Japanese-Style Multinational Licensing

Speaker's notes outline historical development of Japanese licensing

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1. Historical review of the Japan's international relation with the rest of the world:

Chinese influence directly or through the Korean Media. First arrival of the Portugese in 1543, Spanish mission in 1549 bringing Catholicism into Japan, followed by Dutch merchants who were later permitted to stay and trade with Japan as only European; after Japanese government decided in 1639 to close the doors against the western world, till 1854 when U.S. navy headed by Commodore Perry succeeded in signing a friendship treaty with Japan in his second visit, enabling American whale catchers obtain necessary supplies from the Japanese ports. The first U.S. consulate general in Japan was opened in 1858.

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2. Growth of the Japanese economy:

Under the modern government since 1867, Japan's industrialization was remarkable, but the size of her economy was still small because it lacked significant export items as she has today.

After World War II, Japan's foreign currency reserve was always on the low level of about $2 billion, which was too little to encourage overseas investments by the Japanese enterprises, and the foreign exchange control was strictly performed by the government.

3. Japan as one of the greatest industrial countries of the world:

Aggressive investments by the Japanese industrialist for the top-modern manufacturing facilities, helped by high-quality labor with traditional loyalty and diligence, Japan's export jumped to a higher level year-after-year, and especially since 1968 her foreign currency reserve became large enough to back up her overseas activities, with some $19.5 billion at its highest in 1973.

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4. Multinationals headquartered in Japan:

Accumulative total of the overseas investments from Japan is now close to $10 billion by total of about 2,000 projects.

There are some large-scale projects, but most of the individual investments are of rather small scale featuring Japanese-type multinationals.

The Japanese technology and managerial know-how are welcomed in most of the different nations because of

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A few more observations may be helpful. Initially, note that Company A is manufacturing in the United States alone, but will be marketing on a worldwide basis. Therefore, Company A would be well counseled not to pay for the rights necessary to manufacture in foreign countries where they are not needed. However, Company A should have the freedom to sell its apparatus in foreign countries, and this can be accomplished by obtaining an immunity from suit from its licensors under patents corresponding to those licensed in the United States. This gives Company A the necessary freedom to market. When desired, the freedom to manufacture can be "purchased" at a later date.

A second point relates to the question of trademarks and copyrights. Trademarks are beginning to receive special attention in certain sections of the world — for example, the Andean Pact countries are adopting relatively restrictive provisions on the use of trademarks within their countries. If Company A wants to enter into agreements relative to trademarks, they should either clearly address them as a separate issue in the patent license or, preferably, treat them in a separate agreement. In that fashion, rights relative to trademarks can be expressly negated in the patent license agreement.

With reference to copyrights, it is common knowledge that many people are seeking to protect their intellectual property in software by means of statutory copyrights. The ability to use these copyrighted programs are worked out in separate copyright license agreements. Again, it is preferable here to have a separate agreement for those rights, and to include a section in the license agreement expressly negating any flow of rights under copyrights.

The above highlights the major items that are, to some extent, unique in the data processing industry. However, as noted earlier, there are also many areas of similarity in licensing within this field when measured against other fields. Thus, to properly protect Company A — as well as to properly maximize the return on Company A's investment in intellectual property rights — requires a broad knowledge of licensing practices, both business and legal, as reflected in all industries and a specific knowledge of those issues that are unique to the data processing industry. There will no doubt be more areas of demarcation as time progresses — particularly in the copyright and trademark area — but there will also be an increasing overlap in certain areas.