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Submission of comments responding to the call for opinions on the Japanese government's Intellectual Property Strategic Plan 2025	Cabinet Office	December 2024

JAMA Comments in Response to the Call for Opinions on the Formulation of Japan's Intellectual Property Strategic Plan 2025

Topic covered by these comments: (B4) Infrastructure Development for IP Dispute Resolution

The Japanese government's Intellectual Property Strategic Program 2024 recognized that the impact of standard essential patents, which are patents that are essential for the implementation of communications and other technology standards, on global competition was increasing with the growing pervasiveness of IoT technologies. Against this backdrop, the global battle for leadership over the formulation of rules for dispute resolution of standard essential patents has intensified in recent years [see excerpt, in Japanese only]. Based on this recognition, JAMA supports efforts to strengthen related infrastructure development in Japan.

The IP Strategic Program 2024 also noted that a) Japan's Ministry of Economy, Trade and Industry published the Good-Faith Negotiation Guidelines for the Licensing of Standard Essential Patents in 2022 to facilitate licensing negotiations for standard essential patents, and that b) the Japan Patent Office has revised those guidelines while continuing to promote their dissemination. Taking into account such inputs, we agree with efforts to deepen discussions on improving the transparency of "essentiality" and on ensuring transparency in licensing approval procedures [see excerpt, in Japanese only].

In recent technological development, there has been an increase in the number of situations where technologies (including standards) that are difficult to realize through the efforts of a single enterprise are instead realized through open innovation involving multiple players, multiple patents, and multiple rights holders. It is therefore essential to develop an infrastructure for resolving IP disputes that may arise as a result of such multiplicity in patents and in rights holders.

Looking at the situation beyond Japan, it seems that some countries are already adjusting the balance by incorporating the public-interest and equity perspectives. For example, there are certain restrictions on injunctions for patents on technologies that are relevant to the resolution of societal issues (e.g., standard essential patents) or technologies that contribute little to the overall product (Germany: 2021 legislative amendment, premised on equity perspective; U.S.: eBay case; China: 2016 judicial interpretations, premised on restrictions from the public-interest perspective).

We believe that the development of laws to avoid holdups or reverse holdups in advance is an essential element in infrastructure development to improve Japan's international competitiveness and to advance society as a whole.

JAMA also recognizes that "standards are public goods" and would like to see greater transparency in the rules governing the implementation of standard essential patents. For example, we believe that by creating rules that allow stakeholders in the supply chain, from materials and components suppliers to suppliers of finished products, who wish to obtain licensing certification to do so by paying appropriate fees, active standards implementation and consistent use of essential patents can be achieved, thereby increasing the benefits to society as a whole.
