

PRESENTATION:

**THE ROLES OF APEC AND THE JPO
IN THE FIELD OF
INTELLECTUAL PROPERTY RIGHTS**

Shigeo Takakura*

Good Afternoon, friends. I guess that I am the closing speaker on the list. I hope that you are not exhausted and that you are tolerant enough to keep your attention for the last speaker. I am actually excited to be here in Seattle. I studied at the University of Oregon in 1984 and I remember this attractive city that I visited during my stay in a small town in the neighboring state. That is why I did not hesitate to accept the invitation to this meeting. Thank you again Toshiko for your kind invitation. Now let us turn to our business today.

I am here to talk about recent developments by APEC in the field of intellectual property rights. The message that I wish to convey to you today is very simple. APEC is not as exciting as it was a few years ago, but it is still important as a forum for cooperative implementation of the WTO Agreements and for the recovery of the Asian economies.

What is APEC? It stands for the Asian Pacific Economic Cooperation. It is an economic forum consisting of 21 countries along the Pacific Rim. It is just a conference among governments for regional cooperation. However, APEC is unique on several points. For example, APEC is the biggest regional forum in the world, accounting for more than half of the worldwide figures for gross domestic product, imports and exports, and a number of patent and trademark applications. APEC is also unique in the sense that it has both developed and developing countries in a single regional forum. Members include gigantic countries like the United States as well as tiny countries like Papua New Guinea. There is the Asian way of doing business on one hand, and there is the American way of doing business on the other hand. Russia joined APEC last November. Clearly, diversity is a notable characteristic of APEC. So, what is common to all the members? Perhaps it

* Visiting Professor, Law School of Kyoto University, and Chief Appeal Examiner of the Japanese Patent Office, Tokyo.

is the regional neighborhood and close economic interdependence of the members.

The members of APEC are called "economies," not countries, for political reasons. For example, the Republic of China, or Taiwan, is called Chinese Taipei and Hong Kong is now called Hong Kong, China, after its restoration to mainland China in July 1997. The naming is important, but what is more important is the reality that China and Taiwan are both committed to implement the TRIPS Agreement according to the WTO schedule. The main purpose of the APEC IP program is to implement the TRIPS Agreement no later than January 1, 2000 within the whole Asia-Pacific economic region, including Taiwan, China, and Hong Kong.

Looking back at the history of APEC, it started in 1989 as an initiative between Australia and Japan. It is obvious that the founding members were conscious of the advent of the European Union and North American Free Trade Association at that time. Since 1989, many issues have been discussed within APEC that were aimed at facilitating trade and investment in this region.

However, discussion of intellectual property rights is a new issue among APEC activities. It was just four years ago that APEC ministers decided to include intellectual property issues into APEC's Action Agenda. Shortly after the decision by the minister, an IP expert group was established, in early 1996. Japan made this proposal and since that time, the Japanese Patent Office has played an important role as the chair of the IP rights experts group within the APEC.

When the members first discussed the Japanese Patent Office proposal in 1995, some developing economies were reluctant to take up IP issues within APEC. They feared that the United States might seek new and additional obligations to supplement the TRIPS Agreement, which was agreed upon as part of the overall package of the Uruguay Round negotiations. From the viewpoint of developing countries, they could not accept any new obligations separate from the Uruguay Round Agreement. At the final stage of the first experts' meeting, they concluded that the objective of the APEC IP program should be as follows:

1. To align national legislation with the TRIPS Agreement according to WTO timetables.
2. To provide adequate and effective protection, administration, and enforcement of intellectual property rights.
3. To expand bilateral technical cooperation in selected areas such as patent search and examination, computerization, human resources development, and information exchange.

You could say that it was a mixture of obligations and cooperation. In November of 1996, the APEC ministers agreed to specify IP issues as one of their priority issues, together with service, investment, and technical standards. Intellectual property was recognized as essential for the facilitation of trade and investment. Encouraged by these ministerial commitments, the experts from all IP offices, including those from developing countries, changed gears and accelerated implementation of the work program. They seemed to be very happy, because the ministers recognized the importance of IP rights. In several countries, like the Philippines and Thailand, ministers decided to increase the number of working staff and to increase the amount of expenditures for automation and modernization of administration.

When I joined the Japanese Patent Office about 20 years ago, only experts discussed intellectual property issues. It was small world both internationally and domestically. However, since around 1980, it has become a global issue discussed by trade ministers and policy makers. In this context, the United States has done wonders within the IP community. Since that time, I have been constantly moving around the world to participate in bilateral or global organizations in the field of IP. Of course, I am not accusing the United States—I appreciate the U.S. for making the patent system so important. For example, the U.S. Congress adopted an act to create CAFC in 1982. Ambassador Yaiter stressed the importance of patents and copyrights in his statement on trade policy in 1985. In 1986 participants at the GATT Ministerial Meeting decided to create new IP standards within trade negotiations. Finally, the TRIPS Agreement was completed in 1994 as a part of the overall package of Uruguay Round negotiations.

Now, all WTO members should change their national legislation to comply with global standards, because an ineffective intellectual property rights system can distort trade and investment. The principle of free trade now precedes the freedom of domestic IP legislation. It is a change in the paradigm, brought by the package of Uruguay Round negotiations. It was a big change but now it is reality.

With all of these changes, we should give due attention to the difficulties faced by developing countries in implementing the new standards. The global economy will not succeed as a whole if we do not promote the success of economies within developing countries. This means that cooperation for developing countries must not be one-sided assistance, but long-term investment for mutual benefits of all interested parties. This was our philosophy when we agreed upon the APEC IP program.

Now let us look at the contents of the program. The program has two main parts: Individual Action Plans and the Collective Action Plan, or CAP. The CAP consists of seven separate but related activities. You can get more information through the Internet from the homepage of the APEC Secretariat, in English, or from the JPO, in Japanese.

1. Deepening the Dialogue

As I mentioned earlier, we established the expert meeting in 1996. We have met twice per year over the past four years. The last meeting took place just last week in Mexico. In addition to the expert meeting among government officials, we organized a joint symposium with business sectors, in conjunction with the expert meeting. The business sectors expressed their interest in the creation of a regional patent and trademark system and strengthening the enforcement of intellectual property rights with the APEC region. As for high technology, we initiated a preliminary discussion of IP protection for biotechnology and of the IP aspects of e-commerce.

2. Survey of Laws and Regulations

This is aimed at collecting all IP legislation and making it available to the public. We have almost finished this activity and the output is available through the APEC homepage.

3. Contact Point List

The list is a sort of telephone book that includes the GATT e-mail address or facsimile address. It is a very useful tool for applicants. It is also available through the APEC homepage so you should try it. However, the contact list does not include some critical information concerning enforcement officials. Therefore, if you wish to know the name and address of the person responsible for the counterfeit program, for example, you would not find his name and address.

4. Well-known Trademarks

The TRIPS Agreement and the Paris Convention oblige member countries to protect well-known trademarks. However, there is no definition concerning what qualifies as "well-known." It is up to domestic courts to determine whether a trademark fits the definition of "well-known" or not. For example, a Mongolian court may conclude that the trademark for Boeing is not "well-known" in Mongolia because there is no explicit proof that almost all of the Mongolian people know the trademark in their

country. This may cause problems in the global economy. This is why APEC gave high priority to the protection of well-known trademarks.

We are now exchanging examination guidelines with a view toward creating standard guidelines. This activity is being carried out in a manner consistent with new WIPO regulations. The WIPO regulations can provide a basis for common criteria on the definition of well-known trademarks.

5. Simplification and Standardization of Administrative Systems

The initial proposal was to promote harmonization, but some members hated the word "harmonization," so it was replaced by neutral wording, "simplification and standardization." One of the tangible products produced so far is the hyperlink of homepages of all patent and copyright offices within APEC. You can get quick access to any country's homepage through the homepages of other countries.

A challenging new issue is the development of an electronic application filing system. The United States Patent and Trademark Office demonstrated its electronic trademark application system at the expert meeting in February this year. Japan and Korea also made a presentation covering their experiences with their own on-line patent application systems. The electronic filing system is attracting not only developed countries but also developing countries. For example, ASEAN countries expressed great interest in the automation of application procedures in conjunction with their own program for the creation of regional patent and trademarks systems.

6. Enforcement

The TRIPS Agreement provides only general provisions concerning enforcement and does not include specific provisions. Therefore, APEC agreed to elaborate on the TRIPS Agreement concerning enforcement, and the members are now exchanging the guidelines. The information exchange stage is almost complete and the members are heading toward standard guidelines. Customs officials have been actively cooperating in the creation of these guidelines.

7. TRIPS Implementation and Technical Cooperation

This is the most important among all of the collective actions. All developing countries are now in the final process of revising their national laws to comply with the TRIPS Agreement. The next step is to make it work. For this purpose, APEC listed all cooperation programs which members can provide to other countries. APEC also prepared a list of all requests from developing countries noting (1) the country seeking

cooperation, (2) the kind of cooperation requested, and (3) in what area the cooperation is requested. APEC expects that this will lead to bilateral cooperation between appropriate partners. Finally, APEC has presented a series of seminars in Thailand for the past three years.

The CAP was set up 4 years ago, in early 1996. In the three years since then, we have implemented many of the plans. It is high time for the CAP to be upgraded to accommodate the emerging expectations of APEC governments and business sectors, as well as other international organizations. What will be the priority issues for this new stage? We have several:

1. Full Implementation of the TRIPS Agreement by 2000

We must complete implementation of the TRIPS Agreement by the end of this year. At an appropriate time next year, APEC will announce that all member countries have finished implementation. This announcement, I hope, will encourage developing countries in other regions.

2. Participation in WIPO Global Systems

As APEC businesses file more patent and trademark applications in the region, more efforts should be made toward simplification and standardization. However, it is not wise to create a new regional system completely separate from WIPO global registration systems. As you know, more than 100 countries ratified the Patent Cooperation Treaty (PCT), and more than 50 ratified the Madrid System. The New Act of the Hague Agreement will also increase the number of new participants. Accordingly, APEC should maximize use of the existing system in order to achieve the goals of the APEC IP programs.

3. Biotechnology

With respect to biotechnology, APEC must decide how to deal with the TRIPS Agreement within the new WTO Round. The new negotiations will begin at the coming WTO ministerial meeting, taking place here in Seattle in November of this year. My personal view is that we should feel comfortable with the TRIPS Agreement status quo. We should not ambitiously seek to upgrade the TRIPS standard in the new WTO Round. What APEC should do is ensure that developing countries fully implement Article 27 of the TRIPS Agreement. Biological issues can be very controversial, both politically and ethically. There is also a deep connection with environmental issues, including protection of traditional knowledge, and the

genetic resources of indigenous peoples. Accordingly, APEC should be very cautious about putting forward any new initiative for stronger protection of biotechnological inventions. This view was shared with the United States Trade Representative at the last TRIPS council two weeks ago in Geneva.

4. Works on Electronic Commerce and IPRs

As for electronic commerce, we should work toward a deeper understanding and we should promote technical cooperation. Last year the APEC ministers set out the APEC New Program called "A Blueprint for Action." The IP expert group will take up relevant aspects in the field of economic commerce with a view toward enhancing global development within other organizations such as WIPO and the WTO.

At the end of July 1999, the General Council of the WTO will issue a report on electronic commerce including the IP aspects. In addition, WIPO will hold, for the first time, a symposium on electronic commerce. If I am correctly informed, the Vice President of the United States will open this symposium. Anyway, the APEC IP program should be reviewed with the philosophy of promoting regional cooperation consistent with the WIPO and the WTO processes.

In summary, APEC is a forum for action, not for negotiation of controversial issues. It is rather a forum for the exchange of views and information to advance negotiations within other relevant organizations. The most significant role of APEC is to implement multilateral agreements through regional cooperation. It will provide all of its members with mutual benefits because APEC members are closely interdependent with respect to patents and trade issues. However, I am not optimistic about the future of APEC. ASEAN countries seem to have looked back inside themselves after the financial crisis in 1997. Unfortunately, the United States did not seem interested in APEC activities and was not helpful because it had won the game and was rich. To be more serious, it seemed that the United States had doubts about the efficiency of the APEC process. China also seemed to be frustrated about something. Nevertheless, Japan remains resolved to continue its contribution to the protection of IPRs and the development of regional cooperation. I have confidence in strong fundamentals and prospects for recovery of economics in the region.

As we approach an intelligence-based society, the protection of IPRs will become even more essential as incentive for innovation of high technology and the transfer of those technologies. I hope that all of you will keep your eyes on the development of APEC and watch with great interest. Thank you for your kind attention.