South Korea, when political systems are different, economies differ drastically. In my opinion, it is the role of politics to create an environment and/or a

system in which the economy and the public can freely demonstrate creativity and ingenuity.

People have said: "Koizumi has done nothing. It is the corporations that have made things happen." As a matter of fact, I have done nothing that was unnecessary. Some people have urged, "Increase public works, even if you have to borrow the money." However, in view of today's financial situation, belt-tightening is the order of the day. Looking at the state of the world, I feel it essential that we provide an environment in which the corporations and the people actively engaged will find it easy to take on leadership roles, not losing out to those in other countries.

Japan's Role in the International Arena

Fujisawa: Prime Minister, at the United Nations General Session, you expressed Japan's desire to become a permanent member of the Security Council. What function should Japan fulfill?

Koizumi: In international society, the Japanese are held in high regard. Japanese citizens are known to keep their word. Japanese companies deliver products on time and make repairs as required. This feeling of trust is an asset of Japan that cannot be built in a short period of time. It is trust that has been nurtured as a result of Japanese company

representatives abroad working together with the local people. Because of that groundwork, Japan's foreign aid program (Overseas Development Assistance, or ODA) has been greatly appreciated.

Furthermore, Japan has no political ambitions. Japan prospers when there is peace and development in the world. As became evident during the first oil shock in 1973, the world has become smaller and regional conflicts in faraway places are no longer just someone else's business. That is the era in which we live today. We must give serious thought to what Japan can do for world peace and security.

Security cannot be ensured by military might alone. Needless to say, military power is needed but there are many things that Japan can do in areas other than those involving military force, such as cooperation in eradicating poverty, provision of foodstuffs, hygiene and medical care, construction of schools and the dispatch of Japan Overseas Cooperation Volunteers. As a matter of fact, all of these activities have been well-received.

But Japan cannot live isolated — the Japan-U.S. Security Treaty alone cannot ensure the security of Japan. North Korea's spy ship and kidnapping activities took place without our really being aware of them. Japanese ships have been

attacked by pirates in the Straits of Malacca. To counter such problems, we need to work with other countries. Needless to say, in order to prevent an invasion of Japan, we must not only make our own efforts but also seek the indispensable cooperation of the United States. However, while the alliance relationship with the United States is important, we must be aware of the differences between Japan and the United States. Japan should provide whatever resources are realistically sought by international society. Japan's support, both materially and in spirit, is increasingly expected by the world.

Foreign Direct Investment and CSR

Fujisawa: What role should Japanese companies play in the world?

Okuda: When they invest in overseas markets, Japanese companies create jobs that provide a measure of support to the local economy in the countries in which they operate. In order to avoid Japanese companies becoming orphans in the international community, they need to contribute to the other country's level of employment and to the elimination of poverty. Today, Japan is trying to become a permanent member of the United Nations Security Council. In view of all the things that Japan has

accomplished so far, that is naturally to be expected.

Fujisawa: What is to be expected of the business community?

Koizumi: Companies certainly have a significant role to play. I would like them to have the will to succeed, through creativity and improvisation. Unless corporations are in good shape, the nation as a whole will not be up to par. Companies also have a duty to support local events including art, culture, and sports. In other words, they should provide a boost to the society as a whole.

It is important to establish a system in which the corporations themselves become healthy. In the end, that will provide enrichment to people's lives. Recently a lot of those in top management have begun to think seriously about the corporation's responsibility to society. That is the very reason why "devolution from the government to the private sector" is important. It is wrong to say that the private sector does not engage in community affairs. Active involvement in public affairs on the part of private citizens and private companies will energize the society. The role of the government should be to encourage voluntary activities on the part of the general public.

Okuda: During the past several years, corporations have often

talked about Corporate Social Responsibility, or CSR. It is alleged that those companies who fail to deal squarely with CSR are remiss. As the Prime Minister has just stated, it is important that corporations and private individuals make contributions to society. The sum of such efforts will make Japan into a virtuous nation. Also, companies need to make efforts to make Japan a country that can be trusted internationally. This, in my opinion, will be an important objective for corporations throughout the 21st century.

Public awareness

Fujisawa: I feel that societal contributions on the part of corporations will expand significantly in 2005. The profits gained by corporations should reflect the contributions they have made to the society and companies should use part of those profits for public benefit. The general public, which includes both consumers and investors, should have a better understanding of the corporation's place in society and understand in what direction the country is moving. Otherwise, the public will probably not participate in either corporate activities or politics. In that sense, there is a need to demonstrate an easily understood concept: "In what direction will Japan go from now; and, in the

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international context, what type of country should Japan become?" Perhaps the people seek a society in which they feel safe.

Okuda: It is important to promote an overhaul of social insurance policies, including pensions, care-giving and medical treatment, but without provoking a general anxiety about how senior years will be lived. To this end, urgent consultations are underway about the creation of a sustainable social security system in Japan.

Also, a strategy based on the idea that Japan should be a nation founded on science and technology is critical. Lacking natural resources, the only thing that Japan can depend upon is its people. We need to use our heads to develop, ahead of others, cutting-edge science and technology and to apply it to our products. I would like to see the government make efforts to further enhance a support system aimed at the achievement of that goal.

Another priority issue is public ethics. For example, there are many Japanese who go abroad on trips. But no matter how much they spend, that does not mean that they can behave selfishly and irresponsibly. I feel that, in recent times, Japanese have come to lack a feeling of humility, taking the attitude that anything goes.

Recently, Japanese seem to lack virtue, although in the past that was not so. In order to be respected by others in the world, humility is essential.

Koizumi: Rome cannot be built overnight. That is something that develops over time. On the other hand, there are many countries that want to become like Japan or that wish to develop as Japan has. We constantly need to think: "What is it that Japan can do for these countries?" In any case, corporations face difficult times. They must compete not only in Japan, but also overseas as well. In order to ride out the vast changes that are taking place and to win out in the competition, constant effort is a must.

Foreign Perceptions of Japan

Fujisawa: Since the economy is becoming global, it would be nice if politicians, from the Prime Minister on down, could travel overseas and have the opportunity to see Japan from foreign vantage points. Through you it would be possible for the Japanese people to see how their country is perceived by the rest of the world.

Okuda: Since you assumed that position, the Prime Minister has traveled abroad much more often, thereby expanding contacts around the world. I feel that Japan has widened its horizons, accompanied by a dimensional change.

Koizumi: What is bad is the idea that things are bad. If you try, you will succeed. Those are the magic words.

Fujisawa: Thank you very much.

The transcript of this interview first appeared in Japanese in the Nippon Keidanren magazine, *Trend*. It can be found at: www.keidanren.or.jp/japanese/journal/trend/200501/taidan.html

Addressing the Crisis of the Global Patent System

by Bruce A. Lehman, Esq., Akin Gump Strauss, Hauer & Feld LLP

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The global patent system is entering a period of crisis, characterized by longer “pendancy” (the length of time patent applications lay pending before being approved by government officials), declining quality of examination, duplication of work by multiple patent offices and increasing costs of patent prosecution. As the nations accounting for more than 50 percent of global patent filings the United States and Japan are particularly hurt by this crisis.

In the United States Patent and Trademark Office (USPTO), both the number of patent applications filed and the average pendency of applications has been steadily increasing. (See Chart I.) Unless remedial action is taken soon to address this problem, the backlog of patent applications, which currently stands at 475,000, will reach over 1,000,000 by 2008.

By that time it will take over five years for the USPTO to issue patents in many technologies of critical importance to US and Japanese industry.

The situation in the USPTO is part of a larger, global problem of increased pendency of patent applications affecting many offices, including the Japan Patent Office (JPO).

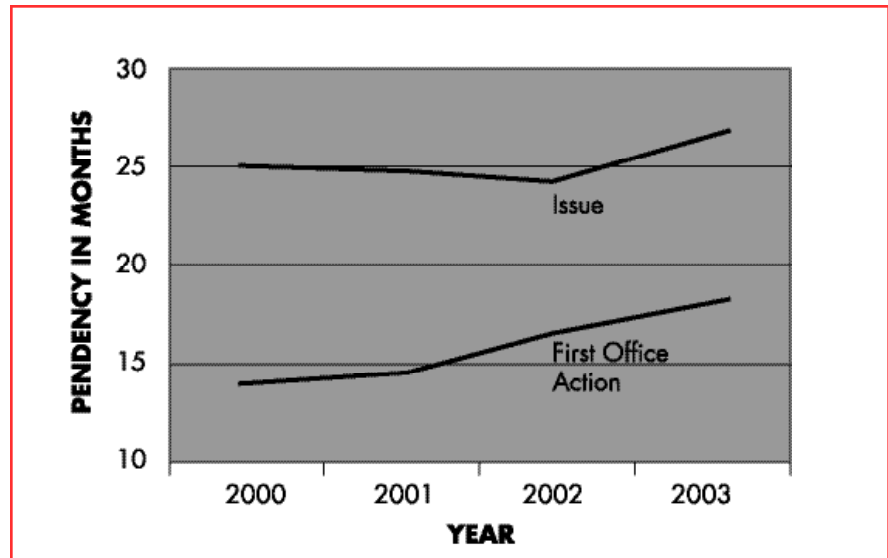


CHART 1: PATENT PENDENCY IN USPTO 2000-2003

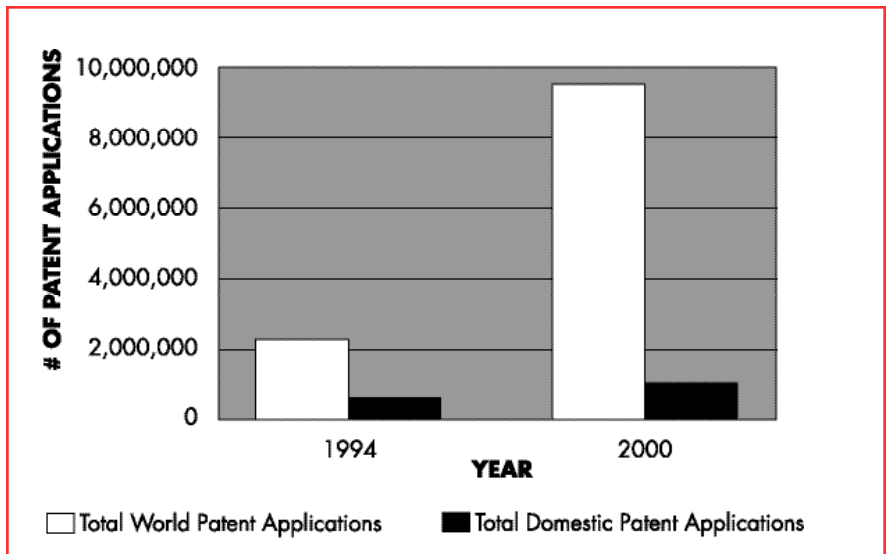


CHART 1: PATENT PENDENCY IN USPTO 2000-2003

The number of patent applications globally is rising exponentially. From 1994 to 1999, World Intellectual Property (WIPO)

statistics reveal that the total number of applications in all countries tripled, from 2,300,000 to 7,000,000. However, during

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those five years, the number of applications filed by domestic applicants increased only from 670,000 to 810,000 (See Chart 2). It is clear that duplicate filings in multiple countries account overwhelmingly for the huge increase in total filings.

The Solution: Work Sharing; Substantive Harmonization and a Regional Patent Office

Much of the stress on the international system could be relieved by concentrating examination in a few regional patent offices along the model of the European Patent Office (EPO). Short of that, national patent offices can be encouraged to use one another's work product wherever possible. Australia, Singapore and Malaysia are example of countries that conduct simplified examinations by using the search and examination results of other countries' patent offices.

The big three patent offices of the world — the USPTO, the EPO and the JPO — are currently experimenting with the kind of work sharing that could eliminate

much of the duplication involved in processing multinational applications.

But for this system to provide significant relief to the USPTO — the most stressed of the big three offices — arrangements must be made to provide the USPTO with search and examination reports from its sister offices far earlier than is the case today. This is particularly the case for the more than 50,000 US applications per year originating in Japan. Under Japanese law applicants may elect to defer examination for up to 36 months. The result is that even with its current high pendency rate, the USPTO completes examination of Japanese origin patents prior to the commencement of examination in Japan. If Japan were to provide more timely examination results to

the USPTO, and the USPTO were to conduct a simplified examination based on those results, a huge amount of pressure would be taken off the US office.

Experts from the tri-lateral offices and from the patent offices of APEC countries have been discussing means of reducing duplication in the international patent system. However, the ability of one office to use another's work is limited at present because there are no harmonized definitions of core principles of patent law such as prior art, novelty, and non-obviousness or inventive step. “Prior art” consists of inventions already in existence and is most often described by already issued patents in a particular filed of technology. That said, it also may consist of published journal articles or products already in the market. “Novelty” means that the invention has never existed anywhere in the world before. And “non-obviousness” is the US version of a standard similar to that of the

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requirement of “technical step” used in other countries. This means that an ordinary person skilled in a particular field of technology would not find the invention for which the patent is sought to be an obvious next step from something already widely known.

Attempts to create harmonized definitions in these areas have been made in the Standing Committee on the Law of Patents in WIPO. Unfortunately, the unwieldy structure of WIPO and the tendency for North-South trade negotiating

governmental representatives from European states, the European Commission, Japan, Canada and Australia – as well as the EPO – to meet in Washington on February 3-4, 2005 to begin talks on an ad hoc harmonization initiative.

While the President of the EPO cannot speak for a national government, the Director of the USPTO and the Commissioner of the JPO are in a position to move quickly to negotiate a substantive treaty that could bind both countries. On the basis of this bilateral effort, other willing countries – particularly in the

would offer a one-stop alternative to country-by-country examination that would be far more efficient and provide better quality examinations at less cost than is currently the case in the region. For all practical purposes it would reduce filings to two offices: the EPO for the expanded European Union and the Asia Pacific Office for the Americas, the Pacific and Asia – especially if two non-APEC countries, Brazil and India, eventually could be brought in.

In addition to lower costs and efficiency, a regional patent office would have an inherently harmonizing effect on international patent law. The existence of the EPO has had such an effect in Europe by bringing new subject matter – biotechnology and software – within the European system. The EPO’s Expanded Board of Appeals has created a patent jurisprudence that has harmonized patent law throughout Europe.

A Role for Japanese and US Industry

USPTO Director Dudas’ call for an ad hoc initiative on substantive harmonization is a welcome development. However, for his efforts to be successful, he will need support from industry, particularly in the US and Japan, whose governments are

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postures to spill over into WIPO’s discussions have thus far stalled all progress on harmonization. Therefore, it may be time to look to other possibilities to pursue the kind of harmonization that could lead to streamlined multinational examinations.

Recently, the leaders of the JPO, EPO and the USPTO met in Washington for their annual “trilateral” meeting and agreed to begin talks on harmonization. The result of that meeting was an invitation from the Director of the USPTO Jon Dudas to the

fast growing Pacific Rim – could be brought in. South Korea, Taiwan, and Singapore would be likely candidates. As the core group became larger it would become increasingly difficult for other countries in the region to remain outside the system.

The ultimate solution to the patent crisis in the Asia Pacific region would be the creation of an Asia Pacific Patent Office, similar to the European Patent Office. Like the EPO, the creation of this office would not require the abolition of existing national offices. Rather, it

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particularly sensitive to the needs of the private sector.

Further, substantive patent law harmonization is of little value unless it can serve as the basis for an ambitious agenda to eliminate duplicative searches and examinations in the multinational patent system. The problems of deferred examination will have to be resolved, which may require policy changes in both US and Japan that will be difficult without the cooperation and support of industry.

The diplomatic efforts of the US and Japan to bring other countries into the harmonization process and to accept mutual recognition of search results will be far more likely to be successful if they are supported with lobbying on the national level by business constituencies who can explain the benefits to policy makers. Finally, solutions such as a regional patent office for the Asia Pacific similar to the EPO for Europe, will never be possible unless industry becomes actively involved in the design of such solutions. ■

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KKC fosters a deeper understanding of Japan's basic social structure. Furthermore, it conducts public affairs activities to improve the Japanese people's recognition of Japan's global role.

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