

JCER DISCUSSION PAPER

No.101

Strategies for Intellectual Property and Preventing
Technology Leakage in China:
A Comparison of Strategies Used in Japan, America,
and Europe

Paper for presentation at the Conference,
Japan Center for Economic Research, Tokyo, June 1, 2006
(This research project “Multinational Firms’ Strategies in East Asia: A Comparison of
Japanese, U.S., European and Korean Firms” was sponsored by Nihon Keizai Shimbun, Inc.)

Yoshio Iteya

(Mori Hamada & Matsumoto)

Makoto Endo

(Mori Hamada & Matsumoto)

2006年8月

社団法人 日本経済研究センター

Japan Center For Economic Research



**Strategies for Intellectual Property and Preventing Technology Leakage in China:
A Comparison of Strategies Used in Japan, America, and Europe**

Yoshio Iteya, attorney-at-law
Mori Hamada & Matsumoto

Makoto Endo, attorney-at-law
Mori Hamada & Matsumoto

Executive Summary

Japanese corporations and American and European corporations take different approaches when it comes to business in China in general: (i) American corporations are concentrated in the music, motion picture, and software industries, so they have a particular interest in solving copyright infringement problems; (ii) American and European corporations have started to actively use China as a base for research and development; and (iii) many American corporations have clear China-specific technological strategies.

The systems for managing intellectual property in China also differ among Japanese corporations and American and European corporations: (i) whether American and European corporations have an IP department depends on the individual corporation's overall management policies; (ii) locally hired employees managing intellectual property in American and European corporations are usually the ones entrusted with important IP-related duties; (iii) there are many requirements for employment and the remuneration is high for locally hired employees managing intellectual property in American and European corporations; and (iv) relatively few Japanese corporations attribute intellectual property rights to their subsidiaries in China.

Various aspects also differentiate Japanese corporations and American and European corporations in terms of the measures they take to combat counterfeit products: (i) American and European corporations show a similar trend as Japanese corporations toward taking administrative enforcement measures or civil proceedings, but a trend toward using criminal proceedings is emerging among American and European corporations; (ii) in American and European corporations, internal employees often prepare warning letters, conduct research, and collect evidence; (iii) the budget of American and European corporations for measures to combat counterfeit products is far greater than that of Japanese corporations; (iv) American and European corporations are active in exchanging information with and collecting information from governments; and (v) American corporations emphasize using estimated amounts of damages and quantifying the effectiveness of their measures to combat counterfeit products.

Two key points stand out as being essential when considering measures to combat leakages of technology and infringements of trade secrets: (A) that good personnel management is effective as a measure for combating the leakage of technology and the infringement of trade secrets; and (B) that good information management is essential for preventing technology leakages and trade secret infringements. Many differences are evident between Japanese corporations and American

and European corporations with respect to these measures: (i) American and European corporations are more active than Japanese corporations in willfully transferring technology to China; (ii) Japanese corporations are considerably less popular in China than American and European corporations; (iii) American and European corporations are more progressive in terms of assigning managerial powers to Chinese management personnel; (iv) the level of compensation offered at Japanese corporations in China is considerably lower than that offered at American and European corporations in China; (v) American and European corporations in China engage in corporate PR in many different ways, but Japanese corporations in China do not do enough; (vi) American and European corporations employ various initiatives to increase the motivation of Chinese personnel; and (vii) Regulations at American and European corporations provide severe punishment for personnel who divulge secrets.

Japanese corporations and American and European corporations take different approaches when it comes to strategies for intellectual property and preventing technology leakage in China. But it is important that Japan adopts the good aspects of the methods used by American and European corporations at the same time as it continues to collaborate and cooperate with international institutions, governments, and anti-counterfeiting organizations.

1 Introduction

(1) Awareness of the Problems

In recent times, fake reproductions of products of foreign corporations have flourished in Asian countries, and problems such as the leakage of the technology and know-how of foreign corporations have come under close scrutiny. In particular, in the People's Republic of China (which we will simply refer to as "China"), dubbed the "factory to the world" and the "giant consumer market," the problem of counterfeit products and pirated copies, and the problem of technology leakage, are so enormous they are impossible to ignore.

China recently entered the World Trade Organization (or WTO) and, consequently, now has considerably more demands placed on it by governments from all over the world. At the same time, the momentum calling for better protection of intellectual property rights in China has accelerated at an extraordinary speed, and China's intellectual property rights legal regime has developed at a corresponding pace. Japanese corporations, particularly those involved in the electronics, machinery, and automobile industries, are increasingly

implementing measures to combat infringements of intellectual property rights and leakages of technology.¹

And how are American and European corporations responding to the problem of infringements of intellectual property rights and technology leakage in China? There has not really been any examination of or reference made to this issue in Japan, so information is lacking. If methods not used by Japanese corporations are being used to good effect by American and European corporations, that information would be immensely useful for Japanese corporations.

That is why as well as examining the measures that European and American companies are taking in Asian countries, particularly in China, where the problems of intellectual property rights infringement and technology leakage are becoming a large problem, we will also elucidate in this study the useful points of reference for Japanese corporations.

(2) Overview of Intellectual Property Law in China

The principal laws of China relating to intellectual property rights include the Patent Law, the Trademark Law, the Copyright Law and the Anti-Unfair Competition Law. There are also, among other things, corresponding administrative instructions, administrative ordinances, departmental regulations, as well as judicial interpretations made by the Supreme People's Court of China relating to these main intellectual property laws and, in practice, these play a very important role. The international treaties on intellectual property rights to which China is a party also make up an important part of China's intellectual property law structure.

In order to enter the WTO, and to comply with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), from around the year 2000 the Chinese government has effected wide-spread reform of the law relating to intellectual property rights. The principal laws and ordinances that were reformed or established include the Patent Law and its implementing regulations, the Trademark Law and its implementing regulations, the Copyright Law and its implementing regulations, and the Regulations for the Protection of Computer Software.

As we stated earlier, because the development of China's intellectual property legal regime has advanced at a considerably high speed, it is possible to say that, to date, a fundamental intellectual property legal regime has more or less been put into place. Nonetheless, some shortcomings still remain from the perspective of intellectual property rights protection.

The Chinese government has recently come to actively promote Chinese policies on the protection of intellectual property rights. It is considered that the reason for this, other than to dodge criticism from foreign governments and other sources, lies in the increasing number of cases of not only foreign corporations but, more importantly, Chinese corporations themselves suffering harm from intellectual property rights infringements in China, which lies in wait for the 2008 Beijing Olympics.

2 Harm Currently Caused by Intellectual Property Rights Infringements in China

(1) Harm Suffered by Japanese Corporations

Report on the Third Survey on Counterfeit Damage in China (March 31, 2005), produced by the JETRO Beijing Center and the Japanese Chamber of Commerce and Industry in China (which we will refer to as the "JETRO Survey"), and the FY 2004 Survey Report on Losses Caused by Counterfeiting (March, 2005), produced by the Japan Patent Office (which we will refer to as the "JPO Survey"), both statistically examine the current status of infringement of the intellectual property rights of Japanese corporations in China. The following is an introduction and examination focusing on the issues found in the results of both surveys.

(A) The harm caused by counterfeiting

In the JETRO Survey, when questioned on the status of harm to their own products by counterfeit products, 26% of corporations responded that there was "serious harm," 25% said there was "some harm but not serious harm," and twelve percent responded that "counterfeit products seem to exist but the actual situation is unclear." This indicates that over sixty percent of corporations surveyed are incurring harm from counterfeit products, with it being possible to say that the 12% of corporations who responded that "counterfeit products seem to exist but the actual

situation is unclear” indicates that it is difficult for those corporations themselves to assess the facts with respect to counterfeit products.

Again in the JETRO Survey, when asked to compare the status of harm from counterfeit products as compared to the previous year, over 60% of corporations reported a worsening trend in harm from counterfeit products, with thirty percent of corporations responding that it was “worse” and thirty-one percent “more worse than not.” So while we are told that in recent times the intellectual property regime in China has been more or less put into place, and the Central Government of Japan and the administrative authorities in the large cities are increasingly active in cooperating with measures to combat counterfeit products, the true situation does not allow for hasty conclusions.

(B) Breakdown of types of intellectual property being counterfeited

The JETRO Survey indicates that most common types of intellectual property rights infringed are trademark rights and design rights, accounting for 56% and 29% of infringed rights, respectively, followed by patent rights and copyright, accounting for 3% each. From these results, we understand that counterfeit products with pirated trademarks and designs are quite common, whereas infringements of patent rights, which require a certain level of high technology, are relatively few in number. Cases of infringement of trademark rights and design rights are common because the production of counterfeit products using pirated trademarks and designs is relatively technologically easy, but it is easy to imagine that in the future Chinese corporations will gain more and more technological capacity, and that cases of patent rights infringement will become increasingly common.

With respect to the quality of the counterfeit products produced in China, 24% of the corporations in the JETRO Survey considered the quality of the counterfeit products to be “quite close to the genuine products,” while 43% responded that the quality fell short of the genuine products, but was “improving.” It is possible to say that this indicates that the technological capacity of counterfeiters is improving at a steady pace.

As for the geographical areas in which harm is caused by counterfeit products,

according to the JETRO Survey, the three most active production centers are Guangdong Province, on 49%, Zhejiang Province, on 24%, and Jiangsu Province, on 23%, and the three most active distribution centers are Guangdong Province, on 64%, Shanghai, on 31%, and Beijing, on 26%.

(C)Extent of monetary harm caused by counterfeiting

The JETRO Survey suggests that the extent of the monetary harm caused by counterfeiting is significant, with 35% of corporations surveyed responding that there was “at least 100 million yen in damage to sales of the genuine products,” with 16% of those corporations estimating the damage at “one billion yen or more.” 55% of the corporations surveyed said that amount of damage was “unknown or difficult to calculate,” indicating that getting a grasp of the actual harm done by counterfeiting is problematic. It is believed that as a result of the problems in calculating the amount of damage done by counterfeit products, cost-benefit analysis, which forms the basis for consideration of measures to combat counterfeit products, is also difficult, and this difficulty is becoming the reason why corporations are not taking drastic measures against counterfeit products.

(D)How counterfeit products are discovered

When asked in the JPO Survey about how they discover counterfeit products, 68% of the corporations surveyed reported “discovery by employees of the corporation or affiliates,” 42% reported “notification from distributors and dealers,” 23% said “notification from customers and clients,” eleven percent said “law firms and investigation firms,” and 8% responded “inquiries made by customs and detection by police.” We can understand from these results that Japanese corporations discover harm done by counterfeit products through various channels.

(E)Filings of applications for intellectual property rights

When corporations in the JETRO Survey were asked to comment on the trend in filing for applications for trademark rights, design rights and patent rights in China, 45% responded that filings for applications were “increasing”, 31% said they were “approximately the same as the year before”, and 1% considered that they were

“decreasing.” It is possible to say that filings for intellectual property rights in China by Japanese Corporations are, overall, on the increase, indicating an awareness on the part of Japanese Corporations of the importance of pursuing intellectual property rights in China.

(F) Registrations of intellectual property rights with customs

When asked in the in the JETRO Survey whether they had registered intellectual property rights with China Customs in order to prevent the export of counterfeit products, 31% of corporations said they were “registered,” 28% said they were “considering it,” while 38% replied that they were “not registered and not planning on registering”. When asked to provide a reason for not registering intellectual property rights with China Customs, 35% of the corporations claimed that there was “no actual harm done by exporting,” 29% said they were “unsure how to take registration procedures or unaware of the existence of a registration system”, and 23% responded that they “do not consider registration effective.” It is too late to prevent the export of counterfeit products once the problem has surfaced, so it is desirable that corporations be sure to register intellectual property rights with China Customs in advance of any problem.

According to the JETRO Survey, trademark rights account for eighty-eight percent of the types of intellectual property rights registered with China Customs, followed by design rights and patent rights, accounting for 36% and 16% respectively.

As for the number of cases of counterfeit products detected or prevented from export by customs during 2004, the JETRO Survey indicates that 16% of corporations had “10 cases or more,” 20% had “5 to 9 cases,” 12% had “1 to 4 cases,” and 52% had “no cases.”

(2) Harm Suffered by American Corporations

(A) Business in China in General

Before discussing the harm suffered by American Corporations in China from intellectual property rights infringements, let us take a look at business climate in

China for American Corporations. “American Corporate Experience in a Changing China,” a survey report by the American Chamber of Commerce People’s Republic of China (AmCham–China), is an analysis based on questionnaire surveys of AmCham–China members from 1999 to 2005.² According to this survey report, close to ninety percent of the American corporations surveyed experienced an increase in revenue in their business in China, as set out below.

**Table 1. (Revenue of business in China of American corporations
(Comparison of 2000 and 2005))**

Survey year	Percentage of corporations that responded that revenue had “increased substantially”	Percentage of corporations that responded that revenue had “increased somewhat”	Total
2000	20%	48%	68%
2005	44%	42%	86%

When asked about the goals for their China business, sixty-two percent of the American corporations surveyed responded that their goal was to “produce products or services in China for the China market,” 14% said it was to “produce products or services in China for the U.S. market,” which indicates that a large number of American corporations are focused on the giant consumer market of China.

With respect to their five-year outlook for business in China, a large majority of the American corporations surveyed have a positive perception, with 49% responding that they were “optimistic”, 43% “cautiously optimistic,” 2% “slightly pessimistic,” and 6% “neutral.”

There is an upward trend in the number of employees American corporations have in China, as set out below.

**Table 2. Number of employees in China of American corporations
(Comparison of 1999 and 2005)**

Survey year	50 or less	51 to 500	500 or more
1999	50%	32%	13%
2005	40%	38%	22%

As the number of employees is increasing in this way, the number one challenge for American corporations operating business China is “a lack of management-level human resources,” followed by “bureaucracy” and “unclear regulations” as the number two and three challenges respectively.

American corporations have also increased their R&D investment in China, with a 37% increase in 2004 and an even greater increase of 47% in 2005, showing us that American corporations are increasingly viewing China as an important and essential base for research and development.

(B)Harm caused by IP infringements

With respect to whether American corporations have suffered harm as a result of infringements of intellectual property rights, 50% of corporations said they have “suffered harm because of counterfeit products apparently manufactured in China that have been exported overseas” and 25% said they have “suffered harm because of counterfeit products that have circulated throughout the Chinese market,” showing that 75% of American corporations have suffered harm because of counterfeit products in China. Only 20% of respondents said they had “never suffered harm as a result of counterfeit products.”

According to research by the International Intellectual Property Alliance (or IIPA), which was established in 1984 by the American copyright industry, the estimates of the amount of harm has been caused in China to American copyrights in dollars is as set out in the table below.³ These figures show just how serious the harm is to copyrights, both in terms of the amount of harm and the extent of how many products are harmed.

Table 3. Estimates of Monetary Amounts of Harm Caused in China to Copyrights (2003)

Amount: Amount of harm (US\$ millions)

Extent: extent of products affected

Motion Pictures		Records, Music		Business Software		Entertainment Software		Books	Total
Amount	178	Amount	286	Amount	1900	Amount	568	Extent	Extent

Extent	95%	Extent	90%	Extent	92%	Extent	90%	40	2972
--------	-----	--------	-----	--------	-----	--------	-----	----	------

The next table shows where China is positioned in statistics compiled by American customs on the situation concerning border enforcement of counterfeit products, whereby counterfeit products seized are categorized by their source country and ranked in terms of the monetary amount of harm and whereby the country ratio represents how many of the total products seized came from that country in terms of the monetary amount of harm.⁴ Except for 1999, China was the number 1 source country for counterfeit products, and its country ratio is increasing.

Table 4. Position of China, in Terms of Monetary Amount of Harm, Among Source Countries

Survey year	China's position among other countries	Ratio of goods from China
1998	1st	38%
1999	2nd	16%
2000	1st	33%
2001	1st	46%
2002	1st	49%
2003 (first half)	1st	70%

The next table presents similar statistics, again compiled by American customs, showing (for the first half of 2003) where China is positioned with respect to border enforcement of counterfeit products categorized by product and ranked in terms of the monetary amount of harm.⁵ This table clearly shows that products from China that infringe intellectual property rights cover every category of product.

Table 5. Position of Counterfeit Products from China, in Terms of Monetary Amount of Harm, Among Counterfeit Products of Source Countries (First Half of 2003)

Type of Product	China's position among other countries	Ratio of goods from China
Clothing	1st	48%
Media	1st	46%
Watches, clocks, and parts	1st	36%

Cigarettes	1st	83%
Toys, games, electronic games	1st	64%
Bags (Handbags etc.), Wallets, and Purses	1st	67%
Footwear	1st	50%
Products for Certification	1st	90%

With respect to what American corporations think about the effects of the protection of intellectual property rights in China, 45% responded that “the weakness of the efforts of the Chinese government to protect intellectual property rights is affecting direct investment into China and technology transfers to China,” while in particular 73% of corporations in high-technology industries, such as airlines, medical treatment, telecommunications, and so on, said the Chinese government’s efforts were “affecting direct investment into China and technology transfers into China.” There was also as total of 43% of corporations that replied it “has an effect, such as causing a delay in plans to establish research and development bases” in China.⁶

(3) Harm Suffered by European Corporations

Next we’ll look at the state of European corporations in China.

The table below shows where China is positioned, in terms of number of cases, in statistics of countries of origin (or source countries) of products infringing intellectual property rights seized in 2004 by member counties of the EU.⁷ Imports from China represented 30% (making China the number one country of origin) across all member countries of the EU.

Table 6. Position of China, in Terms of Number of Cases, Among Countries of Origin (or Source Countries) of Products Infringing Intellectual Property Rights Seized in 2004 by Customs of EU Member Countries

Member country	China’s position among other countries of origin	China’s ratio among other countries of origin
Germany	1st	24%

Austria	3rd	6 %
Belgium	1st	30%
Cyprus	1st	63%
Denmark	2nd	33%
Spain	1st	45%
Estonia	1st	15%
Finland	1st	45%
France	3rd	9 %
Greece	2nd	10%
Hungary	1st	10%
Italy	1st	72%
Ireland	1st	59%
Latvia	1st	63%
Lithuania	1st	50%
Luxembourg	1st	62%
Malta	1st	45%
Holland	2nd	23%
Poland	1st	9 %
Portugal	1st	58%
Czech Republic	1st	37%
United Kingdom	1st	37%
Slovakia	-	-
Slovenia	1st	86%
Sweden	1st	34%
Total EU	1st	30%

The next table shows where China is positioned in statistics, categorized by types of products and source countries, of all products infringing intellectual property rights seized in 2004 by member counties of the EU.⁸ According to these data, electronic devices and toys and game devices from China account for 50% of all infringing products.

Table 7. Position of China in Statistics, categorized by types of products and source countries, of All Products Infringing Intellectual Property Rights Seized in 2004 by Customs of EU Member Countries

Type of product	China's position among other source countries	China's ratio among other source countries
Food and drinks (such as alcohol)	-	-
Perfumes and deodorants	4th	7%
Clothes and accessories	1st	29%
Electronic devices	1st	50%
Computer machines (hardware)	1st	37%
Audio CDs, DVDs, games, software, etc.	1st	26%
Watches, jewelry	1st	23%
Toys, games, electronic games	1st	50%
Cigarettes and tobacco	2nd	23%
Others	1st	44%

The above statistics are made publicly available by the European Commission, but the commission notes in making it publicly available that (i) there has been an increase in the number of cases where the infringing product has been routed through other countries, such as America or Japan, to hide its to hide the country of origin, (ii) among the products seized there are many that are detrimental to people's health and safety, such as food, drink, medicines, household products, car parts, toys, games, game devices, and so on, and (iii) the quality of the infringing products is getting better, making it increasingly difficult to identify counterfeit products.⁹

3 Comparison of Measures Taken in Japan, America, and Europe to Combat IP Infringements in China

Japanese corporations and American and European corporations alike are all being seriously harmed by infringements of intellectual property rights in China. But are there any differences in the measures they are taking to combat such infringements?

There is of course no difference between the legal proceedings available to Japanese corporations and American and European corporations as holders of rights under China's IP laws

(such as administrative proceedings, civil proceedings, criminal proceedings, and injunctions of exports at the customs stage). So in that sense there should not be a great difference in the measures such corporations take to combat infringements of their IP rights.

But there are differences. Japanese corporations and American and European corporations take approaches that have individually specific differences in various aspects. And it is impossible to deny that such differences do not have an impact on the effectiveness of measures to combat infringements of IP rights.

We will therefore look now at a comparison of the different methods used by American and European corporations on the one hand, and Japanese corporations on the other, to combat the problem of infringements of IP rights and the leakage of technology in China.

(1) Business in China in General

There are differences in the way that Japanese corporations and American and European corporations do business in general in China, so we will start by considering them.

(A) American corporations in the music, motion pictures, and software industries have a particular interest in solving copyright infringement problems

The industries that Japanese corporations in China are currently engaged in are many and varied,¹⁰ but the first ones to create the drive to establish businesses in China, believing that it would become the “factory to the world,” were corporations in industries such as the electronics, machinery, automobile, and bicycle industries.

With respect to American corporations in China, however, although their businesses are of course also spread over a range of industries, they are concentrated in the music, motion picture, software, pharmaceutical, and sports products industries. This gives them considerable influence over the American government. In particular, it appears that because many of them are in the music, motion picture, and software industries, both the American government and these American corporations have a particular interest in solving problems of copyright infringement and pirating. In this respect, Japan’s situation is slightly different, as its corporations in China are concentrated in the electronics, machinery, automobile, and bicycle industries.

(B) American and European corporations are starting to actively use China as a base for research and development

The major difference between Japanese corporations and American and European corporations in terms of their purposes for establishing businesses in China is that American and European corporations are “starting to actively use China as a base for research and development.” These research and development bases in China have already started to produce inventions, and they have a particular interest in solving intellectual property rights problems, not just with respect to traditional problems involving counterfeit products, but also with respect to, among other things, the handling of inventions, measures to prevent the leakage of technology, and the development of human resources and the management of personnel.¹¹

(C) Many American corporations have clear China-specific technological strategies

There are many American corporations that have technological strategies that are clearly directed at dealing with IP issues concerning China (that is, China-specific technological strategies). Two of the more popular models of these strategies are the Intel model and the Motorola model.

Corporations such as Intel that have a superior technological advantage over their competitors hold de facto standards in their markets, so their managerial focus is to maintain that captive market. This has created a tendency for such corporations to lavish these markets with the sort of high-tech technology that wins the praise of the Chinese government. And the reason they can do this is they are extremely confident that transferring their technology in this way will not be enough to diminish their technological advantage.

On the other hand, however, there are companies such as Motorola, which does not have a superior technological advantage even in the field of mobile phones. Cutting costs is one of the means of survival for these companies, which are under pressure to expand their market shares. As a result, a trend has emerged among these corporations to clearly separate their technology into one of two categories: “core technology that absolutely cannot be transferred” and “other technologies that

will actively be transferred.” The drive behind this categorization is the “selection and concentration” thinking, under which a corporation clearly marks out its businesses as either “main businesses that it will concentrate its resources on” or “other businesses that it will outsource to cut costs.”

Because there are not many Japanese corporations that have a superior competitive advantage such as Intel’s, the model that will serve as the best guide for most Japanese corporations is the Motorola model. Yet despite the importance of transferring technology for the purpose of contracting out businesses to and investing in Chinese corporations, which is a ‘win-win’ situation, many Japanese corporations still do not have any active strategies for transferring technology.^{1 2}

(2) IP Management Systems

(A) Whether American and European corporations have an IP department depends on the individual corporation’s overall management policies

Of the 10 American and European corporations who were the subject of the JPO’s Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China (March 2005), 5 of them were “corporations with independent IP departments” and 5 were “corporations whose legal departments manage IP matters as one of their duties.”

With respect to how much decision-making authority is given to the corporations in China, 4 of the American and European corporations surveyed indicated their corporations in China are “corporations that make all their decisions themselves and that get support from the parent corporation if they ask.” Three indicated theirs are “corporations that can decide themselves how to carry out their daily businesses in China but that must report to the parent corporation.” And 3 others indicated theirs are “corporations that have absolutely no decision-making authority at all and that must act completely in accordance with the instructions from the parent corporation.”

Whether or not these corporations have an IP department or not seems to depend on the overall management policies of the individual corporation.^{1 3}

(B) Locally hired employees managing intellectual property in IP departments of American and European corporations are usually the ones entrusted with important IP-related duties

A look at the system for managing employees at the 10 American and European corporations discussed in the JPO's report shows that most of the mid-level management employees at all 10 corporations are Chinese, which tells us that such corporations are increasingly hiring local personnel. In particular, even the local company in China with the fewest number of Chinese employees engaged in managing IP rights has 3 such employees. The company with the greatest number of such employees has 21. Taking a comparative look at "employees dispatched from the parent corporation" and "locally hired employees," we can see that there are far more American and European corporations with "locally hired employees." And although there are such corporations that have many "employees dispatched from the parent corporation," the people dispatched of a majority of those corporations are actually of Chinese nationality or descent. Furthermore, the locally hired employees are entrusted with important duties, such as the preparing of legal documents, responding to litigation, negotiating with local authorities, and so on.¹⁴

With Japanese corporations, on the other hand, most of them, including even those that are actively implementing counterfeit strategies, are (i) corporations that have 1 "person in charge of one duty, or person in charge of multiple duties, who has been dispatched from the parent corporation" and 1 or 2 "locally hired employees that also work as interpreters" or (ii) corporations that have a person in charge who, while liaising directly with local research companies and lawyers in China by email, telephone, and the like, takes business trips to China to give the locally hired employees instructions on running the corporation there. The main duties of the locally hired employees are to handle the daily communications with research companies and lawyers and to interpret for Japanese superiors.¹⁵

(C) There are many requirements for employment and the remuneration is high for locally hired employees managing intellectual property in American and European corporations

Because many American and European corporations entrust their locally hired employees engaged in managing intellectual property with important duties, finding

local personnel who are sufficiently qualified is an extremely serious problem. The requirements for employment at most of these corporations are “university law major,” and, at the managerial level, the “qualifications to practice law.” The annual remuneration (the net salary) for these employees is, for locally hired managerial employees, between 2.5 and 10 million yen and, for regular employees, between 2 and 6 million yen.

But in Japanese corporations, because the locally hired employees are only entrusted with daily communications with administrative institutions and research companies and with interpreting, practically no Japanese corporations employ personnel with a high degree of legal knowledge. Most such Japanese corporations employ “personnel that can carry out good groundwork duties, who are relatively young, and who can understand Japanese.” They do not require such things as “legal or technological qualifications” or “specialist legal education at the tertiary level.” And the annual remuneration (the net salary) for such employees in Japanese corporations is meager compared with that offered at American and European corporations: for locally hired managerial employees, between 900 thousand and 1.2 million yen; for regular employees, 600 thousand yen; and for department managers, about 1.7 million yen.¹⁶

As is evident from these facts, the requirements for local personnel to be employed at American and European corporations to manage intellectual property, and the remuneration they receive there, are far greater than is the case with Japanese corporations. In shifting the management of duties concerning intellectual property rights overseas to China, Japanese corporations must therefore determine new requirements for employment and new levels of remuneration for locally hired employees, so that Japanese corporations are more on a par with their American and European counterparts. Naturally, before they do that they must consider such matters as what type of IP strategy they are going to take in China and what sort of system of management they are going to create for their intellectual property rights in China.

(D) Relatively few Japanese corporations attribute intellectual property rights to their subsidiaries in China

With respect to patent rights and design rights, American and European

corporations are split into two camps: “corporations that attribute all rights to the parent corporation” and “corporations that attribute rights respectively among the parent corporation, the company controlling operations in China, and the subsidiaries in China.” But there are relatively few Japanese corporations that attribute intellectual property rights to their subsidiaries in China. The difference between American and European corporations and Japanese corporations with respect to all aspects of IP—such as the attribution of intellectual property rights, management of expenses, decisions on taking intellectual property rights into China, and so on—is merely how active the local legal department is in China.¹⁷

(3) Measures to Combat Counterfeit Products

(A) American and European corporations show a similar trend as Japanese corporations toward taking administrative enforcement measures or civil proceedings, but a trend toward using criminal proceedings is emerging among American and European corporations

We’ll start by looking at the measures Japanese corporations take to combat counterfeit products.

The JETRO Survey asked Japanese corporations “What types of measures do you take to combat counterfeit products in China?” In order of most to least common, their responses were as follows:

“Have research into actual conditions conducted by law firms or research companies”	68%
“Seek administrative enforcement”	56%
“Issue warnings to companies producing fake products”	31%
“File charges with the Public Security Organs”	21%
“Seek injunctions on exports at customs”	20%
“Do not take any particular measures”	18%
“File civil proceedings”	13%

The results of this survey thus show that Japanese corporations being harmed by counterfeit products are taking a range of measures to combat them. The fact that 18% of respondents said that even though they are aware of counterfeit products they are not taking any particular measures also shows that there are Japanese corporations finding it difficult to take measures to combat counterfeit products.

The JETRO Survey also asked them “Have you ever filed civil proceedings for compensation or the like with respect to harm incurred by counterfeit products?”

“Yes”	18%
“Currently considering filing civil proceedings”	46%
“Never have and do not intend to”	31%

The general understanding to date has been that, compared with the number of corporations who seek administrative enforcement, not many file civil proceedings for compensation or the like with respect to harm incurred by counterfeit products. The 46% of respondents who said they are “currently considering filing civil proceedings,” however, suggests that corporations are going to use civil proceedings more actively in the future as a means to combat counterfeit products.

In the JPO Survey Japanese corporations were asked “Why don’t you take measures to combat counterfeit products?” Their responses, in order of most to least common, were as follows:

“Low cost effectiveness”	34%
“Small amount of compensation”	33%
“Insufficient internal company system”	23%
“No rights”	21%
“Don’t know any measures to take”	19%
“The targeted area is not considered an area of operations”	12%
“The counterfeit products are poor quality”	7%

The fact that a combined total of two thirds of respondents said the reasons they did not take measures to combat counterfeit products are “Low cost effectiveness” and “Small amount of compensation” shows that the biggest obstacle to taking such measures is costs.

When JETRO asked Japanese corporations “Why don’t you try to find the culprits yourself through your own research?” in the JETRO Survey, they responded as follows:

“Requires a large amount of money”	27%
“Even if we find them, we can’t expect any positive results”	18%
“Our interests might be harmed by finding them”	3%

Again costs seem to be the obstacle to taking measures to combat counterfeit products.

And when JETRO asked “What organizational activities do you engage in with other corporations?,” Japanese corporations responded as follows:

“Currently considering such activities for the future”	25%
“Take an organized response for some products”	24%
“Need to form such an organization”	8%
“Take an organized response for all products”	5%

We therefore may see more Japanese corporations in the future acting in an organized manner with other corporations.

Now let’s look at the measures American and European corporations take to combat counterfeit products.

When it comes to legal methods to take against infringements of intellectual

property rights in china, 39% of American and European corporations “File a petition with the local government authority” and 16% “File litigation in court,” showing that administrative enforcement is by far the most popular method among such corporations. In this respect, knowing that 56% of Japanese corporations “Seek administrative enforcement” and 13% “File civil proceedings,” as shown above, we can see that Japanese corporations and American and European corporations have similar tendencies toward taking legal proceedings.

According to interviews with American and European corporations, there is a tendency among such corporations to actively pursue criminal proceedings if the situation is right.¹⁸

American and European corporations were asked what they thought of the efforts being taken in China by the government and judicial authorities to combat infringements of intellectual property rights. 57% said they were “Unhappy with the government’s efforts” and 52% said they were “Unhappy with the efforts of judicial authorities.” More than half of American and European corporations surveyed thus expressed their dissatisfaction with the responses of China’s government and judicial authorities.¹⁹

(B)In American and European corporations, internal employees often prepare warning letters, conduct research, and collect evidence

The JETRO Survey asked Japanese corporations “How are your managers of measures to combat counterfeit products allocated in China?” The results were as follows:

“Corporations with such managers whose sole post is to manage such measures”	14%
“Corporations with such managers who have multiple posts, one of which is to manage such measures”	44%
“Corporations that do not have any such managers in China but that offer support from the Japanese head company in relation to such measures”	21%

“Corporations that do not have any such managers in China and do not offer support from the Japanese head company in relation to such measures”	20%
---	-----

When Japanese corporations were asked “What do you intend to do in the future to your internal system in China?” in the JETRO Survey, they responded as follows:

“Probably strengthen it”	59%
“Probably leave it as it is”	36%
“Unsure”	3%

The overall tendency thus seems to be that most Japanese corporations will probably strengthen their internal personnel systems for measures to combat counterfeit products in China, but as is the case we saw earlier with the budget for such measures, there seems to be a big difference in each corporation’s stance toward measures to combat counterfeit products.

Only a few Japanese corporations hire people locally who are qualified as lawyers, so when the corporation wants to send the infringer a warning letter, it outsources the work to outside lawyers. American and European corporations, however, have employees in their legal departments who are qualified as lawyers, and in many cases those employees gather the internal information and prepare the warning letters themselves.²⁰

Likewise, when it comes to conducting research and collecting evidence to implement administrative dispositions, many Japanese corporations delegate the work to research companies. Some American and European corporations, however, “hire people to conduct such research internally in a professional capacity, and those employees conduct research and collect evidence and then file charges directly to an administrative institution.” There are two purposes for having such research employees within the corporation: (i) the first is that because the research employees are employees of the corporation, they firmly grasp the characteristics of the

corporation's products and they can precisely judge what is right and what is wrong; and (ii) the second is that it prevents internal information from being divulged outside.²¹

(C)The budget of American and European corporations for measures to combat counterfeit products is far greater than that of Japanese corporations

The JETRO Survey asked Japanese corporations to indicate their "Budget for Measures to Combat Counterfeit Products." In contrast to the 8% who said their budget was "100,000,000 yen," a combined total of 65% responded that they either had a budget of "Less than 20,000,000 yen" or had "No budget" at all. There thus seems to be a big difference in each corporation's stance toward measures to combat counterfeit products.

Also, in response to a JETRO Survey question asking "Which department handles budgets for measures to combat counterfeit products?," 33% of Japanese corporations responded that a "Local department" does. But 43% replied that it was the "Parent Corporation's IP or Legal Department," and 11% said it was their "Sales Department." It seems that it would be preferable, in order to effectively and quickly implement measures to combat counterfeit products, to delegate as much as possible of the handling of the budget for measures to combat counterfeit products to local departments.

Among American and European corporations, however, there was not one respondent who said their budget for measures to combat counterfeit products was "Less than 20,000,000 yen." Rather, 33% said it was "20,000,000 yen or greater but less than 50,000,000 yen," 45% said it was "50,000,000 yen or greater but less than 100,000,000 yen," and 22% said it was 100,000,000 yen or more. These results show just how significantly larger the budget is in American and European corporations compared with Japanese corporations (Approach Survey page 97).²²

(D)American and European corporations are active in exchanging information with and collecting information from governments

American and European corporations "Make courtesy calls to government

institutions,” “Visit government institutions,” and “Actively use anti-counterfeiting organizations such as the QBPC” (the Quality Brands Protection Committee). Japanese corporations also make considerable efforts in these 3 areas, but American and European corporations also actively “Participate in symposiums held by the Chinese government” and “Participate in Chinese factory organizations.” In many cases what has made it possible for American and European corporations to participate in these ways is the fact that the managers of their intellectual property rights who are exchanging information with and collecting information from the government are Chinese. Consequently, there are no language problems and the corporations can communicate clearly with the Chinese government.

Furthermore, in the case of American and European corporations, their respective embassies and consulates, government institutions, members of parliament, and so on are active in standing up for the corporations, at their request, and encouraging the Chinese government to protect the intellectual property rights of individual corporations (for example, the American embassy has sent a letter of appreciation in its name to law enforcement institutions).^{2 3}

(E) American corporations emphasize using estimated amounts of damages and quantifying the effectiveness of their measures to combat counterfeit products

Practically all of the 10 American and European Corporations that were the subjects of the JPO’s March 2005 Report measure the effectiveness of their measures to combat counterfeit products. They contract the work out to research companies and have them annually or semi-annually conduct ‘fixed-point observation’ research on the areas and factories and the like that have already been found to be involved in counterfeiting. When looking at what sorts of measures are effective, these companies do not use only one but multiple indicators, comparing the various data and thereby measuring the effects of the measures. The main indicators are (i) an increase or decrease in the number of cases of infringements within a certain period, (ii) an increase or decrease in the volume of counterfeit products found, (iii) an increase or decrease in the number of counterfeit products in the market, and (iv) an increase in the sales of products that were being counterfeited.

Many of the American and European Corporations enter into long-term

agreements with the research companies and continue monitoring the market situation even after counterfeit products have been found. On the other hand, however, many Japanese Corporations seek the services of research companies on a case-by-case basis. Doing this enables Japanese Corporations to research keep costs down, but it has the drawback of making it difficult to continuously measure and confirm the effects of measures taken to combat counterfeit products.²⁴

Some American and European Corporations have set up, for when they request specialists to take legal proceedings as a measure to combat counterfeit products, a system for measuring and thereby objectively evaluating the effect of the legal proceedings. (Philips, for example, apparently makes it a rule to fully utilize its representatives in China who are efficient.) Specifically, these American and European Corporations take such measures as (i) regularly checking the number of cases that they have filed in relation to counterfeit products and the number of those cases that they have actually won, (ii) evaluating whether there is any value in or return on the money spent on the legal proceedings, (iii) continuing to use a specialist over the long-term if it produces good results and finding another one if the one they used produced poor results, (iv) checking, especially in relation to petitions for patents, whether the internal lawyers are performing an appropriate job at an appropriate price, and (v) deciding and clearly defining in advance standards that lawyers and research companies must meet.²⁵

(F) A look at specific measures taken by individual corporations

(a) Microsoft

Microsoft uses its own program, called Genuine Software Initiative (or GSI), that checks software to see if it is a pirated copy. The initiative focuses on the strategic areas of (i) Education (“raising awareness of consumers and resellers”), (ii) Engineering (implementing “anti-counterfeiting technologies”), and (iii) Enforcement (“actively [supporting] law authorities”).²⁶ The first strategic area, Education, is about Microsoft “raising awareness of customers and resellers about the risks of counterfeit software” (such as the risks of being infected with spyware or other viruses and the risk of credit card numbers being stolen). Under its second strategy, Engineering, Microsoft offers preferential

treatment to genuine users that participate in its Windows Genuine Advantage program, such as by providing those users with value-added software, and to users that have unknowingly purchased pirated copies of software Microsoft offers them genuine software for free or at discounted prices.²⁷ And in the third strategic area, Enforcement, Microsoft finds pirated copies of software by, among other methods, cooperating with government officials and law enforcement agencies and using information acquired through its internal notification system.²⁸

(b) Thomson Corporation

Thomson Corporation has executed technological license agreements for DVDs, STBs, color televisions and other such products with Chinese corporations, but the rampant epidemic of “understated filings” of royalties in China continues. According to the results of an external auditor, for example, there are many cases where the number of units in filings, which is the number used to calculate royalties, are as few as 10% of the actual number of units shipped. Yet despite these findings, Thomson is unable to easily acquire evidence from the Chinese corporations or easily designate facilities for audit. It is therefore well aware of the importance of crosschecking facts with multiple sources of information.²⁹

(4) Measures to Combat Leakage of Technology and Infringements of Trade Secrets

(A) American and European corporations are more active than Japanese corporations in willfully transferring technology to China

The problem with the leakage of technology and the infringements of trade secrets in China is that the technology and secrets are being transferred in a way that foreign corporations do not wish them to be transferred. When foreign corporations willfully transfer technology to Chinese corporations under license agreements and the like, problems such as those sorts of leakages and infringements generally do not occur. And in fact there are many examples of such willful transfers of technology under license agreements and so on from Japan, America, and Europe to China.

Let's look first at the examples of foreign corporations willfully transferring technology to Chinese corporations.

The following tables show statistics on willful transfers from Japan, America, and Europe to China over the last few years.³⁰

Table 8. Technology transfers to China (2003)

Country of Licensor	Total amount of license agreement ³¹ (US\$ billion)	License fee (US\$ billion)	Total amount of import trade (US\$ billion)	Ratio of total amount of license agreement to total amount of import trade	Ratio of license fee to total amount of import trade
Japan	3.51	2.88	74.15	4.7%	3.9%
America	3.38	2.09	33.86	10.0%	6.2%
Europe	3.27	1.84	53.06	6.2%	3.5%
America and Europe	6.64	3.93	86.92	7.6%	4.5%

Table 9. Technology transfers to China (2004)

Country of Licensor	Total amount of license agreement (US\$ billion)	License fee (US\$ billion)	Total amount of import trade (US\$ billion)	Ratio of total amount of license agreement to total amount of import trade	Ratio of license fee to total amount of import trade
Japan	2.94	1.96	94.37	3.1%	2.1%
America	2.92	2.51	44.68	6.5%	5.6%
Europe	5.51	2.81	70.12	7.9%	4.0%
America and Europe	8.43	5.32	114.80	7.3%	4.6%

Table 10. Technology transfers to China (Jan – Aug 2005)

Country of Licensor	Total amount of license agreement	License fee (US\$ billion)	Total amount of import trade (US\$ billion)	Ratio of total amount of license agreement to total amount of import trade	Ratio of license fee to total amount of import trade
---------------------	-----------------------------------	----------------------------	---	--	--

	(US\$ billion)				
Japan	2.46	2.11	63.28	3.9%	3.3%
America	1.61	1.26	31.85	5.0%	4.0%
Europe	4.89	2.56	47.24	10.4%	5.4%
America and Europe	6.50	3.83	79.09	8.2%	4.8%

If we look at the ratio of license fee to total amount of import trade in technology transfers from Japan to China, we can see that the ratio was 3.88% in 2003, 2.07% in 2004, and then 3.34% in the months January through August of 2005. A look at the same ratio in transfers from America to China, on the other hand, shows continuously higher ratios of 6.18% in 2003, 5.62% in 2004, and 3.97% in January through August 2005. Similarly, the ratio in transfers from Europe to China started an upward trend after 2003, where it was actually lower than Japan at 3.46%, consistently thereafter exceeding Japan's figures with 4.01% in 2004 and 5.42% in January through August 2005. Likewise, the ratios of total amount of license agreement to total amount of import trade for technology transfers from America and the Europe to China were consistently higher than those for transfers from Japan to China.

From these facts we can therefore say that in general American and European corporations are more active than Japanese corporations when it comes to willful transfers of technology to China.

There are also examples of Chinese corporations acquiring technologies by acquiring foreign corporations (through M&As), and we can expect such M&As to increase in the future. One such case in point was Shanghai Electric Group Co. Ltd.'s acquisition in 2002 of the then bankrupt Akiyama Printing Machinery Manufacturing Corp. The technology that APMMC had was the technology for a full color offset printing press that only 6 companies in the world could produce, but Shanghai Electric acquired that technology through the M&A and its Chinese technicians received technological guidance from Akiyama's expert Japanese employees. By effecting this transfer of technology, Shanghai Electric succeeded in

July 2004 in developing China's first ever full-color offset printing press.^{3 2}

(B) Good personnel management is effective as a measure for combating the leakage of technology and the infringement of trade secrets

Based on our research, we have found that the most common cases of leakages of technology and infringements of trade secrets in China are those that occur in connection with an employee of a corporation that has rights with respect to technology or trade secrets who retires or changes jobs, or establishes a company to compete with the corporation with those rights, and in some manner infringes those rights.^{3 3} So in other words, there are actually relatively few cases of leakages of technology or infringements of trade secrets involving third parties of absolutely no relation to the corporations with the rights. What we can learn from these findings is that the objects of corporations' attention in preparing measures to combat leakages of technology and infringements of trade secrets in China are their own employees or the employees of the local corporations in China, and the particular lesson from all this is that leakages of technology and infringements of trade secrets are most likely to occur in connection with employees retiring, changing jobs, or independently establishing their own businesses. It is here that personnel management, including the management of retired employees, becomes extremely important. In short, good personnel management is effective as a measure for combating the leakage of technology and the infringement of trade secrets.

(i) Japanese corporations are considerably less popular in China than American and European corporations

Japanese corporations are considerably less popular among Chinese students than American and European corporations.

The graph below illustrates the top ten choices among Chinese students for corporations they would like to work at. Of the top 50 such corporations, 32 are foreign corporations and 18 are Japanese corporations (based on a survey conducted by the research company ChinaHR that targeted over 600 universities^{3 4}). Unfortunately no Japanese corporations are among Chinese students' top 10 preferences.

Table 11. Top 10 Corporations Chinese Students Would Like to Work at

	Corporation's name	Country
1	Haier	China
2	IBM	America
3	P&G	America
4	China Mobile	China
5	Microsoft	America
6	Lenovo	China
7	Huawei	China
8	GE	America
9	Siemens	Germany
10	China Telecom	China

Several reasons stand out among others that can be given for why Japanese corporations are so much less popular than American and European corporations among Chinese students: (i) the students are unclear about what career paths to take; (ii) they are unclear as to how they will be evaluated in Japanese corporations; (iii) Japanese corporations offer relatively low salaries; (iv) Japanese corporations offer relatively few opportunities for professional development and training that will directly contribute to their career, such as MBAs; and (v) Japanese corporations do not conduct enough PR at Chinese universities.³⁵

(ii) American and European corporations are more progressive in terms of assigning managerial powers to Chinese management personnel

American and European corporations assign managerial powers in the early stages of their corporations' development to Chinese managers with excellent management skills, thereby making it possible for quick management decisions to be made locally. At Japanese corporations, on the other hand, the representative directors and managing directors are more often than not Japanese, and in most corporations actual management decisions are made at the parent corporation. Many American and European corporations (for

example, GE, Johnson & Johnson) seem to assign a vast range of powers to Chinese managerial employees by entering into agreements with them based on business strategies and the key performance indicators (KPIs) used to monitor those businesses. Some of the examples of American and European corporations that have employed Chinese personnel in their local companies as managing directors are set out in the following table.³⁶

Table 12. Examples of American and European Corporations in China Employing Chinese People as Managing Directors in Their Local Corporations

Corporation	Managing Director	Year Employed	Profile
Oracle	Andrew Hu	1995	Chinese–American (educated in America)
Intel	Ian Yang	1995	Chinese (educated in America)
IBM	Henry Chow	1994	Hong Kong (educated in America)
Hewlett Packard	Zhen Yao Sun	1991	Taiwanese (educated in Taiwan)
Sun Microsystems	Daniel Yu	1991	Chinese–American (educated in America)
Cisco Systems	Jia Bin Duh	1994	Taiwanese (educated in Taiwan)
Motorola	P. Y. Lai	1994	Chinese–Malaysian (educated in Taiwan)

One of the reasons there are many Chinese and Chinese–Americans (that is, people whose native language is Chinese and who understand the Chinese culture and way of thinking) in top positions (such as managing director) in local corporations of American and European corporations is probably that “Japanese corporations look to China as a manufacturing base and establish themselves there with a mindset of “moving next door,” whereas American and European corporations look to China as a market and establish themselves there with the mindset of “heading to the Far East.”³⁷

- (iii) The level of compensation offered at Japanese corporations in China is considerably lower than that offered at American and European corporations in China

According to the Report on a Survey of Actual Conditions of Salary and Benefit Plans of Japanese corporations in China and American and European Corporations (prepared in March 2005 by the Shanghai Jiaoda Zhengyuan Enterprise Consultant Co., Ltd., and the Shanghai Rineng Zonyan Zhongzhi Consultant Co., Ltd.), the standard salary at Japanese corporations in China is 70% of that offered at American and European corporations in China.

The following table shows a comparison of standard salaries by job type at Japanese corporations in China as a percentage of those of American and European corporations.³⁸

Table 13. Comparison of Standard Salaries by Job Type at Japanese corporations in China and American and European corporations in China

Job Type	American and European corporations	Japanese corporations	Standard Salaries at Japanese Corporations as a Percentage of those at American and European Corporations
Management and above	231,490 yuan	129,602 yuan	56%
Supervisors	83,884 yuan	61,445 yuan	73%
Technicians	70,583 yuan	42,647 yuan	60%
Operations	73,986 yuan	54,939 yuan	74%
General employees	48,052 yuan	46,46 yuan	85%
Factory laborers	28,167 yuan	21,887 yuan	78%

A look at salaries by job types shows us that the higher the rank, the greater the difference in standard salary compared with American and European corporations, with the difference between general employees of the

corporations being at 80% and senior employees at 71% but the difference between the salaries of managerial employees being 54%. If we look at entry-level salaries, we will see that (i) graduates out of their 4th year of university can get approximately 2,200 yuan at Japanese corporations in China, but approximately 3,000 yuan at American and European corporations in China, (ii) graduates out of masters courses can get approximately 3,200 yuan at Japanese corporations in China, but approximately 4,700 yuan at American and European corporations in China, (iii) doctorate graduates can get approximately 4,000 yuan at Japanese corporations in China, but approximately 7,800 yuan at American and European corporations in China.³⁹

The person in charge of the Report on a Survey of Actual Conditions of Salary and Benefit Plans of Japanese corporations in China and American and European Corporations analyzed these differences between Japanese corporations in China and American and European corporations in China as follows:

“Most of the Japanese corporations in China are engaged in the electronics and manufacturing fields and view China as a base from where they can manufacture their products, so many Japanese corporations don’t have a research and development department in China. As a consequence, relatively little is demanded of employees at Japanese corporations in China. But American and European corporations, on the other hand, hunt out the highest level of personnel in China and immerse them in an extremely competitive business environment, so they generally offer these locally hired employees high salaries as a form of incentive.”⁴⁰

(iv) American and European corporations in China engage in corporate PR in many different ways, but Japanese corporations in China do not do enough

Various options exist for preventing employees from retiring, changing jobs, or independently establishing their own businesses. One of them is to maintain a good corporate image.

Reports on Japanese corporations in China, however, say that “compared with American and European corporations, Japanese corporations in China have an inferior image in the major cities in China”; that “the reason for this is that Japanese corporations in China don’t have a system in place that allows them to be recognized as ‘local corporations’”; that “Japanese corporations in China, as far as stakeholders in the Chinese market are concerned, are merely providers of products and services: They ought to place greater priority on their CSR [corporate social responsibility], such as by fostering Chinese personnel, contributing to society, and protecting the environment”; and that “Japanese corporations in China have not used the corporate activities they have already implemented to their best advantage and in some respects those activities have not led to a positive evaluation of the corporations by the Chinese market.”^{4 1}

Furthermore, Japanese corporations in China often hold job fairs and use personnel placement companies when searching for Chinese personnel to employ, tending not to carry out activities out at universities on their campuses. But American and European corporations in China work hard on their PR at universities by, for example, holding on-campus interviews and having their management team give on-campus talks. There are even some American and European corporations in China who employ 2nd and 3rd year university students as interns, thus enabling them to carefully select and secure excellent personnel.^{4 2} Japanese corporations in China, on the other hand, have failed to sufficiently push their PR such that many people harbor such negative stereotypes of Japanese corporations as “you work there for life, get promoted based on age, not performance, and there’s lots of overtime” or “if you don’t speak Japanese, you won’t get employed.”^{4 3} Moreover, American and European corporations in China are more active in setting up limited-term departments or the like in Chinese universities and establishing scholarships (for example, approximately 100 global corporations, such as Mercedes Benz, GE, IBM, Motorola, P&G, and others, are on the sponsor lists of Fudan University in Shanghai and Shanghai Jiao Tong University). When the CEOs of Nokia and Ericsson visit universities, they do a variety of things to promote their corporate image and appeal to students, such as by holding on-campus

lectures.⁴⁴

(v) American and European corporations in China employ various initiatives to increase the motivation of Chinese personnel

In order for Japanese corporations in China to retain their employees, it is important for them to further motivate Chinese employees who are interested in developing their own career path by making full use of internal training and clearly explaining to them the career paths available to them in the corporation.⁴⁵

American and European corporations are active in this respect in many ways⁴⁶:

- many American and European corporations in China include an annual budget for training in their general budget and implement the training in a way that matches employees' career objectives and their current position of employment;
- American and European corporations in China manage employees on a section by section basis, depending on whether they belong to local corporations, umbrella-type corporations, regional main offices, the parent corporation, or so on, and they implement internal training according to which section the employees belong to (many umbrella-type corporations have set up departments for personnel strategies and training teams);
- the content of the training American and European corporations in China offer their employees as external training often include leadership, accounting, MBAs, and so on (many corporations provide assistance by reimbursing their employees' for a reasonable amount of student fees when the students acquire an MBA, and many corporations clearly explain the career paths available to employees after they receive degrees); and

- American and European corporations in China are increasingly using a system known as “preferential management” (specifically, this is where a corporation trains a select number of employees chosen for being absolutely essential to the corporation and then thoroughly differentiates them from other employees by, for example, training them in the early stages of their employment, giving them better salaries, and creating individual long-term career plans with them; this increases the motivation among all employees because by seeing their colleagues do so well, the other employees will know that if they work hard, they too will be rewarded in the same way), and it enables American and European corporations to capture quality personnel in their early stages.

According to the Report on a Survey of Actual Conditions of Salary and Benefit Plans of Japanese corporations in China and American and European Corporations we talked about earlier, the ratio of employees leaving their jobs is higher at Japanese corporations in China, at 27%, than it is at American and European corporations in China, which is 19%. But if we look at how many of those leaving their jobs did so voluntarily, we see that 17% left voluntarily from Japanese corporations in China, compared with 39% that did so from American and European corporations in China, suggesting that dismissals are more common at American and European corporations in China.⁴⁷ The person in charge of the Report on a Survey of Actual Conditions of Salary and Benefit Plans of Japanese corporations in China and American and European Corporations analyzed this leakage of personnel from Japanese corporations in China as being attributable to the following reasons⁴⁸:

- Even after Japanese corporations in China have established their business in China, they continue to use the same business models they used in Japan, advocating teamwork and not placing sufficient importance on the development of the individual personalities of employees;
- not only do many Japanese corporations in China record employees’ insurance premiums at the minimal statutory rate but

many of them also only pay an extremely small amount of welfare expenses; and

- at most Japanese corporations in China the posts of section and department manager are invariably dominated exclusively by Japanese employees, thereby considerably depriving non-Japanese employees of opportunities for professional development and not allowing Chinese employees to rise above the basic manager or technician levels.

(vi) Regulations at American and European corporations provide severe punishment for personnel who divulge secrets

All of the 10 American and European corporations that were the subjects of the JPO Report have provided detailed punitive regulations for, and strictly enforce punishments against, employees involved in leaking technology or infringing trade secrets. The regulations contain provisions that provide as follows:

- if a leakage of technology or an infringement of a trade secret is discovered, the manager of the person responsible will be held liable and have money deducted from his pay;
- employees will be made to compensate for economic damage they cause to the corporation, regardless of whether they are still employees or have retired; and
- if a person causes economic damage after he or she has retired, the company will hold that person legally liable.

The employment agreements for these American and European corporations also contain provisions relating to the leakage of technology and the infringements of trade secrets and provisions that prohibit employees in all corporations from holding multiple posts. Some corporations encourage internal whistle blowing, even paying incentives to whistle blowers in some

cases. Furthermore, there are also corporations that strictly manage their employees, as evident by the fact that they “prepare a report card for each individual employee during their employment to record their individual situation at work. The employee is regularly audited and the results of the audit are also recorded on the report in the form of a score. Other matters such as daily work matters and matters of carelessness are also recorded on the report. If an employee has 3 breaches of the regulations recorded on their report, that employee will be dismissed.”⁴⁹

Also, many American and European corporations have adopted methods of managing employees such as these methods⁵⁰:

- if an employee of a department causes a problem, the department manager will be responsible for that problem;
- the amount of information accessible to employees must be kept to an absolute minimum and all measures must be taken to ensure information is not divulged;
- the exchange of information between departments must be conducted through department managers and must be conducted in accordance with set procedures; employees are prohibited from entering any room of any other department without authorization and are prohibited from asking anything not related to his or her individual work duties.
- department managers must make public the details of all meetings; and
- employees must not ask colleagues to do their job for them.

(vii) A look at specific measures taken by individual corporations: Philips

Some of the characteristics of the way in which Philips manages its employees are as follows⁵¹:

- always pays attention to whether it is considered a good employer and how high it is ranked among students and job seekers;
- employs many different people in China from different fields but has them undergo plenty of training in Holland;
- treats each locally hired employee as an employee of the entire Philips corporation and makes sure that they feel that they are respected;
- believes it is best to mainly hire local personnel for local sections of the corporation, and exceptionally effective locally hired personnel have a high possibility of advancing to high positions within Philips; and
- believes it is able to offer its employees extremely competitive salaries.

(C) Good information management is essential for preventing technology leakages and trade secret infringements

Most American and European corporations manage information in the following ways.⁵²

- The public relations departments makes public announcements and the like to be made externally concerning internal comp information.
- American and European corporations establish exclusive departments to manage documents. Access to documents is limited by employees' rank and title. The only way to access the documents is for an authorized employee to have their registration examined and verified and a record or the like taken.

- Employees are prohibited from removing any company materials or articles from the premises.
- The company provides all office supplies to be used internally. Employees are prohibited from bringing into the company any office supplies that they themselves own or any memory devices that can store data.
- The IT department takes total control of computer information.
- Safety isolation systems are established for research departments, and if an employee does not have an identity card, then he or she cannot get in. All employees going in and out are recorded on a monitoring system. To use particularly important technology or documents, two employees must take joint responsibility for the use of them.

Major American corporations generally have firmly established corporate policies for the purpose of managing trade secrets, and usually require and strongly demand employees to maintain the confidentiality of trade secrets by way of a handbook on such matters for employees. In hiring employees, these corporations require them to sign an agreement clearly stating that they must keep trade secrets confidential. With employees entrusted with particularly important duties, the corporation will demand that the employee sign an agreement stating that the employee is prohibited from working for a competitor corporation for a certain period after the employee retires. As other examples of measures taken to ensure that trade secrets are kept confidential, concerned corporations have (i) preventative measures for internal safety in the corporation and regulations providing for the handling of documents, (ii) physical methods of managing confidentiality such as with alarm systems, video cameras, and ID cards, and (iii) provisions stipulating to the effect that disclosure of trade secrets is only allowed when it is for the purpose of internal company discussion.⁵³ Also things to make sure of when employees retire are (i) making the employee on retirement formally promise in writing to the effect that he or she will maintain the confidentiality of trade secrets, and for employees that have knowledge of particularly important trade secrets, to make sure to record exactly what

sort of field the employee worked in, and (ii) that because it is extremely easy for important information to be removed from the company premises, a good idea is to confirm where the employee sent emails to before retiring and what sort of data did the employee copy before retiring.⁵⁴

Taking Philips as a case in point again, Philips (i) makes its employees always observe, even within the company, the principle of business that “you only provide information to people you know,” (ii) does not send extremely sensitive technological information to China or at least waits until some time has passed before it does send it out, and (iii) states clearly in its employment agreements with its employees the liability that will be borne by any employee who breaches their employment agreement.⁵⁵

With the American economy as it is at the moment, however, liquidity in the employment market has become the natural state of affairs, so much so that corporations these days manage their trade secrets on the assumption that employees will change their jobs or transfer to a competitor.⁵⁶ Some American corporations go to various extremes in order to prevent information from being divulged when dismissing an employee, such as by making the employee leave the company within 2 hours of giving the employee the dismissal notice and making another employee witness the dismissed employee’s access to mails to him or her.⁵⁷ Also, America introduced its Economic Espionage Act in 1996, thereby establishing a legal system for the protection of corporate trade secrets, such as by providing for a penalty of no greater than US\$ 500,000 for any divulging of a corporation’s trade secrets. Also, in May 2001, a former Japanese employee of Riken was taken to court on charges of stealing research materials.⁵⁸

(5) Interacting with Anti-Counterfeiting Organizations

American and European corporations are actively involved when it comes to measures to combat counterfeit products in China, establishing anti-counterfeiting organizations and developing strong activities.⁵⁹

The main American and European international anti-counterfeiting organizations are as set out in the following table.⁶⁰

Table 14. The main American and European international anti-counterfeiting organizations

International Intellectual Property Alliance (IIPA)	Established in 1984. Represents approximately 1300 corporations in relation to copyrights. Made up of six industry associations: the Association of American Publishers (AAP), the Independent Film and Television Alliance (IFTA), the Business Software Alliance (BSA), The Motion Picture Association of America (MPAA), the Entertainment Software Association (ESA), and the Recording Industry Association of America (RIAA). It plays a central role in lobbying against intellectual property rights problems.
International AntiCounterfeiting Coalition (IACC)	Established in 1978. Includes approximately 150 member corporations (as of February 2005) over a range of fields, including manufacturers, corporations related to copyrights, research companies, law firms. Adds weight to the fight for enforcement of intellectual property rights.
Quality Brands Protection Committee (QBPA)	Has approximately 140 large multinational corporations with famous brands participating. Focuses its activities on China and is active in supporting the enforcement of intellectual property rights. Officially began business in China in March 2000.
International Trademark Association (INTA)	A not-for-profit organization made up of more than 4,600 trademark holders and trademark specialists over 180 countries. Adds weight to the fight for enforcement of intellectual property rights related to trademarks.
US Chamber of Commerce	Biggest industry organization in the world, with 3 million member corporations. Particularly active in making proposals in relation to the problem of infringements of copyrights in China.
Union des Fabricants	Established in 1872. French public utility organization. Approximately 400 member companies. Opened counterfeit products museum in Paris headquarters in 1951.

(A) Motion Picture Association of America (MPAA)

In July 2005 the MPAA signed a Memorandum of Agreement on Copyrights to Motion Pictures between the State Administration of Radio, Film, and Television and the Ministry of Culture, concluding an agreement with respect to copyrights in the Chinese market over American motion picture products. Then on March 3, 2006, the MPAA executed an agreement with the Chinese Motion Picture Copyrights Protection Association, which was established in August 2005, in relation to keeping communication channels open and consolidating cooperation between the parties with respect to activities to protect motion picture copyrights both in America and China (specifically, improving the efficiency of movements to eradicate pirated copies, preventing infringements of copyrights, confirming copyrights, providing information relating to pirated copies, and supporting staff involved in movements to eradicate pirated copies).^{6 1}

(B) Quality Brands Protection Committee (QBPC)

As of May 2006 the QBPC has approximately 140 member corporations.^{6 2} Some Japanese corporations that are members are JT International and Sony, both of which are Voting Members, as well as Canon, Denso, Epson, Fujisawa Pharmaceuticals, Hitachi, Honda, Makita, Panasonic, NEC, Nintendo, Nissan, Sanyo, Seiko, Sony Ericsson, Taiyo Yuden, Toshiba, Toyota, and Yamaha Motor, all of which are General Members (there were 11 General Member companies in March 2003, but that increases to 20 as of May 2006).

QBPC is active in promoting its cause in China. Its key objectives for 2006 are as follows:^{6 3}

- Strengthen the QBPC's role as a bridge between China and the international community, as well as facilitating international cooperation in IP enforcement
- Work collaboratively with the Chinese central government on building regional IP strategy into the regional economic/social development plans and on fighting local protection effectively

- Strengthen criminal and administrative enforcement
- Strengthen cross-border enforcement
- Build the QBPC into a comprehensive IP professional organization and work more closely with Chinese domestic brands
- Increase public awareness of IP issues and continue to lobby the concept of prevention
- Membership retention, recruitment and improved communication

As you can see, QBPC is an active international anti-counterfeiting organization that continues to actively promote its cause, using China as its base, and it will continue to fight for that cause with specific and clear purposes and strategies. Worthy of particular notice is that fact that QBPC is able to provide a consistent and effective efforts in taking its cause to the Chinese central and local governments. Its key characteristics are thus its consistency and its closeness with which it approaches the Chinese central and local governments.

It has been noted with respect to QBPC that “although it has the attention of the Chinese government, there are only a few Japanese corporations in China that participate in the QBPC system. The reason for this is not only that the general member’s annual fee is extremely high at 100,000 dollars, but also that the committee meetings are generally held in English and meetings with the government are generally in Chinese, and there just aren’t enough people around who are expert in English or Chinese and have a particularly high degree of knowledge in intellectual property.”⁶⁴

But if Japanese private organizations truly wish to actively and effectively spur the Chinese central and local governments into action, they must dispatch people who are experts in intellectual property rights and measures to combat counterfeit products, and who can speak English and Chinese, to China and station them there. They must then have these people make consistent efforts to interact with Chinese

government officials and collect information from the Chinese government.

(6) Participation of International Institutions and Governments

Foreign governments are increasingly placing greater demands on China to strongly enforce its Intellectual Property Law. China is taking various measures in response to such demands.

Under these circumstances, the Temporary Regulations Concerning Cooperation and Reinforcement of Law Enforcement regarding Intellectual Property Rights established by the Ministry of Public Security and China Customs were promulgated and put into force on March 24, 2006. The purpose of these Regulations is “to strictly regulate criminal acts that infringe intellectual property rights, and to reinforce communication and cooperative relations among the sections in charge of protection of the intellectual property rights of the public security agencies and customhouses” (Article 1).

The Notice Concerning Pre-installation of Computer Genuine OS Software was established by the Ministry of Information Industry, the National Copyright Administration, and the Ministry of Commerce of China and promulgated on April 10, 2006. The Notice requires pre-installation of genuine OS software in computers manufactured in, or imported to, China (Articles 1 and 2).^{6 5}

As we described above, we believe that behind the barrage of measures taken by the Chinese government to reinforce the law enforcement for intellectual property rights is the Chinese government’s attempt to fend off demands from America and other countries to reinforce the protection of intellectual properties, thereby preventing America and other countries from taking harder measures against China.

(A) Japan

The Japanese government plays an important role in counterfeit products problems in China by approaching the Chinese government and negotiating with it.

In order to conduct effective and powerful negotiations with China, the Japanese government must collect accurate and extensive information based on facts,

including where and what is the problem with the Chinese legal system and its operation, what harm is being suffered by Japanese corporations and how much, and where and how the Chinese legal system and its operation may be improved.

The Ministry of Economy, Trade and Industry actively proposes the measures to fight back damages suffered by the Japanese companies due to the counterfeit products in China by preparing and publishing Guidelines to Prevent Technology Leakage. The JPO also plays an important and key role in taking measures to combat counterfeit products in terms of collecting information by conducting field surveys for counterfeit products, and commissioning outside organizations to do research and investigation on the measures against counterfeit products.

In August 2004, China established the Government General Office for Measures against Counterfeit Products and Pirated Products.⁶⁶ The General Office was designed to receive inquiries as a government organ and give responses in collaboration with other relevant ministries, because it was pointed out that when companies are harmed by counterfeit products or pirated copies and wish to inquire about laws and ordinances or to request that foreign governments be lobbied, they have a hard time in finding the right organization to consult with, and it is also better to comprehensively handle the matters involving two or more ministries. The General Office engages in (i) handling e-mails regarding counterfeit products and pirated copies, (ii) responding to inquiries by telephone and through meetings, (iii) managing and providing information on the counterfeit products or pirated copies, and (iv) communicating with and coordinating the relevant governments and ministries necessary to performing these operations.

The Japanese government continues to seek further intellectual property rights protection through government negotiations with the Chinese government, as well as through western countries and international organizations such as WTO and WIPO. It is required to carefully determine whether the Chinese government takes appropriate measures when Japan makes such requests.

Better results can be expected if government and private sectors team up and cooperate, instead of the Japanese government and private companies attempting to tackle the counterfeit products issue individually.

For example, in April 2002, the International Intellectual Property Protection Forum (IIPPF) began as a place where companies and associations that have a strong incentive to solve the problem of overseas infringement of intellectual property rights can get together from across all sections of business to organize opinions in the industrial world and take concerted action with respect to foreign governmental agencies while reinforcing cooperation with the Japanese government. The IIPPF dispatched a mission jointly organized by governments and private sectors to China, as a result of which it reported on the various issues that the Japanese companies face through meetings and by submitting a request to the intellectual property rights-related agencies and local governments in China. The IIPPF mission consists of members from all industries such as the electric and electronic, automobile, chemical, and software industries. In June 2006, the IIPPF also plans to dispatch a mission to China to request that detection of infringement of intellectual property rights be reinforced and to request that relevant laws and ordinances be revised (specifically (i) to regulate prohibition of copy of shapes in the Anti-Unfair Competition Prevention Law, (ii) to increase fines imposed on persons infringing intellectual property rights, and (iii) to adopt globally recognized standards).⁶⁷

(B) America

(i) Main reasons American government is increasing pressure on the Chinese government

According to the U.S. Chamber of Commerce in Beijing, approximately 45% of approximately 900 member companies responded that a passive stance of the Chinese government against intellectual property protection has an adverse effect on investment in, and transfer of technologies to, China.⁶⁸ As such, the U.S. companies are not at all satisfied with the protection of intellectual property rights, and as a result the United States Trade Representation (USTR) is continuing to increase the pressure on the Chinese government.

One of the reasons that America intently takes measures against counterfeit products and pirated copies is that the manufacture and sale of the

counterfeit products and pirated copies provides funds to terrorist organizations.

As we mentioned earlier, America is more likely to put pressure on foreign governments through government agencies.

(ii) Trends in the American government's spurring the Chinese government into action

Since October 2004, the American government has been conducting a program called "STOP!" (Strategy Targeting Organized Piracy), the purpose of which is to eradicate pirated copies created by criminal organizations, jointly with the federal government agencies, and it has established a high-level post of coordinator in charge of global issues on counterfeit products and pirated copies.⁶⁹ The American Embassy in China has decided to establish a special office of intellectual property principal attorney, who will represent the U.S. Patent and Trademark Office and perform business in collaboration with the Department of State, the Department of Commerce, and the Department of Justice.⁷⁰

On December 11, 2005, USTR submitted a report on the progress of China's performance of its commitment it made when it joined the WTO. The report showed that the protection of intellectual property rights by China had been insufficient. Specifically, it pointed out that (i) China has endeavored to reform its legal system for the purpose of performing under TRIPs in cooperation with the United States, and has achieved success to a certain extent, (ii) law enforcement aspects are, however, extremely insufficient, and they therefore allow counterfeited products and pirated copies to be widespread throughout China, as a result of which American corporations are being seriously and financially harmed, and (iii) the American government actively gave cooperation to China, increased personnel and budgets in Washington and Beijing, and was willing to take steps to help China to perform the TRIPs agreement⁷¹.

On February 14, 2006, USTR submitted a report stating that USTR would reconsider and fundamentally strengthen the trade policy against China

(specifically, to establish a special team in USTR to strengthen the ability to conduct trade negotiations with China, and to reinforce collaboration with Japan and EU to strongly request China to protect intellectual property rights).⁷² Mr. Portman, Representative of USTR, said at the press conference after publishing the above report, “As long as China does not take strong measures against infringement of intellectual property rights, the United States may file a complaint with WTO.”⁷³ Mr. Mendenhall, General Counsel of USTR also indicated a policy on February 23, 2006, that America would file a further complaint on China with WTO, and that it may complain to China that the Chinese regulations of prohibition on sale of counterfeit products and pirated copies are insufficient.⁷⁴ At the end of March 2006, Mr. Gutierrez, Secretary of the Department of Commerce visited China and discussed with the Chinese government trade conflict issues and issues on intellectual property protection. USTR published a Report on Foreign Trade Barriers in 2005 on March 31, 2006, indicating that the infringement of intellectual property rights were serious and cause significant harm to American corporations and that law enforcement, such as enforcement of criminal punishment, must be reinforced. An annual report published by USTR on April 28, 2006, based on Special 301 provision of the Trade Act (intellectual property rights protection provisions) stated that USTR would designate China as priority monitored country, consider making a filing with WTO, and conduct surveys in Guangdong and Zhejiang by deeming Guangdong as the “manufacturing base” of counterfeit products and pirated copies and Zhejiang as the “distribution base” of those products.

(iii) American enforcement authorities’ alliances

Regulatory agencies in the United States and China recently collaborate on measures against infringement of intellectual property rights. For example, the American Immigration and Customs Enforcement (“ICE”) announced that it detected persons who infringed the intellectual property rights (U.S. citizens) as a result of cooperative investigation conducted by the regulatory agencies in the United States and China. According to that announcement, after pirated copies of movie DVDs were discovered to be sold at a flea market in Mississippi, U.S.A., in September 2003, ICE and the criminal investigation

department of the U.S. Internal Revenue Service, as well as the Ministry of Public Security of China and the Ministry of Public Security of Shanghai, began a cooperative investigation. In July 2004, the Ministry of Public Security of China and the Ministry of Public Security of Shanghai detected an organization organized by those U.S. citizens, arrested them, seize pirated copies of DVDs, and closed down a warehouse. The Chinese court ordered those American citizens to serve 30-month sentences and pay a fine of approximately US\$ 60,000, with deportation proceedings to be taken out at the end of the period of sentence. After those American citizens were deported to the United States in September 2005 (the reason they were deported early is unknown), they were arrested by ICE at Los Angeles airport and indicted by the federal court of Mississippi over conspiracy, smuggling, distribution of counterfeit products, money laundering, and copyright infringement. They pleaded guilty.⁷⁵ MPAA reportedly cooperated and contributed significantly to the investigation on the above case.⁷⁶ This case is a good example of collaboration between the regulatory agencies in the United States and China.

(C)Europe

Europe takes a different stance toward China than the America policy, which focuses on pressuring China. For example, in November 2004, the European Commission announced a plan for new measures to effectively enforce the Intellectual Property Right Protection Law in third party countries. Mr. Jessen, Deputy Head of the Delegation of the EU Commission in Beijing, said that because the trade relationship between EU and China was getting closer, the EU would focus on developing a constructive cooperation relationship with China and had no intention to take punitive measure against it. In September 2005, Mr. Barroso, President of the European Commission, visited China and gave all the impression that Europe was warming up to China by announcing the establishment of a “strategic partnership” with it.⁷⁷

These days, however, new movements have started in Europe. For example, on February 22, 2006, German Foreign Minister Steinmeier met with Mr. Wen Jiabao, Prime Minister of China, in Beijing and made a strong demand for China to strengthen the protection of intellectual property rights, the German ambassador’s

reason being that there is a suspicion that the linear motor technology for cars manufactured by Germany is starting to leak out.⁷⁸ Germany and China entered into an Agreement on Reinforcement of Cooperation in Intellectual Property Protection on April 26, 2006.⁷⁹

(D) Interaction between countries

America tends to deal with China in cooperation with Europe these days. For example, in February 2006, USTR Representative Portman and EU Commissioner for Trade Mandelson met in Washington and agreed to demand China to make further efforts by stating that they both believed intellectual property needed to be better protected in China.⁸⁰

Further, on March 31 and April 1 of 2006, the Forum for Criminal Protection of Intellectual Property Rights in China was held in Shanghai with respect to the issues on infringement of intellectual property rights such as counterfeit products and pirated copies, and the Shanghai Declaration was adopted. The law enforcement agencies of WIPO, China, Japan, America, the EU, Canada, France, Germany, and other countries agreed to adopt the Shanghai Declaration with respect to strengthening international cooperation in regulating intellectual property infringements.⁸¹

Considering the above-mentioned trends, it is important for the Japanese government to respond to the Chinese government in collaboration with other foreign governments. In this respect, the key countries of Japan, America, and Europe are expected to agree to prepare a treaty to eradicate counterfeit products and present it at the summit to be held in July 2006 in St. Petersburg. A more finalized version of the treaty will be drafted by 2008 and ratified by countries where the Chinese counterfeit products and pirated copies are widespread, with the aim being to eradicate counterfeit products all over the world.⁸²

4 Conclusion

We have thus examined the differences between Japanese corporations and American and European corporations with respect to their strategies for intellectual property and preventing technology leakage in China. The Japanese government and Japanese corporations must adopt

the good aspects of the methods used by American and European corporations at the same time as continuing to collaborate and cooperate with international institutions, governments, and anti-counterfeiting organizations.

¹ In this report, the term “Japanese corporations” refers to Japanese corporations and Japanese-affiliated corporations. The same applies to the terms “American corporations,” “European corporations,” and “American and European corporations.” The term “Japanese corporations in China,” as “American and European corporations in China,” is used to refer specifically to Japanese, or American or European, corporations incorporated in China.

² For the introductory portion of this report on the survey relating to harm suffered by American corporations, please see *Aggressive American Corporations in China* (Fuji Sankei Business Eye, March 20 – 22, 2006).

³ *Study on Effects of Measures against Counterfeit Products in Western Countries* (Japan Patent Office, March 2003) page 47

⁴ *Summary of Field Survey on Legislation against Distribution of Counterfeit Products in Developed Countries of 2003* (Japan Patent Office, March 2004) page 11

⁵ See the page 153 of the following pdf on the web site of the International Intellectual Property Protection Forum (page 153): <http://www.iippf.jp/01/pdf/0403senshinjirei/2-1-01.pdf>

⁶ http://headlines.yahoo.co.jp/hl?a=20060216-00000231-kyodo-bus_all

⁷ *CIPIC Journal Vol. 169* (Japan Tariff Association, Customs Intellectual Property Information Center (CIPIC) 2006) page 43

⁸ *CIPIC Journal Vol. 166* (Japan Tariff Association, Customs Intellectual Property Information Center (CIPIC) 2005) from page 44

⁹ *European Commission Makes Public Statement of Results of Products Seized in 2004 that Infringe Intellectual Property Rights on Member-Country Basis* (*CIPIC Journal Vol. 169* (Japan Tariff Association, Customs Intellectual Property Information Center (CIPIC) 2006) from page 41)

¹⁰ Recently, corporations in industries related to digital content such as animated motion pictures and game software have become increasingly more active in establishing themselves in China.

¹¹ *Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China* (Japan Patent Office, March 2005) page 1

¹² Toshiya Tsugami, Don't be Afraid of Transferring Technology to China! Win – Win Strategies to Secure Your Market, digital column in the *Nikkei Telecom*, August 31, 2000.

<http://www.rieti.go.jp/users/tsugami-toshiya/library/002.html>

¹³ *Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China* (Japan Patent Office, March 2005) page 63

¹⁴ For example, some of the personnel in charge at the IP department of Phillips in Holland are Chinese people who have worked for many years in China's State Intellectual Property Office and are therefore specialists in the practice of IP in China well acquainted with handling IP problems. Liu Xinyu, *Problems Japanese Corporations Face when Entering China and How to Solve those Problems* (*Patent News* (Research Institute of Economy, Trade and Industry) April 6, 2006) page 4

¹⁵ *Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China* (Japan Patent Office, March 2005) pages 77 – 79

¹⁶ *Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China* (Japan Patent Office, March 2005) pages 79 – 80

¹⁷ *Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China* (Japan Patent Office, March 2005) page 9

¹⁸ *Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China* (Japan Patent Office, March 2005) page 43

¹⁹ *Aggressive American Corporations: Doing Business in China* (Fuji Sankei Business Eye, March 21, 2006)

²⁰ Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China (Japan Patent Office, March 2005) page 50

²¹ Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China (Japan Patent Office, March 2005) page 51

²² Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China (Japan Patent Office, March 2005) page 97

²³ Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China (Japan Patent Office, March 2005) pages 106–107

²⁴ Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China (Japan Patent Office, March 2005) page 115

²⁵ Statement by Tony Tangena (Senior Vice President, Patent Portfolio Director, Philips Intellectual Property & Standards) in Panel Discussion titled Challenges and Solution Proposals to the Increasing Development of Local IP Operations in China ((*Chizaiken Forum* Vol. 60) Institute of Intellectual Property, 2004) from page 75

²⁶ Japanese information: <http://japan.internet.com/busnews/20060310/print12.html>.

[Translation note: English quotations in this paragraph are from the following site (as of May 23, 2006): <http://www.microsoft.com/genuine/about.msp?displaylang=en>.]

²⁷ Japanese information: <http://www.itmedia.co.jp/enterprise/articles/0507/26/news047.html>

²⁸ Japanese information: <http://www.itmedia.co.jp/news/articles/0603/10/news015.html>

²⁹ Beatrix de Russe, Thomson International IP Strategy and Licensing Experience in China (Intellectual Property Research Forum Vol. 64 (Institute of Intellectual Property, 2006)) page 59

³⁰ Figures presented in these graphs are based on publicly available data on imports and exports into and out of China that we gathered from the web site of the Ministry of Commerce of the People's Republic of China, the original (Chinese language) home page for which is here: <http://www.mofcom.gov.cn/>

³¹ In the statistics of the Ministry of Commerce of the People's Republic of China, "Total amount of license agreement" covers a total of 8 different types of technologies: (i) patent technologies, (ii) know-how, (iii) technological consultancy and technological services, (iv) computer software, (v) trademarks, (vi) joint or collaborative manufacturing, (vii) plants, base facilities, and manufacturing lines, and (viii) other technologies. Of those 8 types, the total amount of the license agreements for type (vii) plants, base facilities, and manufacturing lines is mainly the actual purchase amount of facilities and the like, which means it is difficult to say that it represents compensation for the transfer of technology per se. The figures in the tables that therefore best reflect amounts relating to transfers of technology are those in the *License fee* column.

³² Tsutomu Ono, Moving Toward Developing Cutting Edge Technologies and Acquiring Foreign Technologies (JETRO Censor March 2006) page 67

³³ Yoshio Iteya and Makoto Endo, Leakage of Technology and Infringements of Trade Secrets and Measures to Combat Them (Japan Machinery Center for Trade and Investment) page 57

³⁴ May 20, 2004 Fuji Sankei Business Eye page 4

³⁵ Takashi Kumon, Chinese People's Thoughts on Careers and Strategies for Utilizing Personnel (I). Japanese information: http://news.searchchina.ne.jp/dispcgi?y=2005&d=1102&f=column_1102_001.shtml

³⁶ Yasushi Sawada, Why Do Strategies for Business in China Fail? (Harvard Business Review Vol. 29 No. 3 (Diamond, Inc., 2004)) from page 55

³⁷ Statement of Dongming Hua in The Current State of IP Problems Associated with the Move of Business into China: From Misinterpretations of Types of Patent Applications to Counterfeit Products (Part I)

³⁸ Jie Hua Yan, How to Get Chinese Employees Motivated (Harvard Business Review Vol. 31

No. 5 (Diamond, Inc., 2006)) page 114

³⁹ Shigehiro Aihara, Guide and Q&A 35 to Employing and Utilizing Personnel Who Will Succeed in China (ALC 2006) from page 18

⁴⁰ Salaries in Japanese Corporations in China Considerably Less Than Those in American and European Corporations: Could This Be the Cause of the Personnel Leakage? (April 11, 2005 China Net). Japanese information: <http://www.peoplechina.com.cn/maindoc/html/news/20050411/4.htm>

⁴¹ News Release Japanese Corporations Have Inferior Image Compared With American And European Corporations: They Must Not Only Produce Good Products, But Also Increase Their Corporate Appeal (Searchina Nomura Research Institute 2006)

⁴² According to Takashi Kumon (noted previously), one American IT manufacturer offers 3rd year university students a 2-month long summer internship in the research and development department at one of its umbrella-type corporations. Of the students that do the internship, 40 – 50% of them apply to work at that corporation.

⁴³ As above

⁴⁴ Kiyoshi Inagaki, Japanese Research and Development in China (Research and Development Reader No.5 Technical Information Institute Co., Ltd. (2005)) page 37

⁴⁵ Takashi Kumon, Chinese People's Thoughts on Careers and Strategies for Utilizing Personnel (II). Japanese information:

http://news.searchina.ne.jp/disp.cgi?y=2006&d=0405&f=column_0405_004.shtml

⁴⁶ Takashi Kumon, as cited above.

⁴⁷ Aihara, as cited above, from page 20

⁴⁸ Salaries in Japanese Corporations in China Considerably Less Than Those in American and European Corporations: Could This Be the Cause of the Personnel Leakage? (April 11, 2005 China Net). Japanese information: <http://www.peoplechina.com.cn/maindoc/html/news/20050411/4.htm>

⁴⁹ Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China (Japan Patent Office, March 2005) pages 94–95

⁵⁰ Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China (Japan Patent Office, March 2005) page 95

⁵¹ Statement by Tony Tangena (Senior Vice President, Patent Portfolio Director, Philips Intellectual Property & Standards) in Panel Discussion titled Challenges and Solution Proposals to the Increasing Development of Local IP Operations in China ((*Chizaiken Forum* Vol. 60) Institute of Intellectual Property, 2004) from page 75

⁵² Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China (Japan Patent Office, March 2005) page 96

⁵³ Peter C. SCHECHTER (Translated by Tomohiro Yamazaki) Overview of IP Management at Large American Corporations (*Chizai Kanri* Vol. 54 No. 3 (Japan Intellectual Property Association, 2004)) from page 467

⁵⁴ Statement by Douglas Clarke, attorney-at-law, in Panel Discussion titled Challenges and Solution Proposals to the Increasing Development of Local IP Operations in China (*Chizaiken Forum*, Institute of Intellectual Property, 2004) page 77

⁵⁵ Statement by Tony Tangena (Senior Vice President, Patent Portfolio Director, Philips Intellectual Property & Standards) in Panel Discussion titled Challenges and Solution Proposals to the Increasing Development of Local IP Operations in China ((*Chizaiken Forum* Vol. 60) Institute of Intellectual Property, 2004) page 76

⁵⁶ Kazuo Makino, IT and Intellectual Property Made easy to Understand: A Practical Q&A (11) (JCA Journal Vol. 52 No. 2 (The Japan Commercial Arbitration Association, 2005)) page 40

⁵⁷ Statement of Dongming Hua in The Current State of IP Problems Associated with the Move of Business into China: From Misinterpretations of Types of Patent Applications to Counterfeit

Products (Part II). Japanese information:

<http://chizai.nikkeibp.co.jp/chizai/manufacture/china20040427.html>

⁵⁸ Toshiaki Hasegawa, Management of Trade Secrets and Leakage of Customer Information (The Labor-Relations Times No. 3525 (The Institute of Labor Administration, 2002)) page 53

⁵⁹ Yoshio Iteya, Makoto Endo, and Hefu Zhang, Systems for Responding to Disputes Concerning Business in China (*Shoji Homu*, 2004) from page 284

⁶⁰ See from page 23 of Research into Effectiveness of American and European Corporations' Measures to Combat Counterfeit Products (JPO March 2005)

⁶¹ Japanese information: http://j.peopledaily.com.cn/2006/03/04/jp20060304_57935.html

⁶² English information: <http://www.qbpc.org.cn/en/about/about/members>

⁶³ English information: <http://www.qbpc.org.cn/en/about/about/2006keyobjectives>

⁶⁴ Investment News No. 92 (Japan China Investment Promotion Organization, 2003) page 16

⁶⁵ In response to the Notice, Tsinghua Tongfang, Founder Technology, Lenovo, and TCL entered into contracts one after the other with Microsoft regarding pre-installation of genuine OS software. An execution ceremony was held just before President Fu Jintao visited the United States in April 2006. <http://headlines.yahoo.co.jp/hl?a=20060426-00000094-myc-sci>

⁶⁶ Japanese information: <http://www.meti.go.jp/policy/ipr/overview/contact.html>

⁶⁷ New Strategy for Protection of Intellectual Property Rights (Fuji Sankei Business Eye, dated April 13, 2006)

⁶⁸ Japanese information:

<http://news.goo.ne.jp/news/kyodo/kokusai/20060216/20060216a3820.html>

⁶⁹ President Bush Creates High-level Post to Manage Issues of Counterfeit Products and Pirated Copies, CIPIC Journal Vol. 163 (Japan Tariff Association, Customs Intellectual Property Information Center (CIPIC), 2005) page 49

⁷⁰ Cause for Concern of Increase in Disputes on Intellectual Property Laws between China and the United States (China IP News Letter (No. 76), February 28, 2005, (JETRO Beijing Center Intellectual Property Right Office)), Xinhua, February 16, 2005

⁷¹ USTR Submits Annual Report to Congress on China's Performance of Commitment upon Participation in WTO, CIPIC Journal Vol. 168 (Japan Tariff Association, Customs Intellectual Property Information Center (CIPIC), 2006) from page 29

⁷² Japanese information: <http://www.nikkei.co.jp/kaigai/us/20060215D2M1500P15.html>

⁷³ Japanese information: <http://www.business-i.jp/news/china-page/news/200602160006a.nwc>

⁷⁴ Japanese information: <http://headlines.yahoo.co.jp/hl?a=20060224-00000419-reu-int>

⁷⁵ Leader of Organization Distributing Pirated Copies of Movie from China to Foreign Countries Pleads Guilty, CIPIC Journal Vol. 169 (Japan Tariff Association, Customs Intellectual Property Information Center (CIPIC), 2006) page 38

⁷⁶ ICE Arrests at the Airport U.S. Citizens who Established Network of Counterfeit Products of Movie in China, CIPIC Journal Vol. 169 (Japan Tariff Association, Customs Intellectual Property Information Center (CIPIC), November 2005) page 39

⁷⁷ Pressure Unrelenting on Chinese Market," Tsuyoshi Miyabe, JETRO Censor of May 2006, page 54

⁷⁸ Japanese information:

<http://www.nikkei.co.jp/news/kaigai/20060223AT2M2201C22022006.html>

⁷⁹ Japanese information: <http://www.xinhua.jp/news/free/10046780.html>

⁸⁰ Japanese information: <http://www.asahi.com/business/update/0223/102.html>

⁸¹ Japanese information: http://j.peopledaily.com.cn/2006/04/02/jp20060402_58656.html

⁸² Japanese information:

<http://www.nikkei.co.jp/news/main/20060330AT3S2900X29032006.html>

References

1 Books

Dispute Resolution System for Chinese Business, Yoshio Iteya, Makoto Endo, Hefu Zhang (Commercial Law Review, 2004)

Guide and Q&A 35 to Employing and Utilizing Personnel Who Will Succeed in China, Shigehiro Aihara (ALC, 2006)

Leakage of Technology and Infringements of Trade Secrets and Measures to Combat Them, Yoshio Iteya, Makoto Endo (Japan Machinery Center for Trade and Investment, 2005)

2 Investigation Reports

3rd Results of the Inquiry Survey on Actual Conditions of Damages by Counterfeit Products (JETRO, March 2005)

Experience of U.S. Companies in Changing China (The American Chamber of Commerce People's Republic of China)

Investigation Report on Damages by Counterfeit Products of 2004 (Japan Patent Office, March 2005)

Report on a Survey of Actual Conditions of Salary and Benefit Plans of Japanese corporations and American and European Corporations (Shanghai Jiaoda Zhengyuan Enterprise Consultant Co., Ltd., and the Shanghai Rineng Zonyan Zhongzhi Consultant Co., Ltd., March 2005)

Report on Survey of Approaches Taken by Japanese, American, and European Corporations to Deal with Problems of Counterfeit Products in China (Japan Patent Office, March 2005)

Research into Effectiveness of American and European Corporations' Measures to Combat Counterfeit Products (Japan Patent Office, March 2005)

Summary of Field Survey on Legislation against Distribution of Counterfeit Products in Developed Countries of 2003 (Japan Patent Office, March 2004)

3 Magazines

China IP News Letter (JETRO Beijing Center Intellectual Property Right Office)

Chizaiken Forum (Institute of Intellectual Property)

CIPIC Journal (Japan Tariff Association, Customs Intellectual Property Information Center (CIPIC))

Fuji Sankei Business Eye (The Nikkan Kogyo Shimbun)

Harvard Business Review (Diamond, Inc.)

Intellectual Property Management (Japan Intellectual Property Association)

Investment Organization News (Japan-China Investment Promotion Organization)

JCA Journal (The Japan Commercial Arbitration Association)

JETRO Censor (JETRO)

Labor Administration Times (The Institute of Labor Administration)

Patent News (Research Institute of Economy, Trade and Industry)

Research and Development Reader (Technical Information Institute Co., Ltd.)