Max Huber: My name is Max Huber. I am the Vice-President of the German Academic Exchange Service, and we are co-organizing this forum. We are very happy that you all came to this first workshop. This workshop has been organized by the Research Center for Legal System of Intellectual Property of Waseda University, and with the support of Alexander von Humboldt Foundation and the German Academic Exchange Service.

It is dedicated to the question whether Germany and Japan are ready for the new challenges of the information age. Both Germany and Japan strive to lead global competition for science and new technologies. In this context, there are urgent issues, such as patenting industry standards and extraterritorial intellectual property enforcement.

The German Academic Exchange Service, ladies and gentlemen, will always be glad to support academic research and exchange also in these fields, in the legal fields by scholarships, fellowships, and internal programs. First of all, I would like to thank all the speakers, and specially, Professor Toshiko Takenaka from the University of Washington for chairing today’s event. So, I am looking forward to a certainly very interesting discussion. Thank you very much.

Koichiro Agata: I am Koichiro Agata from Waseda University, and I am very pleased and honored to be a part of this. I am very honored to be able to give this opening remark representing the Alexander von Humboldt Foundation. Thank you so much for inviting me.

We believe that two countries are losing its momentum in this world now, and we find that we are at a crossroad in the sense that environmentally speaking, the interest in the area of IPR is somewhat subdued. And so, it is important that both countries engage actively in promoting the intellectual property strategies in this global competition. We need to select suitable topics for the discussion.

So to work on this topic and to have a forum such as this is very meaningful. I would like to encourage a very active discussion so that we can produce fruitful results. Thank you for this opportunity, and I appreciate your efforts. Thank you.

Toshiko Takenaka: Now, I would like to serve as your moderator. I am Takenaka, and I would like to carry out the administration of this workshop now. As was already mentioned, research exchanges between Japan and Germany has been the theme that we have been discussing since this morning, what do we have in common and maybe the academic culture as well as the research environment in both coun-
tries we discussed. And when you think of that, I may think that some of you are wondering why am I here. I am from Seattle, Washington, and I do teach at University of Washington in Seattle, United States. And in that sense, it may seem peculiar that I am here, but I personally have written the doctoral thesis on the scope of the patent protection in Japan, United States, and Germany. Therefore, whenever I have a sabbatical I always do go to Max-Planck Research Institute to study.

In the United States, I do teach US laws to the American students, but as you know, the lawyers in the United States are not that well versed or interested in foreign laws in cases. And I do want to see changes among the American students and lawyers to have more interest. Therefore, I do try to refer to various laws in Germany and Europe and Japan. And since I teach comparative laws, I do want the American students to study together with foreign students that are visiting the United States to learn about this. Therefore, although I live in United States, I am pro-Japan and pro-Germany, I believe.

And at the same time, I believe that this conference is being held at such a great timing. I am in my sabbatical year right now, starting on the 1st of November. I will be pleased to carry research under the scholarship of DAAD. To return some of my appreciation to this, I am here to serve as your moderator.

The workshop today will be in the following format. We will hear from the three keynote speakers. We will, first of all, hear from a Japanese specialist, an expert, and then we will have two German professors after the Japanese speaker. And then that will be followed by the panel discussion to have the panelists discuss and comment on the keynote speeches and make a comment from their special field. And then among the panelists, we hope that there will be active discussion, and we hope to have time at the very end so that we can have question and answer session that is open to the floor. This is going to be interactive workshop with the floor and the speakers and the panels.

The topic has already been mentioned by Mr. Huber and Mr. Finken. The theme for today's workshop is global competition and intellectual property strategies. When you think of international or global competitiveness, both here in Japan and in Germany, competition based on labor cost and wages are not possible. There is China and there are emerging nations, with whom we cannot just compete, just with labor cost and wages, especially in the age of information. Intellectual asset has gained even more importance and value based on the IP rights. We need to utilize the intellectual property rights in order to pursue and gain international competitiveness, and that is the challenge that all of us in the developed nations face.

So, the global competition is very fierce, and how the Japanese, as well as German company, can be winners in this harsh environment will be the discussion theme today. And we would like to ask Mr. Isayama to start first.

I would like to briefly introduce Mr. Isayama. He graduated from Tokyo University in 1967. He joined METI, now MITI. In 1971, he went to Kennedy School in Harvard and graduated from there, and he has assumed various very important posts, and he has become the head of the Patent Office here in Japan, the Commissioner. During the time, he has been involved in various diplomatic negotiation between Japan and the United States regarding patent. Since then, from 2001 to 2002, he has been at the Asia-Pacific Research Center at Stanford University as a visiting Then, furthermore, as you know, he joined Nissan Motor Company as the Vice-President, and he was in-charge of managing the very important portfolio of intellectual property at Nissan. And he joined then the present consulting company. He is using his wide experience in providing various advices.
Takeshi Isayama: Professor Takenaka, thank you very much for your kind introduction. I am not, in any ways, an expert or specialist. I see many specialists around me, but with my background, I am the one who is more or less in-charge of the administration and not an expert on this field. I hope that you will not attack me with very difficult academic and expertise questions, but I am very honored to be invited to this very, very meaningful seminar today, and specially to Dr. Takenaka, while I was at the Patent Office, she has given me a lot of guidance concerning the patent system as well as the IP strategy of the corporation as well as HR matters.

The first point is that we need to respond to the changes of the world. The American journalist Thomas Friedman said that the present world is hot, flat, and crowded. I think this was written in a very popular book that was published last year. When you say hot, it’s global warming, environmental issue; flat means that, as is indicated by IT, the walls and the borders between nations have become, much lower. This not only true for IT but for trade and for the capital flow, the same can be said. Crowded is that there is a population growth in the world.

As is represented by those three phrases, the world and the society have changed significantly, and under such circumstances, how can the business and corporation survive. The rate of the market economy is very strong in the field of business, but from the standpoint of the capitalism, this has become a world with certain constraints. In other words, there are constraints of environment, resources, energy, and water. Also, there is an issue that we confront, which is the increase of the population, which may not be permissible. Can we sustain it? Therefore, we cannot continue in the way that we had pursued in the past, but we need to know the limits of what we can do. There was the Lehman Shock 2 years ago, and also a major disruption from the financial economy. How we can create a new financial market order is a very difficult matter to tackle in US, Europe.

In Asia, we are still trying to grapple with the situation to find the right solutions. So, with such an environmental change, the development model or competition model has changed. In the past, it was developed nations versus the developing nations. In other words, those that advanced early was followed and caught up by the developing nations. In other words, this was a conflictual model. Those that were following were to catch up and, maybe, overtake, and they felt that if that was then, they could survive. However, such model is no longer applicable.

The second point is that in such a new environment how can we create a competitive order, or how can we create the stable global economic development is a challenge for us. We are yet to find an answer to those questions. The world economy at present is mix of pessimism and hope. In the mature developed nations, there is a population decline, ageing of the population, as well as the high cost structure, and there is the imbalance of supply and demand. This can be phrased as the fear of the limit of growth felt in the developed nations.

On the other hand, in the emerging markets or in the emerging nations, access to people, goods, and money have become possible, and there is a confidence that I have felt that there is a lot of room for further growth. In other words, they are starting to create a system that would be advantageous to them. Whether they are good or bad, the surplus capital and funds, technology, facilities and engineers are responding to these new developments. If it left untouched, we will not see an orderly development, but we may face a chaotic situation and many have such a concern.

In order to meet the present situation, ie. the G8, G20, the World Bank, IMF, WTO, and WIPO, these
organizations exist; however, we are not sure whether they would be able to overcome some of the new challenges that we face at present. These changes, and in the present atmosphere, the world is looking to see whether the international legal institution is sufficient or not. Developed nations are losing its momentum, but emerging nations are gaining more momentum. Are the institutions that we have sufficient to meet the new age? If one is disadvantageous under the system, that will be overturned. We cannot have one side be advantageous. We need not to have bias. We need to have a fair system, where the systems would be beneficial for all and the new opportunities must be available.

There are WTO and WIPO that are used for this international order, and I personally have been involved in this process for long time. As a result of that, the goods and services, and the tangible asset world order was created, but we are now moving into the intangible asset management, and relevant countries and people are supporting those system, but we are not sure whether those systems that we have created is sufficient, or whether they are reliable. Since that is not the theme of the discussion today, I shall stop on that topic at this point.

My conclusion is that there are many challenges and issues that we have to overcome. Urgent measures are necessary to overcome some of the shortcomings; especially for those who are in the business, we need to realize that the world is now in a difficult situation to pursue business with free mind. In other words, innovation is not necessarily appropriately evaluated, and there is no system to do that in the world yet. There are imitations and copies, and infringements of the value of the intangible assets are seen widely in the emerging nations, and there is incomplete system in order to compensate for those infringements. There seems to be some kind of a barrier for a more balanced development due to that. There is FTA, and there has been improvement in the international transaction of the tangible assets, and the tariff barrier has become much lower. However, international trade of the intangible assets, as compared to the tangible asset trade, is still lagging behind, and there is significant room for improvement in this area.

In other words, effectiveness and utility of the intellectual asset as well as the necessity of the protection system, the concept may be understood globally; however, when you look at the market itself, there is a very arbitrary operation of the system. It seems that the corporation must create a system in order to defend and protect themselves.

So, where do we go from here? I do have some handouts distributed, I believe. That’s my experience at Nissan Motor Company, and I have been responsible for some tasks at Nissan. And when I would ask Mr. Ghosn what he wants to do, he would say, “oh, we have never done that before, so I hope you would take care of it.” And so actually, I have had the very difficult task, if I raise something, he will say, “oh, then please get on to it.”

I would say it’s been a very good learning experience for me, but very tough task. And one of that was this IPR issue. I don’t have sufficient time to go over all of that, so I hope you will just read through what’s been distributed. But as a practical matter, my comment out of the experience comes down to three. First is that IPR. Intellectual property is something that the management needs to tackle. Number two, how to deploy that within the organization. How to implement is the difficult part. And number three is setting of the objectives. So, those three will be my comments.

So, the first thing we have to do is taking this up as a management issue. As far as I see, the issue is not only with Nissan, I can say this for many Japanese companies. First, the company needs to clarify
where the core competence lies, so that the features of the intellectual property of that company are fully understood and that can be shared by the organization. So, for the R&D or the product research, product development, looking for collaborative partner, many companies go to the investment banks or consultants to get information.

But I think, on the contrary, you should be the owners of such intellectual property information for the company. To be proactive would be a necessity, so that when the company wants to go into product development, rather than going to outside vendor for information, to be able to look within yourselves, or even to go look for public domain information would be useful. Before going in to do anything else, to look into your own strength and then also the strength or the patents of the other companies, to check that in the public domain would be useful. Some companies do that, but many companies don't even utilize their own internal intellectual property division. The management does not take that up as a resource. That's my impression of the Japanese companies; that they would rather go to the outside for IP information. So, I think to have a broader view that many companies overlook in this area of IP.

And now second of all, what I call IAM, Intellectual Asset Management, how can one practice IAM? There are three points to this as well. First is to have effective usage of assets. What I mean is if one can effectively utilize asset that produces profit, but if it's just held and maintained, the asset is just an expense item. In the financial crisis, the working capital has been pointed out to be a very important part of the management and inventory is sometimes equated to bank debt. And so, likewise with the intellectual assets, unless it is utilized, it is not a profit producing but asset.

So, to get rid of what's not needed, and to just keep it if you find it valuable, that is no longer sufficient. To have more proactive usage or utilization will be the corporate strategy. The useful ones, of course, can be used to produce profit. The unused patents, if one gets rid of that, that can sold off; I was doing that in Nissan. And every year, 100 billions of yen were saved by us letting go of unuseful patents. Also, intellectual properties can be used to assess competitiveness.

When doing a mid-term and long-term analysis, we can see what the company emphasizes and the area of development research. If the competitor has a very strong IP portfolio, your works in the same field may bring you to a court matter, intellectual property court, and it may, in order to meet that litigation, cost you several dozens of billions of yen, and that would be pure loss. That also happens in many Japanese company cases. In the case of Nissan, not maybe in the order of many billions of yen, but in the area of 100 millions of yen, we did have to pay on several instances of litigation cost.

Third, or before I get to that, I also want to talk about alliance strategy. I think the IP can be used to build alliances. As competition gets more global, the funding is getting to be more difficult. Even the most largest companies need to collaborate according to the product line or components in order to have effective usage of resource. We see more M&As and more business alliances. In Nissan's case, there is an alliance with Renault; also from this year with Daimler, there will be an alliance as well.

So, between Daimler, for some time, there will only be work on the diesel engine and small to medium engines will be with Renault, but with the large-size engine, Daimler has very strong capabilities, so Nissan will work with Daimler. So, company should choose wisely who to collaborate with according to the product line and that's something very realistic. By analyzing IP, you can analyze your competitor's strength and to set up an alliance strategy based on that.
So, lastly, now the third point selling of the appropriate objective. As I said earlier, when practicing Intellectual Asset Management, IAM, this could be additional cost center. In the case of Nissan, when I said that the management needs to take up the Intellectual Asset Management, luckily they have understood the need for that, but they took 2 years at first to first explore what the situation was under global standard and to have a thorough discussion on what Nissan strategy shall be and then a new organization was set up. At that time, Nissan did not yet understand the full scope, but usually in the environment where all of the downsizing has been going on, to set up a new department of IAM was going against the wind.

But they have understood, and they have set it up not only as a cost center item, but something to really proactively use, and we have set targets in each year. We have evaluated our performance toward the targets and moved from year to year achieving the target. I can’t go into detail, but I hope the relevant information is in your handout material.

Takenaka: Thank you very much, Mr. Isayama. I think you are just on time. And you had also talked about the practical aspect as to how international-multinational company like Nissan tried to increase the value of the intellectual asset. I believe that you had provided us with the knowhow that was used in Nissan to enhance the value of its intellectual asset. I thank you very much for your presentation. Now, we would like to move on to the second presentation.

From the first keynote speaker, we did hear about the very practical business perspective of IP. The second speaker is a very well-known German researcher, Dr. Hanns Ullrich. Dr. Hanns Ullrich had graduated from Tübingen University in 1964, and Freie Universität Berlin in 1969, and he then went on to New York University and had obtained a degree in the United States as well. And in 1982, he had completed habilitation in Munich. From the Humboldt Foundation, Dr. Ullrich has been granted the award with high distinction. Dr. Ullrich and I have had some contacts. When I was writing my doctoral thesis in Germany, I used Dr. Ullrich’s book called “The Patentability for Europe.” It was the model for my dissertation, and whenever I teach my students, I always tell the student to read Dr. Ullrich’s publication because that serves as a good model.

In the present, Dr. Ullrich is a researcher at Max-Planck Institute for intellectual property. The presentation today will be on the interaction of intellectual property protection and competition law. He will be analyzing this IP protection from the competition law standpoint. As an international strategy, how can the technological standards are set is an important theme. When the standards are set, there is always a need to comply with the standards in manufacturing certain products, but these standards in reality is the compilation or conglomeration of the cutting-edge technology and various patents involved. As such, there are some essential technologies, but they cannot be used free of cost or charge. So, the company making the standard makes the patent pool. While protection the technology, they must try to secure the freedom of business, and this must be available as international pooling and not limited to only one country.

Today, Dr. Ullrich will talk to us about the activities related to patent pool and what kind of issues we may see as a result of these patent pools.

Hanns Ullrich: I suppose that many of you would be able to hear me in German, and I little bit regret that
we have to talk to each other in a foreign language. You have to hear me in English. I have to talk to you in English, but as all things develop, and there may be a reason to it, an implicit reason, which is that our subject is, are Germany and Japan ready for challenges in the information age? And the Germans have to face this challenge within the framework of the European Union. As you know, we still have German Intellectual Property Law, we have German Competition Law, but the fact is that all this is superseded by the European Industrial Property Law. We have European Community Trademarks. We have a sort of harmonization – the area of copyright law, of design law and patent law as well as largely determined by European standards. And competition law also is a matter mainly of European Community Law, and the language has become, as a practical matter, English.

The problem is that we all write in English, but when we write in German, then the English, the British, the Americans wouldn’t read us, and now all what we are doing is lost in international competition. So, you see there are certain asymmetries right from the beginning in the system. Now what I am going to tell you is probably just set a little bit of the generable framework, and, therefore, I am going to try to explain to you what the basic relationship is between intellectual property and particular industrial property and a competition law, and then try to bring some focus on some more recent trend.

In my introduction, I am saying we have a change in focus, but we have spilled the old problems. We are approaching or used to approach the relationship between industrial property, mainly patents and utility models, or technology-oriented copyrights, like software copyright, data copyright under an angle of transfer of technology. So, if he has the technology, just what we needed to do is to transfer to other people, but in fact that was alluded to this morning is that we have first to make the innovation ourselves. This, of course, changes the perspective under which you consider the competition law problems of industrial property.

We also have had a change from looking to contractual practices or mainly licensing, to control the unilateral practices of large firms, mostly powerful firms. And just recently, we widened the perspective and are looking no longer simply to what kind of intellectual property assets we have and how we exploit them, but also as to whether and how we acquire them, and whether in the process of acquisition we already may have a competition law problem.

Now the question, of course, arises, why these changes? Are these changes in hear and the development of the intellectual property and the industrial property system?

You all know probably the term of global patent warming. We are just simply getting too many patents covering too many fields, and the result of these too many patents is that, instead of fostering innovation, they may be blocking innovation because you have to have to get licenses before you even can start doing your research. Or alternatively, this is a result that we have now a different look at competition law. We used to apply competition law for the German perspective for almost 50 years as a matter of maintaining a liberal free market order, but nowadays the trend, not only in Europe, but mainly in the United States, is to look to competition law more in a perspective of industrial policy of how to make the economy meet the challenges, and then you would accept restrictions probably which we didn’t accept before.

Now when we first start with the contractual practices, then precisely the question is, why do we look into the contractual practices under competition law? What is our interest? Are we looking for establishing a system of individual free competition as many actors as possible, all acting individually or are we looking at competition as an arrangement for enabling people also to cooperate and to create together
certain desired results? The traditional doctrines have been very much oriented towards the individual contractual practices. The approach was quite simple. When you have an industrial property right, what you get is an exclusive right, which excludes competition by its very definition, and, therefore, whatever restrictive arrangement is within the scope of your exclusive right would be permissible.

So, if you limit your licensees' freedom to operate as to the territory, as to the quality, as to time, all this would be, per se, allowable. Or the alternative probably would be, you would widen it a little bit more and say the patentee may impose whatever conditions he or she thinks fit to impose on the licensee if this is in the interest of getting a reasonable reward for his invention.

The problem is, and this we realized in the European Union, and, therefore, the European Union may be a model on a global scale, that we have different patent laws. And all the members said, "oh, the European Union, a different patent law on a global level", and that, therefore, the patent laws will differ, that you cannot define what is an allowable restriction under competition law by reference to a national law when competition is global.

And the idea of saying you have to get a reasonable reward, a question immediately emerges, what is a reasonable reward? What is reasonable and why only reasonable? The market economists will say whatever the market yields is reasonable. And in a famous dictum by an American Professor. Professor Becksy [ph] was saying, if the licensor asked for the killing of his mother-in-law, then it will be the reasonable price if the market is willing to pay this price. That's true as a philosophy, even if in a moral consideration, it, of course, is totally wrong.

What did the Europeans do? The Europeans realized first that licensing is a negotiated transaction, a give and take between two parties. It may be between competitors; this is what we call a horizontal agreement. Or it may be between firms acting on different levels of the market manufacturer or distribution or on different markets, technology market, manufacturing market, sales market. And that we have to assess these licensing transactions such as this kind of mutually negotiated transactions.

Second point is intellectual property under competition law should not be treated differently from any other property. What we are looking at really is what are the merits of the license transaction? Is it efficient? Is it pro-innovation? What purpose does it serve? And the catchword answer was, it helps transfer technology, and, therefore, it would be fine.

Now, the question, which I, as an academic, would ask is, we changed our policy totally 180 degrees. Why? After all licenses have been granted and received since decades, intellectual property has been always the same. Why can we all of a sudden have a different approach to the matter? And the answer is we have to reconsider the relationship between industrial property and competition law, and ask some rather basic questions.

The first point is when we are talking about the market economy, then the basic regulation of that economy is competition law because market economy is about competition. It defines the rules of the game. And then we introduced property, in general, as the basic value which confers an autonomy of action to firms and that property they will exploit via a contract. Then you have this basic principle that it is the contract which helps you exploit your property and the property gives you the autonomy. You may use this on the one hand, of course, that same freedom, autonomy for restricting competition via a contract.

And on the other hand you have to ask how does intellectual property, the exclusive right, come into
this picture. Why do we and how do we create a property? What do we mean by property in this context? And in order to understand this, you have to see what we protect, the subject matter. The subject matter of industrial property is knowledge. It's information. And the question is what is so particular about knowledge that we have to give it a property title and then we will know why and the function this property title serves.

And the answer is very simple. Basically, information is something, which is not a private good by nature. I am always telling my students, “I have here a new technology. What are you willing to pay me for my new technology?” And the students will always hesitate, and I would ask that question again and again. And finally, I would tell somebody would come in, “Show me what you have as a new technology. Show it to me.” And I show it to them. They immediately understand what it is, and then what happens is, and you must realize this is, the moment I have shown to you the information, you have it. We both shared. Everybody in the room may use that knowledge at the same time. That information is not subject to the rules of natural appropriation. It is not subject to rules of consumption. That property is not something which is consumable as bread or as beer. And it's indivisible; we all can use it. And the trick, which intellectual property does, is that it creates property. It transforms that information, which everybody can use at the same time into a private good because now I can retake it from you. I can stop you from using it via my industrial property right.

And it is only due to this possibility that I can stop you from using my property right, that I can also make the next step. Let me ask you what you are willing to pay to me for the right to use that information. And your willingness to pay depends on what the market is, and the fair and reasonable price is the price accruing under conditions of competition because markets work under competition. And, therefore, the conclusion is that it is the market which determines the profit which you may get, the reasonable reward, or the incentive to innovate, not intellectual property. Intellectual property is only the means by which you catch the reward which the market offers to you. And you have to understand that this is a very important thing because the moment that you can establish prices for your information, you also know the cost which you may incur to create the information in the first place, because you have to know this cost in order to be later on set reasonable prices.

So, this holds together, and what this means in practice is that as a result of the market mechanism, the investment process and research and development becomes rational. It means that intellectual property pre-supposes a well-functioning market system. And it means that it is the intellectual property right, which enables you to enter into competition against other people creating intellectual property. When people are speaking about patents as a monopoly right, this is dead wrong. It’s never a monopoly. It protects the item you created and enables you to compete with this item against other technologies.

Now this does not mean that intellectual property, how you would frame as is not important but quite to the contrary. Because by defining the terms of protection, you are defining the basket, so to speak, by which to seize an opportunity on the market. What kinds of invention qualify for patentability? What requirement of novelty you establish? How large do you find the scope of the right? What are the infringing acts? All these things are the way you define the means of competition for firms on the market. It’s the size of the market. And as the conclusion, then, is that way you see the operation of the property right in competition. It becomes clear that any change in your competition policy will change the possibilities, the opportunities that you can use on the market.
When you are changing the definition of what is a relationship in a licensing transaction between competitors and non-competitors, then, you change the terms of the game. When you say whenever you are a patentee acting on the market and that market is the market for technologies, and you can’t realize this to a producer, and you say it’s a vertical relationship, then you assume that there is no competition between the two and that the competition on the technology market determines the terms on the manufacturing market. Therefore, the patentee may impose whatever conditions it thinks fit on the licensee because the patentee is acting competition with the other patentees on the market. Then you make a big error because “the licensing dilemma” precisely is that your licensee is your future competitor.

You enable him by granting him the license, and, therefore, the problem you have to solve under competition law is “the licensing dilemma”. You need to be able to keep your licensee at a certain distance because, otherwise, you would not be willing to grant him a license. If you define the relationship between two patentees, of a principal patent and of an improvement patent, which, therefore, are in a blocking situation, not able individually to act on the market as a vertical relationship. You all of a sudden change your competition policy, and that’s what the Americans did, and what the Europeans did.

And the result was more freedom in licensing, allegedly pro-transfer of technology. But you see that this is a problematic approach. I am not going into the details how you saw that, but I want to show you that it’s a problematic approach.

And the next question then arises, if that is problematic, and if you are willing to be liberal so as to enable technology transfer, should we possibly compensate that permissiveness vis-à-vis licenses into more stricter control of unilateral practices? First, because it may not be voluntary that the licensee accepts the conditions; they are imposed on him by a monopolist. Second, because the patentee, is a monopolist, may refuse to grant a license altogether. And, therefore, we may be forced to look more severely, more seriously, more deeply into the application of the abuses of a dominant position.

Now, we are changing the fields from contractual restrictions to the actions of monopolists, and then we are looking into what a monopolist can do. We leave patent law. We are now talking about the abuse of market power. The patent itself does not control market power. As I told you in the beginning, the patent is an exclusive right just on one piece of technology in competition with others. If you manage to impose your technology on the market, then you have a dominant position, and then you are enjoined from exercising your market power abusively. The means might be the right to block competitors via injunctive relief.

My point, the important point is your abuse of the market power, not of the patent. Any dominant enterprise in a market may use a patent as anybody else to protect itself, himself, herself against imitation, but they may not block off competitors of substitute technology.

The problem is complicated because you have the defined abusive conduct by reference to what any enterprise would do on a competitive market, but by definition, you do not have a competitive market, therefore, it becomes complicated to define what is correct and what is not correct. We have examples. We have examples of people asking for excessive royalties. The most famous case for excessive royalties in our field of recent years is the Rambus case. The Rambus has managed to get a patent on a technical standard, and when all the enterprises applying the technical standard had made their investment, they assume these people in asking high prices for the right to use the Rambus patent. They are asking for excessive royalties.
In a recent decision by the European Commission, they are enjoined from doing so by just simply setting a price cap on this. So, we have to have some price control. You have exclusionary practices. You have exploitation of closed market. I am jumping over these categories because they are classic. Exclusionary practices are tying practices. Closed markets, closed markets exactly are again markets where you have a technical standard. And the technical standard set mostly in telecommunications is under rights on the claims of a patent.

Then you can use the patent to block the use of the standard. You can hold up an entire industry. Under those conditions, we may say, “oh, no, you may not use your patent that way. It’s an abuse.” And the most recent step was one step further, namely and this comes to what my neighbor was telling “you are building up a stock of industrial property rights.” You do what we call strategic patenting.

The principle is that everybody is free to acquire as much patents as it seems fit, as he or she thinks for the firm is necessary. You may do this for trademark also. We have had the case of the World Football Association who used the trademark WM2000 to cover all classes of products and then blocked everybody from entering into the business which would, in one way or the other, benefit from the championships, you know, by selling T-Shirts and so on with reference to the trademark.

We have strategic patenting, and we have had a recent investigation by the European Commission in the pharmaceutical sector. The starting point was the innovation rate in pharmaceutical is diminishing. What are the reasons? Are the reasons a lack of opportunities? Are the reasons anti-competitive conduct? Or are the reasons somewhere else? And they looked into the relationship between the producers of original pharmaceuticals, the originators, and the manufacturers of what we call generics, people, who, after the term of the patent has lapsed, immediately enter the market. And the interest was to see whether the originators used delaying tactics, for instance, by taking out modifications of the pharmaceutical, slight improvements at a period of time when the patent for the principal patent was close to expiration. Is this a nice tactic or is it not a nice tactic? Should we allow this or shouldn’t we allow this?

There was a relationship between the manufacturers of original compounds, namely, the big pharmaceutical firms. They build large clusters of patents to get a sufficient margin of maneuver. They also use patents to patent into where their rivals are doing research, and they use these patents only to block the rivals. Is this a nice and acceptable strategy or not? The answers to these questions are very difficult because basically, and I have this in my slide, you will see when you look in to the slides, basically, the patent system allows you to act that way. And it has to allow you to act that way because after all you have a technology, you have the patent system, and the patent system allows you only to pick the inventive parts of the technology.

And you have to reassemble, so to speak, via the patenting technology into a protected overall technology, but that’s okay. But using it to go into others, then blocking them. My colleague, he was saying, we sold them. That’s nice. Most of the time, they don’t sell them. They just use them to block the competitor. And the question is, can we solve this by competition law, or shouldn’t we rather look into patent law and seek whether we can arrange our patent law so as to avoid these kinds of frictions? And that is the new global issue in patenting because it’s nice to have them as assets. But the part of having them as assets was also you sell them, and the buyer doesn’t necessarily use the sold patents for its own production. They use them as patent rules to block others and then we have a problem again. Thank you.
Takenaka: Thank you very much, Dr. Ullrich. The first presentation by Mr. Isayama focused on the positive side of the patent system. The second speaker, Dr. Ullrich, talked about the competition law and how the patent law may be abused. There is a risk of the patent system being abused.

The third speaker is going to be professor and doctor of law from Germany, Dr. Theo Bodewig. Dr. Theo Bodewig has studied economics and law at the University of Munich and received habilitation of degree from the same institution, moved to the Max-Planck Institute, and headed the U.S law section for intellectual property and tax law. I spoke earlier that I spent some time in Germany studying and learning. When I first went to Germany, I met Dr. Bodewig at the US law section at the Max-Planck Institute. He is a specialist and professor for Civil, Commercial, and IP and Comparative Law at Humboldt University in Berlin. He was also, heading the Humboldt University's division of Intellectual Property and Comparative Law. He also serves as the visiting professor at the Santa Clara University Law School, also University of Washington Law School, in Seattle, where I teach.

Today, Professor's speech will be on the territorial principle in a globalizing economy and the enforcement thereof. And the information age and the globalizing economy is going to be the specific topics he will cover since intellectual property can cross borders as a form of information, but as Dr. Ullrich pointed out, even within Europe, the patent system is not fully harmonized. And to speak of Japan and Germany or Japan and US between the markets, the patent scope and conditions differ greatly, that causes many disharmonies in the global law, and he will be addressing these areas.

Theo Bodewig: Well, thank you very much for your kind introduction here, and thank you very much for giving me the opportunity to talk here to this audience. I would like to talk about the territoriality principle in a globalizing economy as Professor Takenaka already told you because the territoriality principle is one of the basic dogmas of intellectual property law. It means that National IP rights have effect only in the borders of the jurisdiction granting them.

A German patent, German copyright, German trademark have effect and can be enforced only in Germany. It follows the rules German law has established for granting, using, losing, or transferring and licensing the right. The same holds for other National IP rights, like the Japanese, for instance, and other countries and their respective national rules. The difficulties with the territoriality principle relates to procedural questions of securing protection, the substantive law of criteria for protection, the scope of exclusive rights being granted and the enforcement of IP rights.

What are the consequences for an international enterprise doing business in 20 or more countries? Let's take patents as an example. If you only look at the territoriality principle, if you want to have protection in 20 countries, well, you need 20 applications, one for each country. That's not all; you cannot just copy your German application and send it to the Japanese office to get protection. There, you have to write it in the Japanese language. You have to translate. And not only that, you cannot translate it word by word. You have to write it differently because you have to formulate the claims differently.

I remember the time when in Japan, you could only claim one – put one claim into one application, while in Germany it was easy to put 10 claims into one application. You need different forms which are provided by the patent offices, and also you need many patent attorneys. You, then, have to pay because each country probably will require that you take national attorneys for it before its patent office. You have different granting procedure in the different patent offices. The conditions for patentability are different,
and even if the conditions sound the same, have the language, their interpretation in the different countries and patent offices may be different.

If you get a patent, these patents may have a different scope of protection. Some countries acknowledge the doctrine of equivalence, other countries do not, or interpret it in a different way from the other countries. If you want to enforce your patents, you have to do it on a country by country level. You have to file infringement suits in each country where you want to protect your patents. The intensity of patent protection or infringement protection or protection against infringement is different in each country. In some countries, it may be easy to get protection in a very formalized way. In other countries, it will be more difficult to get protection. Even if you get protection, you win the case, the remedies may be different. In some countries, it will be easy to get preliminary protection and preliminary injunction. In other countries, you cannot get any preliminary injunction. The damages, you may be awarded, are calculated in different ways in different countries and so on. Most countries have criminal laws statutes also for violation of patents, trademarks and so on, but the criminal law applying here are also different.

Countries have different invalidity procedures. You may be able to file for an invalidity, for invalidation of a patent in the countries, but the procedures are different. For instance, in Germany, if you want to file for an invalidity in an infringement proceeding, at the same time, you have to go to two different courts. In other countries, you can raise the invalidity of a patent as a defense and then the normal court deciding the infringement will also decide on the invalidity. In Germany, it’s different.

The licensing laws are different in the different countries. Different employee inventions law; to whom does an invention belong if an employee is making the invention? This differs very much in different countries. Compulsory licenses are provided for in most of the countries, but the rules compulsory licenses are following are very much different in the different countries. So, you see that because of the territoriality principle, we have totally different worlds of patents in each country. So, there is an inherent conflict between globalization and the territoriality principle. Globalization depends, among other things, on unfettered trade, on similar legal rules in all countries, and on non-discrimination against foreign companies.

The territoriality principle, however, tends to create and maintain different legal rules, maintain barriers to trade, and maintain possibly discriminatory provisions for foreigners. Though globalization is a relatively new phenomenon, the detriments of the territoriality principle have been felt much earlier. The industrialization in the western economy started in England in the early 18th century and then moved on to France and Germany and other European countries in the middle and late 19th century. And it led to ever increasing international trade and the development of big companies doing business in many countries. At the same time, patent and trademark protection got ever more important not only as a consequence of industrialization but also as one of its driving forces.

On the one hand, the demand for national IP protection grew; on the other hand, national laws oriented at the conceived self-interest of the countries created barriers to trade. Therefore, in the second half of the 19th century, the awareness of the necessity for a certain level of internationalization and harmonization of the national IP laws grew. This finally led to the conclusion of three international treaties, which up to now form the basis of the international IP law system; in 1883, the Paris Convention; in 1886, the Berne Convention for copyrights; and in 1891, the Madrid Agreement for Trademarks.

Actually, the Paris Convention is the oldest international treaty still in force and today has 193 member
states. It survived the First World War, the Great Depression between the wars. It survived the Second World War. It survived the Cold War and so on, and it still is enforced. Currently, the World Intellectual Property Organization, an institution of the United Nations, administers 29 international treaties relating to IP law. Additionally, the World Trade Organization is also in charge of those rights, and there are several regional conventions and organizations active in this field, like the European Patent Organization and the European Union, to name just the most important ones.

You can understand all these international treaties in the field of intellectual property law as trying to overcome some detriments of the territoriality principle. And I would like to sketch a little bit how these different treaties try to do that, to alleviate some consequences of the territoriality principle. The Paris Convention in 1883, it first obliged the member states to protect industrial property rights. It introduced a non-discrimination clause for foreigners. Foreigners have to be treated like domestic companies, people. It introduced minimum standards for compulsory licenses, and it introduced an international priority system for patent applications and for trademark applications.

The Berne Convention, 1886, it defined in the copyright field, the works, the kind of works to be protected. It set minimum standard for protection and imposed upon the member states the obligation to protect moral rights. It also has non-discrimination clauses in there.

The Madrid Agreement in 1891, and followed by the protocol with the Madrid Agreement in 1989, established a system for the international registration of trademarks. So, by just one application, you could get protection in the member states you designated where you wanted to have protection. So, you did not need 20 applications anymore when you wanted protection in 20 countries. You could do it by one application. The same was done for patent law in the Patent Cooperation Treaty, which was signed in 1970, establishing a system for international applications for patents; one application for all, or selected member states.

The next step was the European Patent Convention. In 1974, the European Patent Convention established a system of one application for the member states, and on top of that, of one granting procedure for the European patents in the member states, which currently are 37 states. On the other hand, what you get under European application and European patent is not one patent, you get a bundle of patents. And then after grant, this bundle of patents divided into national parts of the bundle, follow national rules again.

So, the procedures for invalidation and infringement follow national rules. So, infringement, invalidation of a European patent valid in Germany has to follow German rules and France has to follow French rules and so on. So, the harmonization is far from perfect in the European Patent Convention.

We have the Trademark Law Treaty of 1994 and the Patent Law Treaty of the year 2000. Both are WIPO treaties, both intellectual property law and organization treaties. They harmonize the formal requirements for trademark application and patent applications in the member states. One of the most important latest developments is the TRIPS Agreement; the trade related aspect of intellectual property law, one of the part sub-agreement of the World Trade Organization treaties. From 1994, they set strict minimum standard protection for IP rights for all members of the TRIPS of WTO. And they have a great advantage over WIPO treaties because under the WTO, you have an enforcement proceeding. And WIPO have no power to enforce adherence to the treaty. So, if a country is violating the Paris Convention, WIPO cannot do anything about it.
Under WTO, there is a panel proceeding, which finally can lead to tariffs put against these countries violating the treaties. And then specially, there are further initiatives underway; WIPO is trying to put together diplomatic conference to try to harmonize again international patent law on a substantive level. In the European Union, you have many regulations and directors which are widely harmonized using legal law in the European Union. We have a community trademark, we have community designs, and a community patent is being planned.

To summarize, some of the disadvantages of the territoriality principle have been alleviated in the meantime. Thus, the application for patents and trademarks in foreign countries has been simplified and made less expensive by the Patent Cooperation Treaty and the Madrid Agreement and its protocol. Formalities of national patent and trademark applications have been harmonized by the Trademark Law Treaty and by the Patent Law Treaty. Copyrights can, thanks to the Berne Convention, be secured all over the world without any formalities.

A step further has been taken in Europe with the European Patent Convention not only introducing a single patent application but also single granting procedure. Similar systems exist for Eurasian patents for Russia and some former Soviet Union states. And you have two systems in Africa also, the ARIPPO for former English colonies and the OAPI for former colonies. Substantive law to a large extent has been harmonized on a minimum level by the TRIPS Agreement and the international treaties, it applied to its member to join. In the European Union, harmonization goes even further.

But despite these efforts to cut back on the extent of the territoriality principle, major problems remain. I will name just a few. The first is the exhaustion doctrine and globalization. The exhaustion doctrine, or as the Americans call it the first sale doctrine, is generally applied in national IP laws. In effect, it means that once a product incorporating an IP right like a patented machine, a trademark goods, a CD, a DVD, a book, once such an item has been put into commerce by the rights owners, or with its consent, its redistribution by third parties is free and cannot be subject to restrictions of the rights owner anymore. The distribution right as to this product is exhausted. Because of the territoriality principle, only the distribution right in the respective country of the first sale is exhausted.

Consequently, the rights owner can still stop the importation of products first sold in another country. This is called National Exhaustion. National Exhaustion, therefore, clearly is at odds with the globalizing economy since it hinders the free flow of goods from one country to another. To protect the freedom of movement of goods, the European Union has adopted the principle of EU-Wide Exhaustion, meaning that a first sale in any member states exhausts a distribution rights in all member states.

But regional exhaustion is the exception in the IP laws of the world. Recognition of a system of worldwide exhaustion is even further away. Germany had recognition of worldwide exhaustion for trademark law, but it had to be cut back again to European-wide exhaustion under a decision of the European Court of Justice. The consequence is that patented, copyrighted, or trademarked goods do not enjoy freedom of movement of goods worldwide.

Second problem, different substantive legal rules and globalization, especially when it comes to patent-ability, for instance. There are still many differences in the substantive IP laws of the world. As an example, the USA still follow the First to Invent Principle in patent law, while all other countries have adopted the First to File Principle. On the other hand, the European Patent Convention has done away with a grace period for all the inventors’ own publications, while the United States granted 12-month grace
The European Patent Convention recognizes absolute novelty as condition for patentability. The USA, for public use, only requires relative novelty. The USA for quite some time has granted patents for business method software. The future of this practice, maybe, you would like to talk about this – after the Bilski decision, the Supreme Court is a little bit in doubt here. The European Patent office, on the other hand, required technicality as a prerequisite for protection. So, I could go on and on about the differences, the substantive differences in patent law all over the world, but I have just mentioned the differences between the European patent and the USA, and not between the European patent and the Japanese and Indian and the Chinese and so on.

All those differences make it difficult for inventors to get protection in the major markets in the world. Domestic companies may have an advantage over foreigners because they better know their own system. Sometimes, the substantive provisions are contradictory so that following the law of one jurisdiction may jeopardize the efforts to get protection in other countries. If, for instance, US inventor relies on the grace period in USA patent law and publishes his invention before application, he will thereby lose the possibility to get a European patent. Even if the substantive law is harmonized, this does not necessarily mean that it is interpreted and applied in the identical way.

A third difference, even more different is the enforcement of IP rights in the world. Not only does an inventor have to fight infringements in his patent separately in each jurisdiction, the procedural rules in each country are equally different. The same holds for the available remedies. While some countries freely grant preliminary relief, it is not available in other countries under totally different conditions. Damages are calculated in many different ways and so on. One of the most pressing problems relating to enforcement is the different intensity of enforcement activities, or even the lack, the total lack thereof. In the last analysis, what counts is not the law in the books, which is most often of high moral standard, but the application of the law. What good are the best laws and their protective language if the inventor cannot effectively invoke such provisions?

The international problem of product piracy is not a consequence of inadequate laws against it, but of the difficulty to get them effectively enforced in the local courts and before local authorities. Another difference, compulsory licensing; each country, with a few exceptions, has its own set of compulsory licensing provisions. They implement the minimum standard required by the Paris Convention, but besides that, they differ widely. The main problem, however, is that compulsory licenses can only be granted for the territory of the country granting them and not for the benefit of other countries. This led to the situation that compulsory licensing provisions in poor countries who could not afford the high prices for pharmaceuticals the population needed could not successfully resort to compulsory licensing.

The WTO, in the so-called Doha Compromise, has tried to solve this problem by allowing under certain conditions to deviate from the territoriality principle and grant compulsory licenses for the benefit of other countries. The problem of affordable healthcare in the poorest countries of the world, nevertheless, has not been solved yet. And this is true also because this possibility, the Doha Compromise, gives the member states of WTO has not been effectively followed by the member states, specially the industrialized member states.

Other differences relate to licensing contract and employee invention. In some countries, licensing contracts have to be registered; in others, not. Some countries require certain conditions to protect the
domestic industry. In others, there is wide contractual freedom and so on. Employee inventions in some countries automatically belong to the employer. In others, to the employee who then under certain conditions has to transfer them to the employer. In some countries, the employee gets a remuneration if the employer uses his invention; in some countries, not.

An international company employing many researchers in its labs from different countries and in different locations worldwide has to cope with this complicated situation of employee inventions.

And then differences in anti-trust law. You have just heard from Professor Ullrich about the general principles of anti-trust law relating to IP rights. Anti-trust laws are also very different in the countries of the world. Though many countries now follow the US or the European Union model, again, the other side of the coin is the enforcement activity. While some countries like the EU are pretty strict, others for lack of experience, lack of personnel, or lack of interest are more lax. Thereby different competitive conditions are created distorting international competition. Following this analysis of the major deficiencies being based on the territoriality principle, if, despite big successful harmonization effort, the territoriality principle still causes major problems in a globalizing economy, why then one is tempted to ask have we not yet done away with it? Why is it still not superseded by a universality principle? Short answer is that giving up the territoriality principle, for the countries of the world, would mean to give important parts of the sovereignty in economic policy. How politically painful and disturbing this can be. We see even in the European Union where lots of people complain about those bureaucrats in Brussels who take over more and more powers to rule into the lives of the citizens and take the powers away from the national governments.

Giving up the territoriality system also would mean complete and worldwide harmonization of IP law. This currently is not achievable. The only way is the piecemeal approach to harmonization being taken since the Paris Convention. Total harmonization would, by the way, not stop at the special laws. It would also have repercussions for general Tort law. An infringement is a tort, and you cannot harmonize infringements only. Without that, this would have repercussions on the Tort law. It would have repercussion on civil procedure law. If you harmonize infringement procedures, you cannot do this isolated, you probably would have some repercussions on general civil procedure law and so on. We see this especially in Europe currently because we are intending to introduce a centralized court system for European patents and maybe the future community patents and how difficult it is to get a system set up with a central court for the member states of the European Patent Convention and the European Union.

But even if the territoriality principle could be abolished, the question remains, at what price? Sure globalization would be furthered and enhanced, but what would be the sacrifice if we give up territoriality. Does the territoriality principle not have some positive effect, which would make it worth keeping, at least, in a limited version? As already mentioned, the territoriality principle leaves the states more sovereignty, more sovereign decisions in the field of IP law. This enables the countries to tailor their loss, more to the national interest then it would be possible under a completely harmonized system.

As we have seen when discussing compulsory licenses, poor, less developed countries may prefer and may even need different rules from rich, highly industrialized countries. This could be taken care of even in a harmonized system by allowing exceptions, but such exceptions need the consent of the other member states of an international convention and then, therefore, cannot be decided on independently. Leaving the countries more leeway may also enhance the acceptance of the rules of IP law in the domestic
economy and population. International harmonization may lead to a feeling of being overpowered by foreign governments and international institutions like the IMF and the World Bank and so on and so on and thereby lead to resistance against the rules perceived to be forced upon a country.

Another aspect of international harmonization is that institutional competition between different approaches to legal problems is excluded. For instance, new technological developments occur and require legal regulation, the best way to do it may not be immediately obvious. Letting different approaches deal with the problem could lead to an evolutionary process of finding the best way. Premature harmonization would not necessarily yield this best result. Think about the protection of computer software. United States went ahead and protected it under copyright law and all other countries followed in this. And now in the last years, they have detected that maybe patent protection would be the better way.

From the viewpoint of an IP rights holder, a detriment of wide ranging harmonization may be the loss of the possibility of forum shopping, for instance. Finding the forum best suited for his case and interest as application enforcement is the same all over the world; there is no forum shopping anymore. Harmonization always has winners and losers. The winners are all participants in the market because of international business being made easier, but the winners are specially those who profit from the legal solution chosen as common ground. Losers are those who would have preferred another rule better serving their interest. They would have liked to keep the territoriality principle.

To sum up, irrespective of the fact that abolishing the territoriality principle, at least currently, is not politically feasible anyway, it also should be kept in mind that it would come at a price. Therefore, the traditional approach we see since the Paris Convention in 1884, namely, to cut back on the principle of piece by piece as the international community sees fit, to enhance harmonization seems to me to be the wiser way. Thank you.

**Takenaka:** So, now let me go ahead and introduce the panelists. I will introduce the panelists first, and ask each panelist to give 10-minute presentation each, and within that presentation, I would like each speaker to comment on the speech that was presented by the speakers.

First panelist is Felix-Reinhard Einsel. Mr. Einsel is an IP litigator and resides at the Sonderhoff & Einsel Law and Patent Office as partner. The office is in Germany, but this is the oldest and most established foreign language office in Japan.

After graduating from Sofia University, he came to Washington University for LLM of Asian Law Program and has passed the Japanese bar. So, Mr. Einsel works and is qualified at both Germany and Japan to practice law and is a sort of the Chamber of Commerce himself, acting as a bridge in the area of business law for both countries. So, from a very practical and business oriented perspective, and from the full knowledge of differences in the business culture of both countries, will be able to give us his professional view.

The second panelist is Dr. Martin Schaefer. The panel is mainly focused on patent, but actually Dr. Schaefer is a professional in the copyright arena. He works at the Boehmert & Boehmert, which is well-known with IP experiences. He is a partner, in the Berlin office. And also Dr. Schaefer is working as an Advisory Committee Chairman of the German Music Archive and providing valuable inputs. So, again, he is one of the leading commentaries in the German copyright law, with international experience.

The third speaker is my colleague at Waseda University, Professor Ryu Takabayashi. I usually come to
Waseda for 3 months every year from Washington University, to teach American law and European law. And Professor Takabayashi, who has already been very well-known in IP field without my explanation though, graduated from Waseda University and had been a judge. Then he served as a researcher in Supreme Court of Japan before joining Waseda University. He became a professor of Waseda University, and at the same time, he is the director at RCLIP, the Research Centre for the Legal System of Intellectual Property at the Waseda Institute of Corporate Law and Society. We, in Washington University, also have a Center for Advance Study of Intellectual Property. These two institutes have collaborated to make a database by translating German and other European IP precedence. This is a very large project, which our institutes cooperate in. Prof. Takabayashi will speak from the perspective of an academic about the legal system in Japan as well as the current practice environment in Japan.

Felix-Reinhard Einsel: I would like to talk to you about the practical aspect. First of all, you need to obtain the patent; otherwise, we will not be able to talk about the level of activities the keynote speakers talked about, the international business of intellectual property by Mr. Isayama, and licensing by Dr. Ulich. Regarding obtaining patents, there are daily difficulties that we confront. So, let me take them up.

First of all, Dr. Bodewig talked about the principle of territorial jurisdiction. The fact that there is that principle concerning what needs to be the requirement, they can be decided on national basis. And what happens regarding what is written, the regulation in the Germany is not as strong as that of the registering requirements as compared to Japan. You don’t have to write about the practical example. The specification is much, looser in Germany.

Not many practical examples in case of German corporations because they are not required. There are sometimes registration forms that do not even these practical examples, or some of them are too conceptual in descriptions. And also regarding the innovativeness, it doesn’t really talk about the effectiveness or efficacy and then it is very difficult to be evaluated in the Japanese Patent Office. The requirement here in Japan is rather meticulous, and they need to be submitted and applied with all those requirements. In that sense, German companies are very disadvantageous in applying for the patents here in Japan because of the differences that exist. For example, when you look at one of the requirement for registration, 80%-90% of the requirements are not fulfilled. About 40% return as a violation of not necessarily filling in all the requirements for the application.

Oftentimes, we do serve as a representative for the German companies and about 70% of them are PCT, and we as attorney cannot change that. The only way is to translate word-to-word basis. And in that sense, we could say, even on a bilateral situation between Japan and Germany, territoriality is disadvantageous to the German corporations. Dr. Ullrich then talked about the patent strategy and its abuse. And what I thought of is the divisional application.

Why? The reason for that is because, in EPO, there has been a new revised law. First office action in 24 months after the original parental application, divisional applications cannot be made. Why is it? There is a German company, for example, and because German corporations abuse divisional applications, they repeatedly carried out divisional applications so that rival companies will not be able to – when the competitor actually market something in the – product in the market, they will file for a new divisional application so that the competitors will have a problem. And because of that new law was introduced, and this is a procedure that is often time employed by corporations so that they can repeatedly have divi-
sional applications to harm the competitor. Maybe, here in Japan, too, at certain time in the future, it may be necessary to introduce the suspension of the divisional application. The limitations and restrictions on the time may be not very appropriate. If you notice the history of the applications for various patents, and if the divisional applications are carried out to stop or to change the claim based on the product that appears by the competitor, then we need to think about that.

As for obtaining the patent by the German companies in the past few years and the strategies that they employed after the Lehman Shock, I actually visited the IP sections of the German corporations, two to three months every year, and I was very shocked after the Lehman crisis that none of the plants were actually in operation in any of these companies.

But IP department people, everyone said that R&D and the patent application number will not be reduced. That’s what everyone said. As compared to that, Japanese corporations reduced a number of patent applications, and this is clear from the Japanese Patent Office data. From ’08 to ’09; there has been a reduction in the number of the patent applications by about 11%. And the Commissioner of EPO said that Japanese companies show the largest decline in the number of application during this time.

When you look at the reality, there may be composite factors, but German economy has recovered, it seems, as far as I am concerned, I see it, than that of the Japanese economy, and this may be one of the reasons why the German recovery was faster. In other words, German company did not reduce the amount of the patent applications, but this has two aspects. Within Japan, domestically here in Japan, the reverse situation took place, that is, German corporations did not file for patent applications in Japan or they reduced it. One of the reasons for that is because the registering requirement in the non-obviousness requirement is very strong and there has been many rejections of the patent applications here in Japan and many of these rejections were only Japan, they felt that it is useless to actually apply for a patent here in Japan.

It seems to be a joke, but, in Germany, people thought that there was foreign discrimination in Japan. It’s just a rumor, and I said that is not the case and I am trying to enlighten the Germans that it is not the discrimination, but the form of the registration is different in Japan. And if you don’t follow the requirement for the registration you may not be able to fight and try to obtain the patent here in Japan.

When I explain it, they say that they are not writing this registration requirement for Japan, but they are writing this so that they can obtain patent in EU. But some European companies had learned and they had actually increased the number of the practical examples. In case of a priority under the Paris Convention, it would be the work of attorneys.

And I think the patent attorneys need to inform these corporations about what they need to do so that they can file for the patent applications in Japan in a more appropriate manner. Thank you very much.

Takenaka: Thank you Mr. Einsel. What Mr. Einsel pointed out is also true for the American applicants. Though I do not know whether they use the word “discrimination against the foreigners”. Their divisional application and how they are used, for example, is similar to the way that continuous applications done in the United States, and when the application is made, oftentimes you do not know the infringement, and if the claims are not covered, they may go ahead with the divisional or continuous applications, and they say that it is all right to change the claims in order to protect themselves.

So, I think, including that these practical aspects would have to be discussed during the panel discus-
Martin Schaefer: Yes, I will restrict myself to some short comments on, especially, the speeches held by Dr. Bodewig and Dr. Ullrich. Both of them have shown that we are talking about the whole broad of IP rights protection. We, of course, in this session focus on patent, but most of the rules we were talking about equally apply to copyright protection as well. And I believe that the issues of copyright protection that are currently most discussed in Europe might serve as a valuable backdrop for the discussions held in patent because there are certain differences that maybe put certain issues into a clearer light as they are more extreme in copyright than they are currently occurring in patent law.

So, I would like to address some of the territoriality issues first because the European unification is basically about free movement of goods and services and especially in copyright and I will talk on the example of the music business. These products directly and instantly reach the consumer and are by definition trans-border. It is probably no wonder that these issues have been put on top of the agenda by European law makers because in the past decade it has not been possible to establish a functioning licensing system for the whole of Europe in the music sector. And that was basically due to some deficiencies in licensing author's rights, and I won't go in details of what the reasons are for these deficiencies, but the reaction was very clear.

In the European Union, it was made instantly point about harmonizing rights management on a European scale because it was held in a broad public opinion that it cannot be true that in a European-unified market not all repertoire of all protected music can be made available online in a legal manner. And therefore, exactly the kind of challenges of the territoriality principle that Professor Bodewig was just talking about, their call for giving it up altogether was very early heard in the field of music exploitation.

So, in the copyright world, we have always, aside of the more technical terms talked about, two principles, the country of origin and the country of destination principle. The country of destination principle means that you have to acquire rights for the country where a certain offer is being made, and you have to acquire rights for each and every territory in which use is made. So, in a broadcast, for instance, in the country where the transmission or where the broadcasting signal originates and then as well in the country where it arrives. That is the purest expression of territoriality, and it's still serving as the general principle, but, of course, this was, as we have already heard, challenged at an early stage. And for services, it has been at least partially abolished for the field of satellite broadcasting, and as we have heard by Professor Bodewig, it’s long been abolished for the field of trade with physical goods in which protected matter is embodied, that's the Principle of Exhaustion.

So, what I would like to refer to is that now, having that call for harmonization, both principles are being called for, so, there are tendencies within the European Commission to say, “well, in the absence of a functioning licensing system throughout Europe, let’s call for something like an Exhaustion Principle for online services of music.” Or if that doesn’t work due to the systematical problems that could cause, let’s apply something like we have already done to the satellite broadcasting so that it is sufficient that you buy a certain iTunes’ file in one country and then it can, after that you license iTunes in a certain country and then iTunes can sell their products throughout the European Union.

Now, what I wanted to display in this context is that this will not resolve many of the problems that are presently occurring. Well, in all of these cases, you need to harmonize legal framework before you can
apply either of these types of country of origin.

In the field of copyright, we are rather advanced on this, so that won’t constitute the main problem, but, of course, unlike in the patent world, for almost all kinds of copyright you need broad access to repertoires. So, it isn’t sufficient that you get access to Sony Music repertoire only or to EMI repertoire only or to in the book field, the publisher Random House only, but you need a comprehensive approach for everything. So, if you don’t provide for full representation of all rights owners in each country, you won’t have the desired effect because it doesn’t help you at all.

If you, for instance, go to Ireland to acquire central license under something like a Country of Origin Principle and then you get only the Irish repertoire because the other repertoire isn’t represented there. And I think one has to keep this in mind because that is often overseen. In the polemic discussion within the European Union, it is all focused on central access, but it’s not only about central access, it’s also about collecting repertoire. So, there have been principles already in existence for a long period of time dealing with centralized access, and they have to be reestablished for the online business, and that’s basically what will serve everyone well, and that works within the framework of territoriality.

Now, let’s move on to competition issues. In the recent past, the EU Commission has pushed on establishing a tougher competition within rights management, especially in the copyright field, which resulted in a breaking up of traditional collecting societies. And this led to a situation where large parts of the repertoire were withdrawn from collective licensing and put back in the hands of individual rights owner. And this has led to a situation where the rights owners have split into many. While in the past you had to address one collecting only, nowadays, you might need to go to publisher A for repertoire that he controls to an agency B plus to several collecting societies.

So, in this context, we have two issues. One is the splitting up of the unified licensing system, which is disadvantageous to users just as much as that old system was as well. So, you exchange, in essence, the benefit of having unified access for better competition. And then, of course, secondly, the question needs to be raised, what’s happening with these large quantities of repertoire and that is bringing me back to Professor Ullrich’s remarks, this is all about market power.

In the past, the collecting society was under very strict control. They had to issue licenses. Now, parts of the repertoire went back into huge publishers that are just as big as a big collecting society. Are these private enterprises under the same rules in terms of anti-trust as the collecting societies used to be, because, as we heard, it is not about the monopoly inherent in every exclusive right, but it is about the market power that the amassment of certain rights in one hand creates, and so, the question arises, will there be some control imposed in future also on large scale individual enterprises being involved in the licensing business. So, that was basically my remarks on the two main keynotes. Thank you.

**Takenaka:** Thank you very much, and especially we need a different perspective on intellectual property. Then, finally, professor Takabayashi from the Japanese system.

**Ryu Takabayashi:** Today, there is very small number of Japanese here, and I am very honored to have this opportunity, as a Japanese, to speak here. I am from Waseda University’s Research Center for the Legal System of Intellectual Property. Today, there was a discussion about the principle of territorial jurisdiction as well as the non-unification of the intellectual property law, and so on. At our research center,
we are looking at the IP legal system, and what is the ideal IP law, and establishment of such ideal IP system is what we are aiming at, an incredible idea. I would like to speak about 2 points in my 10 minutes. As introduced by Professor Takenaka prior, I served as a judge for 17 years, and as a professor for 15 years. I would like to speak from the viewpoint of a judge for the first half, and the rest from the standpoint of an academic researcher.

So, first of all, I would like to talk to you from the viewpoint of a judge. That is, according to a journal issued this month, where I had written an essay, with the title of “an internationality of the cases related to IP”. There are many precedents in various fields but, generally, I don’t think they are very international. But in case of the IP, precedents in different countries are impacting each other very much.

For example, about the business patent, patenting the e-business method are very hot issue today, which is related to Bilski case, in the United States and here in Japan too. In Japan, coincidentally, there was a case about the patentability of the business method, decided by the IP court, last year.

As Mr. Einsel mentioned, from a practical point of view, when applying, how much of the invention you have to disclose? He mentioned about the descriptive requirement. This is the issue not only in Europe, but also in America and Japan, as common topics in this trilateral area. And there has been similar judgment given. It is in relation to the United States, though.

As mentioned by Mr. Isayama, IP is an effective tool that can be used by the corporation. So, there are various conflicts, or issues of application and infringement. They are oftentimes common and similar among the countries in the world. Decisions of these cases are independent per country, of course, without discussing with other countries’ judges each other, with different law system, but the theme of these precedents are quite similar. Enforcement and law are not necessarily equal or similar, but the judges idea about the IP law are similar. So, this is the view as a judge.

Now, going back to the academic’s standpoint, legal systems are not unified. There are TRIPS, and there are somewhat of a unification of the system as a forum, but when it comes to enforcement, some are more advance; some are still in the process of being enforced. So, they are not at all unified. Since I am a scholar, I cannot just say that they are not unified. I have worked on constructing the IP case database in the world since 7 years ago. We asked a few collaborator in each Asian countries, China, Taiwan, Korea, Indonesia, Thai, India, which are non-English speaking countries, and ask them to select IP cases from these countries. We translate them into English and provide the translation free in our website.

Moreover, we extend the activity to European countries of non-English speaking countries, including Germany, France, Italy, Spain, by the cooperation with Prof. Takenaka. We translate the cases into English for releasing free, by the fund of Japanese government.

There is no use to say that the enforcement and legal systems are not unified, and to collect the cases, where the similar matters appear, and study them from the common basis could make it possible to extract the resource of the problem.

I have invited judges from various Asian countries, and I had actually come up with a virtual case and tried to see what judgment each of the court from different countries will come up with based on which procedures. So, we do have this kind of mock trial. And from the standpoint of a scholar, since I was actually a judge before, I believe that these court cases are very useful. That may not be the only thing that we need to look at, but I use them to try to establish on the more unified or integrated, an ideal IP legal system. That was the first step.
But as a second step, by utilizing the database that I have created and by utilizing the network, I think, we need to create an integrated or uniform legal system. Dr. Ullrich talked about a market, and an incentive Business aspect, I believe, is important in creating the IP legal system. But when you look at the Asian countries like Vietnam or other developing countries, I think we need to have a legal system that can be used by those countries as well.

So, this is not something that is achieved only with business-like. For example, we need to look at the medical field. I believe that IP is very instrumental in the development of the field of medicine, but that is not all, but IP is very important for the future growth of the medicine. And what do we see? There is something that is common. There are people in the emerging countries or less developed countries, and I think we do need to have a legal system that can be acceptable to all of them.

I don’t really like the incentive-driven type of legal system. I do like to see an IP legal system that is a little different from the incentive-based one. I may be talking too much about the conceptual ideal approach, but that would be my comment.

**Takenaka:** Thank you, Professor Takabayashi. Let’s take about 10 minutes for discussion amongst the panelists, and then we will now like to invite questions from the floor as well. So, first from my side, I would like to address the speakers first.

To Mr. Isayama, I know that you said the intellectual assets need to be managed and utilized; otherwise, it is just inventory, just a cost center item. It reminds me of non-practicing patent holders, as I have resided in the US for some time. When you say asset management of IP, concerning to the situation of making money or utilizing it as an asset besides using it as a technological asset, how do you differentiate between general company like Nissan, and such non-practicing patent holders? This is quite interesting from the viewpoint of an academic researcher. How do you think about it, Mr. Isayama?

**Isayama:** I have seen from the viewpoint of practitioner. The topics raised by professors reminded me of the days when I was in the Patent Office, and I do feel that things have not changed as much from the time that I was working at the Patent Office.

After all, the most important thing is to comprehend the reality of the situation. The usage of patent or non-usage is not something one can enforce from external player. Then, for the people who would use it positively, what is loss that society suffers? That’s, I think, some common agenda.

Perhaps by this common agenda, if there is a need and to make a comparative study internationally, it would be possible to reach an agreement at least in the level of public administration. When I was in Patent Office, there was an idea that harmonization is not the abstract logic but the practice. For example, I wondered why the same sort of examinations has to be taken in each country for the same objects. Once it is filed in Japanese system, why don’t the other countries accept in a certain extent? It would speed up definitely. I don’t know what is going on at this very moment but I made such discussions several times.

In a meantime, there were several concrete examples that if it’s approved in one country, it should be approved in other countries.

From Japan, it seems that countries in Europe have individual system, though EPO said they are harmonizing, it is not true. Each patent office in a country decides whether to accept or not. So, from a very realistic practicing perspective, utilization of the patent or non-utilization doesn’t really matter, but
whether or not the system can be set up where the patents are granted universally or not.

Otherwise, these discussions are just technical discussions, and we are trying to work on an innovation.

If a certain inventor is very innovative, that innovation should be honored by the world. And the R&D expenses that’s been set – input into that. That’s all been the cost to the employer or even the inventor and that’s why the patent is granted. So, the system, if even a very supreme system is about 100 years ago, it doesn’t benefit the inventor. I think that’s more of the crucial point. I think a system needs to be workable. If people can’t understand the system – I am sure there are people here, and everybody is probably some kind of a specialist, so they probably understand more than I understand the matter, but if you speak to any average person about today’s discussion, I think there will be very few who will say that the discussion was convincing.

So, I think we would need to work to try to put these ideals, or the framework into more a practitioner’s oriented discussion. That transition is probably the most important in my view.

**Takenaka:** Professor Ullrich, I would like to ask – your comment with respect to the activities of the company like, Rambus? In the United States, the activities of non-patent practicing firms have a big impact with respect to the development of patent system, and particularly case law, not only patent law but also competition law, is it also true in Germany and European countries? There are so-called the patent troll.

**Ullrich:** I wanted to say probably two things. The starting point when you think about utilizing or non-utilizing patents is that you have a patent system based on registration, so you acquire the title, and you may acquire the title, so to speak, in the abstract, and you invent and – what we learn from the sector enquiry into the pharmaceutical industry is that industry is able to make inventions on demand. It’s nothing which is, so to speak, coming only by genius. It’s a management effort, and you can produce them where you want to have them. The example, I am always giving for this is all in the pharmaceutical industry, is when the Siemens decided that they were not innovative enough, they set the goal of doubling their inventors’ activity within 1 year and they did so.

So, apparently, the criterion of non-obviousness is nothing which is really a hurdle. You just use the inventions as you want. And then produce a title to this. Now, the question is, should you also use this kind of invention to work them. And there is a common misunderstanding about the patent system as if there were no use requirement. There is a use requirement underlying the patent system. That’s where the origin of the patent system is coming from because the odd history was we granted patents to foreign inventors to bring them in the country and to make them their technology work in the country. That was the basic behind the patent system originally.

And that later on in the end of the 19th century, it has been changed as a rule and the sanction would only be compulsory licensing. And Theo Bodewig has told you much about the complications of compulsory licensing, the major obstacle being that in order to be able to practice an invention on a more than a local level, you had to get a compulsory licensing in many countries. This is very impractical. Okay, this is one point.

The other point is there is no basic, so to speak, disapproval of non-using patents and of taking out
defensive patents only for patents which you put around your basic technology which you have, because you may need more protection against your rivals in order to be able to get to the market than actually for the core of the technology which you put into a product. So, there is, so to speak, a halo around your core which you need.

And then there comes a third, so to speak, circle around your inventions, which are these blocking patents which you usually – non-used patents which you also use – put into your rival’s technology. Or you have assets – you have developed a technology over the years, and you will change your business format and you say, well, no, I don’t need them anymore, and you sell them. And probably the firm buying this patent doesn’t use them either, but uses them only as a means to attract money out of other people. And you see this is – there is no easy answer to this because basically, in economic terms, it’s absolutely rational to sell non-use patents to firms, which may use them and to ask a price for this because this would just simply mirror the value of the patents on the market.

The problem comes – now you have to introduce competition law – when you do this under conditions where you extract more money than the value – the patent is actually worth and that you can do when the other firms have already invested into their own technologies and into their own production facilities.

Now arises what the economists call a hold-up situation. They have made – they have incurred sunk cost, and now you are trying to enforce your patent against them, and they are willing to pay, so to speak, every price just to save their investment. This is where the problem really arises.

This also means that the distinction, what to say, patent law, somebody who only tries to make fraudulent money out of the patent and what is simply a very profit-minded businessman is very difficult to draw. The profit-minded businessman is what we have in our system. The other one is a problem. The distinguishing line is very difficult to draw as this case is now before the German courts, and we are all looking to what the courts are going to find out. And we get this, you know, until we get it to the last instance, we won’t know. And even then, we might get the wrong answer. So, I cannot give you a very good answer to that. Thank you.

**Takenaka:** Professor Bodewig, I understand that there are a lot of differences between a patent system as well as a copyright system among European countries, and even more so between Germany and Japan. However, the subject matter of IP protection is already global. So, do you think that despite of the difference, do we need to have some system to reach beyond the border because, for example, emailing system is beyond the border, and if neither party – I mean neither Germany or Japan is not able to prevent the infringement, then that would cause a lot of problems, especially, no compensation for inventors if the invention itself is beyond the border, such as emailing system.

**Dr. Bodewig:** I have mentioned already that the enforcement, of course, is different, and that on the European level, we currently are trying to get unified enforcement system for European patents and how difficult this is already on the European level. If you want to introduce something like that on the worldwide level, this would be totally impossible currently.

The other way would only be to have one country introducing trans-border injunctions, for instance, like the Dutch have tried to do it for the European patent, so that, let’s say the Americans are starting to empower American courts to grant injunctions not only for the American territory but for the Chinese
territory. Well, this would be a nice idea, perhaps, for the Americans to do that. On the other hand, how would they enforce those injunctions anyway, even if they would have a judgment giving this injunction to an American company, on the Chinese territory, the Chinese wouldn’t enforce it. So, I think this is an idea we could follow that. Some time we will have a system like that, and we probably will have something like that on the European level, but we see on the European level already how difficult it is to introduce such a system.

You have different procedural laws of the European member states, and you have to come to one harmonized procedural law in a centralized court in the system. We have, for instance, the German courts, especially, when it comes to invalidity proceedings, we have technical judges, which are unknown in other countries in the European Union. So, we have a centralized court for the European Patent Convention of European Patent Organization. What about technical judges in those courts? Germans, of course, would say, “well, we need that. We have very good experience with technical judges.” Other countries say, “we do very well without.”

So, what are the rules you agree upon? It’s very, very difficult to do that even in between the European Patent Organization and then to do it worldwide, I think, it’s hardly possible.

I would like to make another comment on what Hanns Ullrich has said already on the use requirement. You have another kind of use requirement, but you have annual fees in the patent system. And the annual fees are rising year by year, and the idea behind this is patents which are not used, which are economically useless should be abandoned.

So, you have the non-use of the patent by itself. I think it’s not a problem; the non-use of the technology. In the trolls, they use the patent. They do not use the technology, but they use the patent, the exclusive right, in that they try to enjoin other people from using this invention. So, you could say that’s kind of using the patent also.

Dr. Ullrich: That’s what we call a sophistic distinction.

Prof. Takenaka: I also want to ask to distinguished practitioners about maybe with respect to the extraterritorial enforcement. What would be – especially, Mr. Einsel, you emphasized the differences between patent systems. However, the subject matter is global, so how do you – otherwise your client, if your product is spread all over the world, then you need to file lawsuit everywhere where infringement occurs?

Mr. Einsel: Well, for example, if a German company felt that its rights were infringed by a Japanese company, in the practicing arena, the largest question has to do with injunction. Of course, the litigation and going to the court takes a lot of time, and it doesn’t get to that level, but in terms of injunction, once a month I would get some enquiries of how to do that, and what is the process involved. German companies initially when they feel that their product – before they launch in the market, they go to an exhibit, and they find that an infringement is already found at the exhibit, they like to stop at that stage, or after the exhibit, they would go to market. So, they want to stop before it goes into the market. That’s a lot of the requests coming from the German company. And from a German perspective, that injunction might come in 2, 3, days, or even before the day of exhibit closure. And when they find that injunction is not available
and that the actual litigation and fighting in the court is necessary, then a lot of the German companies give up at that point.

So, the Japanese system is not much appreciated much by the German companies in the sense that the injunction is not provided on an immediate basis. And the German company product, if it’s infringed, it’s infringed in varieties of regions, and they would rather, I think – as a trend, about 10 years ago, U.S was a forum that’s been favorable, but even American companies now file for a forum in Germany. The German system is quite appreciated, whereas Japanese court is not chosen, it’s not the favorite court of choice.

Prof. Takenaka: We talked about harmonization, but if harmonization goes too far, if there is only one system, European Patent Court in Europe, one system in Europe, that would mean one-stop enforcement, that’s the merit side, but then the demerit side is that practitioners cannot do forum shopping. So, it goes again with the competition law. Each country needs to compete and build a favorable system and that leads to a better innovation, so whether one universal system is favorable or not is a discussion where the court systems and the legal systems, the professionals, the policymakers, the governments need to work on to develop a system that’s more usable for the foreign companies as well. That’s my comment.

I would like to ask the comments from Dr. Schaefer particularly in the field of copyright, the extra territorial enforcement would be even more serious issue, I believe.

Dr. Schaefer: I would like to make a comment, especially on the last point that Professor Bodewig made because, indeed, this question is omnipresent. Can we achieve some rule by which we can obtain an injunctive relief beyond the borders of the territory in which the injunction is sought? And I, in fact, very much to supplement what he has said, the situation is in a way even worse currently as the procedural means of obtaining temporary injunctions are so different throughout Europe. So, if you have copyright case or a trademark case - I mean in patent, it’s rarely ever been dealt with by temporary injunction. Let’s take a trademark or on unfair competition or a copyright case and assume you have an infringement in Germany and you have an infringer, let’s say, in the Netherlands. As the infringement takes in Germany, you would be able to obtain a temporary injunction in Germany even without an oral hearing because in Germany, it is possible to obtain temporary injunctions without an oral hearing, which is very effective, and in a way, a legal terror instrument against your opponent. But if you try to serve this in the Netherlands, or in some other European states, they will simply deny these acts of jurisdiction without an oral hearing any binding effect according to their own constitutions. So, you might have something that is only meant to govern the situation in Germany, but is directed at the third party abroad. And you might be able to serve it to that party, but according to the ordinary rules whereby normally Dutch authorities would enforce the temporary injunction in the mutual agreement they have, this would fail with certain types of temporary injunctive relief.

So, I can only emphasize what was being said more than once. This whole issue rests also with a kind of harmonization on procedural level before it’s truly working. And then the next step is either harmonize it on a broader level, such as European, or you will most presumably stay within the limits of territoriality.

Prof. Takenaka: Lastly, Prof. Takabayashi. US and Germany, Mr. Einsel practices in both regions, and
according to him, Japanese system does not seem to be very friendly to foreign practitioners, foreign companies. Would you like to comment on that?

**Prof. Takabayashi:** Well, Japanese judges are very independent, and so saying something does not mean it leads to a particular action in any sense, but in terms of a system, the temporary injunction is available with a fairly simple document presentation. So, it is not system wise so difficult, but in terms of the judgment on whether there is an infringement on the patent took place or not, that is more sensitive, and a decision on that cannot be reached in a day or two. So, the speed of sentencing on the infringement takes much longer, as Mr. Einsel said. But now, we have the IP Court of Japan, and not sure it’s going to be patent friendly to the German companies like we are talking about, but in terms of filing in the novelty and also the explanation of the invention technical writing portion, if we are to say that more harmonization is necessary, that discussion needs to come not only within the court but also from practitioners and the public opinion as well.

But of course, to get an expedited and a more reasonable sentencing is what we aim for all the time. But again, there are many types of judges. Judges are very independent. Some judges feel that they want to turn left if someone tells them to turn right. So, as a system, it’s very difficult to say and make a unilateral comment.