

Lecture on IP Law

1. Introduction to IP Law

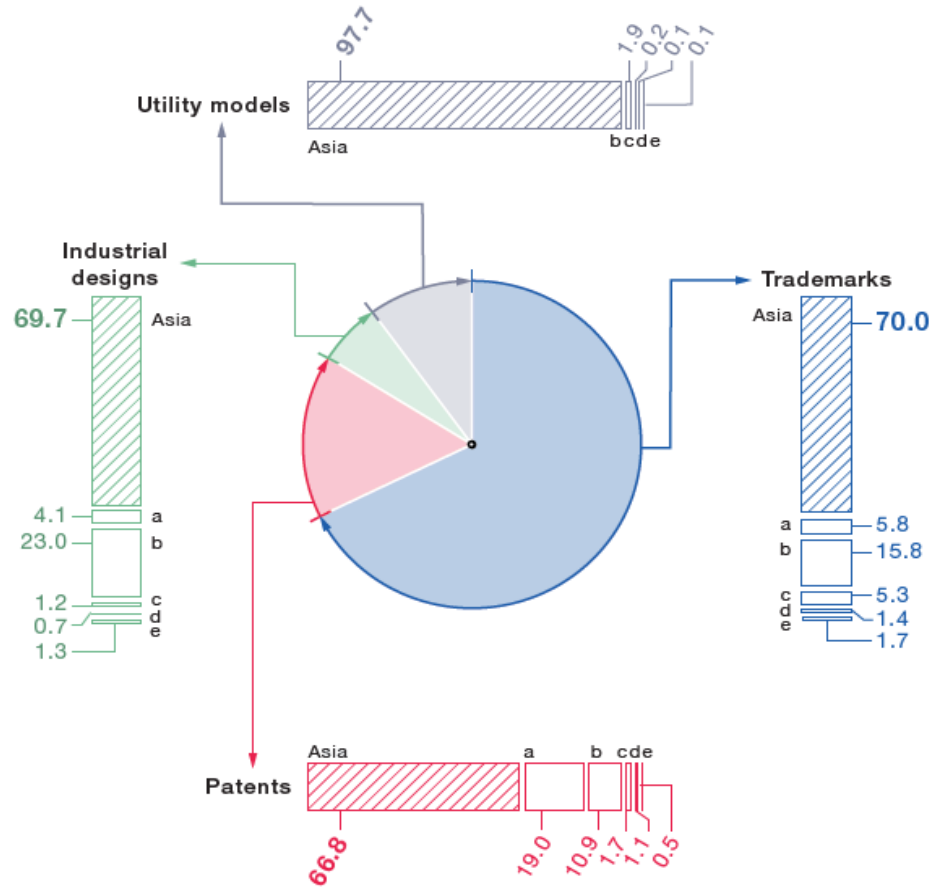
November 2020
Masabumi Suzuki
Nagoya University



IP IN ASIA AND JAPAN



Asia and Japan in IP Landscape

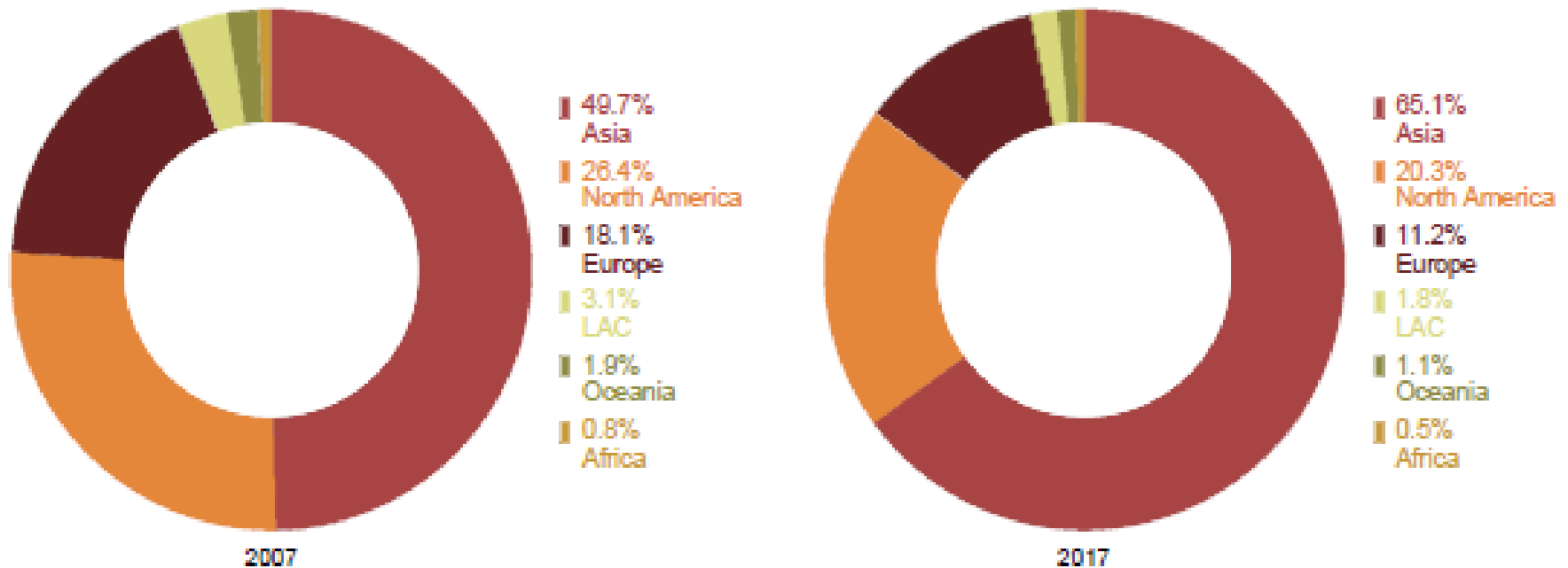


LEGEND	
▨	Asia
a	North America
b	Europe
c	Latin America and the Caribbean
d	Oceania
e	Africa



Asia and Japan in IP Landscape

1.3. Patent applications by region, 2007 and 2017



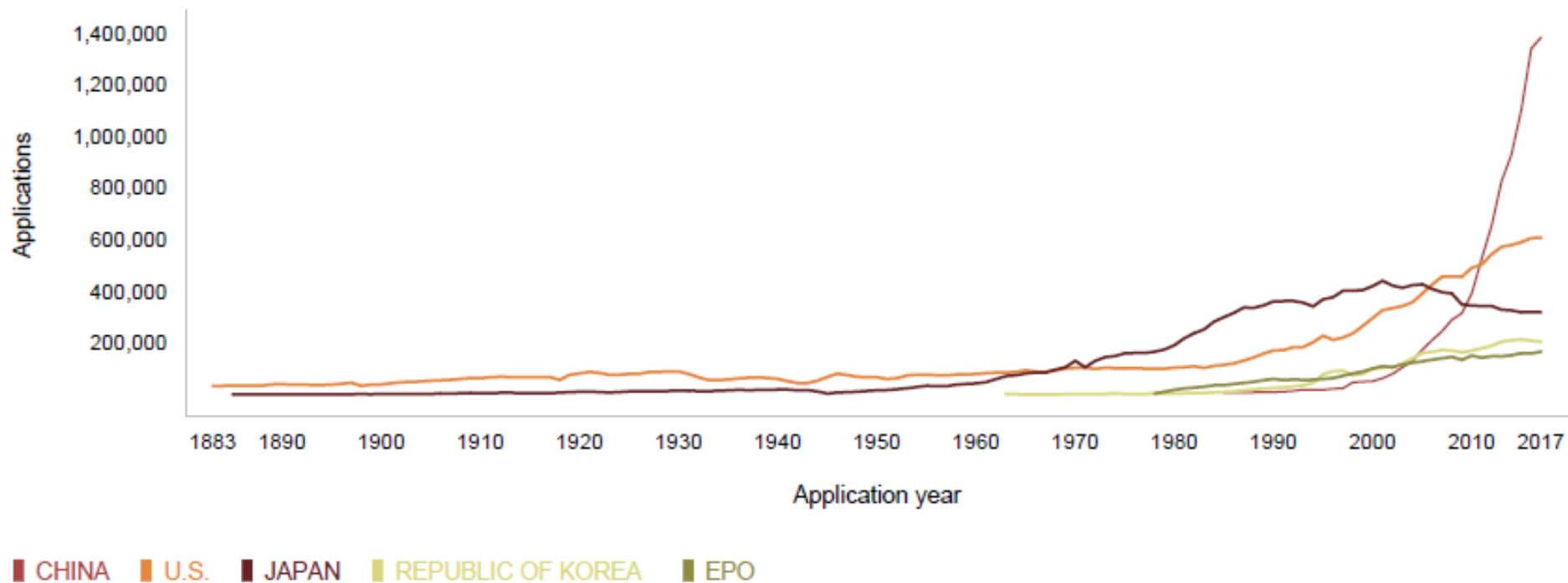
Source: Table A8.

Source: WIPO World IP Indicator 2018, p.26



Asia and Japan in IP Landscape

Trend in patent applications for the top five offices, 1883–2017

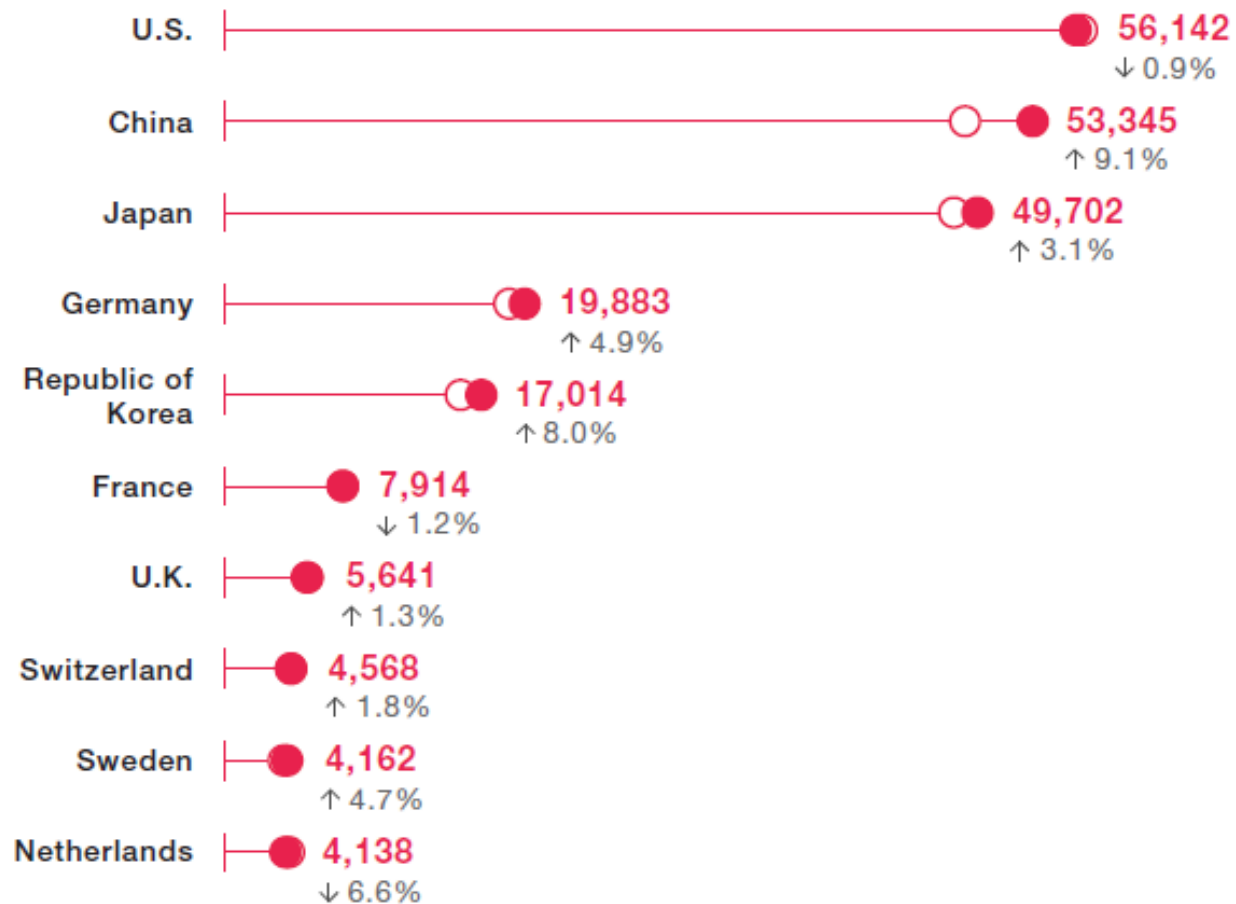


Source: WIPO World IP Indicator 2018, p.26



Asia and Japan in IP Landscape

9. PCT international applications for the top 10 origins



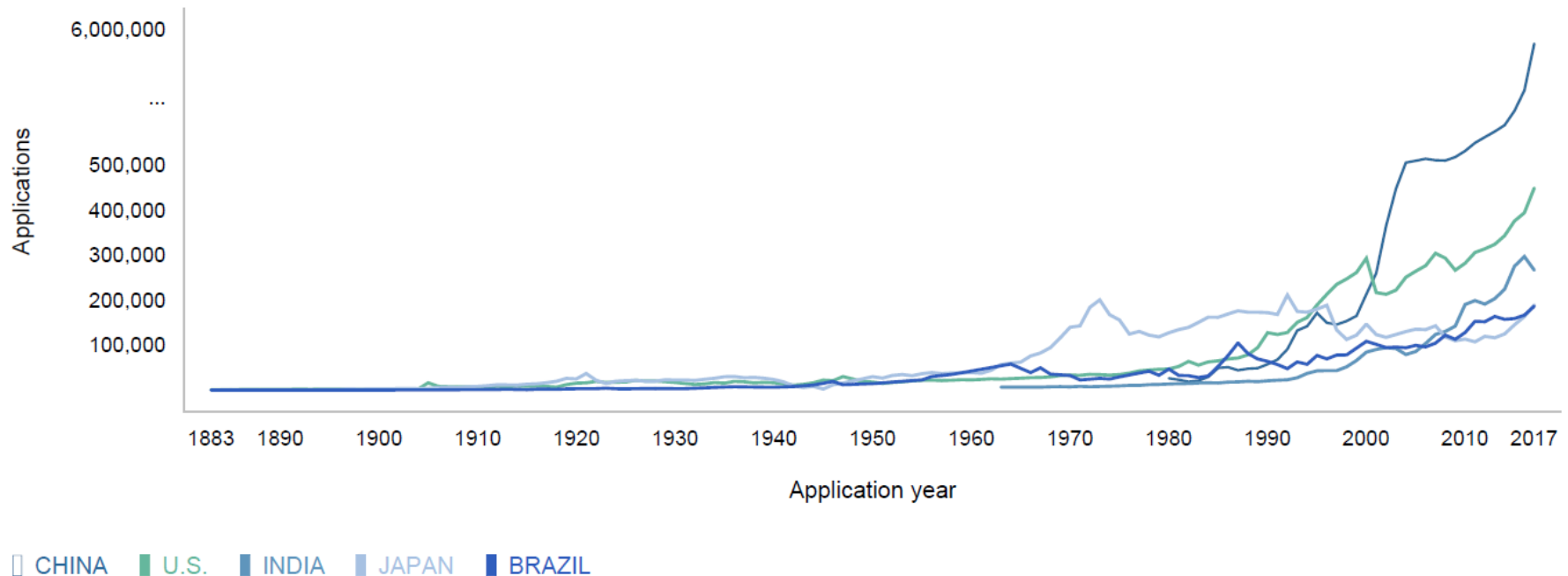
Source: WIPO IP Facts and Figures 2019, p.16

LEGEND	
○	2017
●	2018



Asia and Japan in IP Landscape

Trend in trademark applications for the top five offices, 1883–2017



Source: WIPO World IP Indicator 2018, p.91



Asia and Japan in IP Landscape

- World Intellectual Property Report 2019: The Geography of Innovation: Local Hotspots, Global Networks
- https://www.wipo.int/edocs/pubdocs/en/wipo_pub_944_2019.pdf



DEVELOPMENT OF JAPANESE IP LAW



Short history of Japan

- ~19 C. : Feudal Era
- 1867 (or 68) : Meiji Restoration (beginning of modernization)
- 1884-5: First Trademark Law and Patent Law
- 1899: Joined the Paris and Berne Conventions
- 1945: End of the World War II
- 2002: Introduction of Policy for “IP-based Nation”



Characteristics of Japanese law

- Based on civil law system (strong influence from Germany and France)
- Growing influence from American law
- Civil remedies
 - 1) injunctions: basically, not available for general torts, while almost automatically granted for IP infringement
 - 2) damages: awarded for intentional or negligent tortious acts based on the general tort law (Art.709, Civil Code)



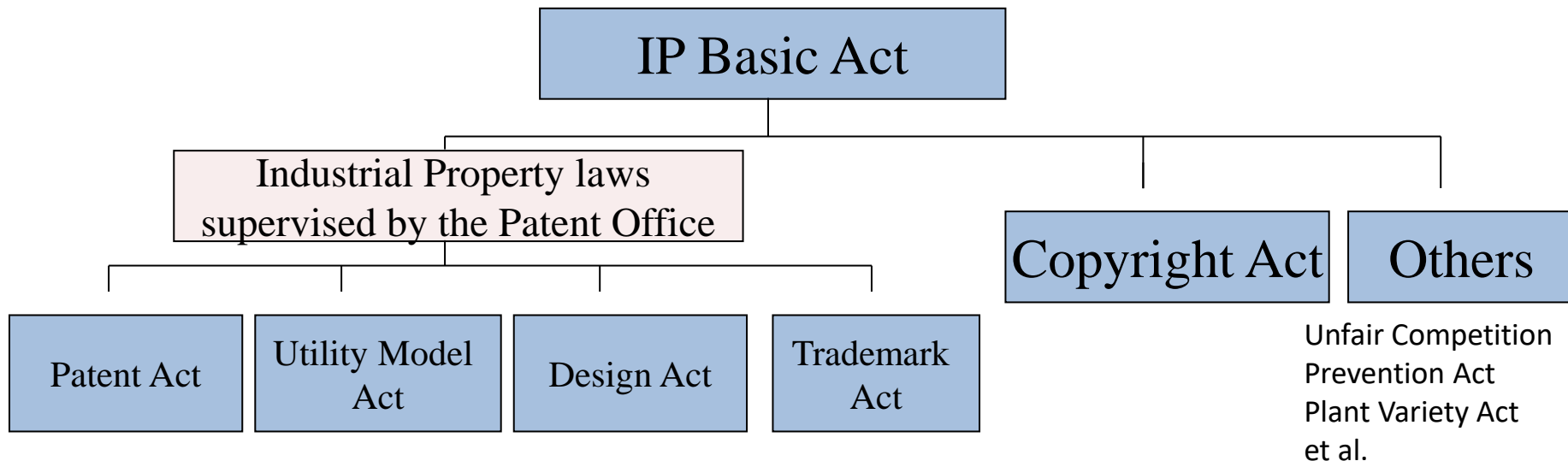
Civil remedies for patent infringement

	Japan	US
injunction	based on IP law automatically granted	granted as equitable remedy <i>eBay</i> requirements ongoing royalties available when injunction is denied
damages	awarded for intentional or negligent acts no enhanced damages nor disgorgement of infringer's profits	strict liability treble damages for willful infringement disgorgement available for design patents

Court system

- the Supreme Court of Japan
- the IP High Court (in the Tokyo High Court) = specialized court
- District Courts
 - The Tokyo and Osaka District Courts have exclusive jurisdiction for civil cases regarding patents and other technology-related IPs.

Structure of IP law (the Japanese model)



History of Japanese IP law

- 1871(Meiji 4) the first Patent Act
 - Abolished soon, but re-introduced in 1885.
- the first Copyright Act followed in 1875, and the first Trademark Act in 1884.
- IP system was recognized as an important tool to the promotion of industry, and as one of the requirements for becoming a “modern country”.
 - The first head of the Patent Office (1884～) was *Mr. Korekiyo Takahashi* (高橋是清) who later became the Prime Minister (1921-22).
- 1899 Accession to the Paris and the Berne Conventions
- 1959 Fundamental revision of Patent Act and other IP acts
- 1970 Fundamental revision of Copyright Act
- 2002 Launch of the “IP-based Nation”



Korekiyo TAKAHASHI (1854-1936)



- 1867-1868 lived in US
- 1884- Commissioner of the JPO
- 1911- Governor, Bank of Japan
- 1913- Minister of Finance
- 1921- Prime Minister
- 1927- Minister of Finance

Recent reforms

- New policy to strengthen IP protection
 - the “IP Strategy” (知的財産戦略) for establishing an “IP-based nation” (知的財産立国) (since 2002)
- Special emphasis on IP enforcement
 - speed-up of examination and dispute resolution
e.g., permission of the **defense of invalidity** in patent infringement litigation, establishment of the **IP High Court** (2005)
 - Strengthening of civil remedies, criminal sanctions and border measures



Factors behind the recent reforms

- Global competition
IP = source of “competitiveness”
- Domestic economic situation and change in industrial structure
- International legal environment
 - FTAs/EPAs (Economic Partnership Agreements)
e.g., TPP (Trans-Pacific Partnership) Agreement

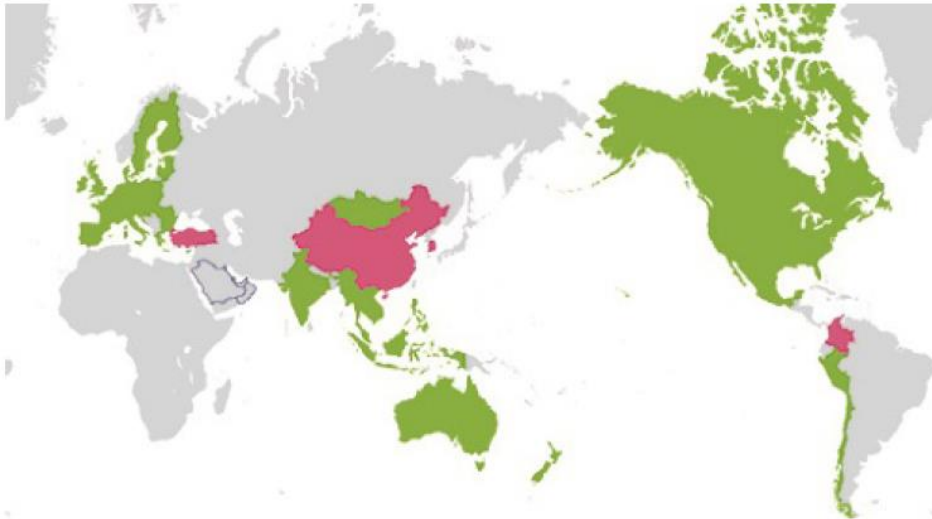


International environment

- 1899 Accession to the Paris and the Berne Conventions
- 1945 End of WWII
- 1995 WTO/TRIPS Agreement came into force
- 2002 Japan-Singapore EPA (Economic Partnership Agreement)
- 2016 TPP Agreement
- 2018 CP TPP (TPP-11) *Comprehensive and Progressive Agreement for TPP



International environment



EPA/FTA in Japan
(August, 2018)

In Force or Signed ▶ 18

Singapore, Mexico, Malaysia, Chile, Thailand, Indonesia, Brunei, ASEAN, Philippines, Switzerland, Viet Nam, India, Peru, Australia, Mongolia, TPP12(signed), TPP11(ratified), EU(signed)

Under Negotiation ▶ 5

(Include Negotiation Concluded and Unsigned)
ASEAN(Services and investment chapters, substantial conclusion), Colombia(Negotiating), Japan-China-ROK(Negotiating), RCEP(Negotiating), Turkey(Negotiating)

○Others(Negotiations postponed or suspended)
GCC, Korea, Canada

International environment

- TPP (Trans-Pacific Partnership) Agreement
 - Agreed by twelve countries (Japan, US, Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Vietnam).
 - The US withdrew from the agreement, and the other 11 countries agreed on and signed “CPTPP (TPP 11).”
 - It contains detailed provisions for stronger protection of IP.

International environment

- RCEP: Japan, China, South Korea, ASEAN, India, Australia, New Zealand



BASIC PRINCIPLES OF IP LAW



IP and property



出典：<http://www.i-turn.jp/oominekougen-nanairo-ookaede-2009-autumn.html>



Civil Code

- Article 85 The term “Things” as used in this Code shall mean tangible thing. (この法律において「物」とは、有体物をいう。)
- Article 206 An owner (=holder of property right) has the rights to freely use, obtain profit from and dispose of the Thing owned, subject to the restrictions prescribed by laws and regulations. (所有者は、法令の制限内において、自由にその所有物の使用、収益及び処分をする権利を有する。)



IP and property

- Property rights under the Civil Code extend only to the aspect of things as tangible things,
- while IP rights such as copyrights extend to the aspect of things as intangible things.
- When IP rights expire, their subject matter that are intangible things come into the public domain and every person may use them.

JP Supreme Court, 20 January 1984

Rationale of IP Rights

- Deontological rationale of IP rights
 - IP rights as a natural right
- Consequential rationale of IP rights
 - IP rights as an incentive for creative activities

