Formalities of Negotiation With Japanese

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Success if encouraged by understanding traditions and following well-defined steps in negotiations

In Japan one does not "throw in the towel"; one "throws away the spoon" (saji wo nageru).[1] To avoid having to throw away the spoon during a licensing negotiation, a Western businessperson or attorney would be well advised to modify his or her approach from the one customarily used. An attempt to wrap up a licensing negotiation with cold objectivity and logic in a minimum period of time is not an approach that will have a high rate of success.

Face-to-Face Meetings

Face-to-face meetings are more important in dealing with the Japanese than in most other licensing situations for two reasons. First, due to language differences, a face-to-face meeting is often essential to attain a mutual understanding. Second, negotiations with the Japanese are facilitated by a relationship of trust and respect. A face-to-face meeting is essential to cultivate such a relationship.

Adequate preparation is the cornerstone of any successful licensing negotiation. Preparation for a licensing discussion with the Japanese should go beyond being thoroughly briefed on the subject matter to be negotiated. Even if one is not traveling to Japan, business cards should be printed up with the information on the face of the business card translated into Japanese on the opposite side. A hierarchically ranked social system exists in Japan. Before doing business it is important for the Japanese to know the rank of the person they are dealing with and this is determined in part by the title appearing on a business card. As in Europe, first names are rarely, if ever, used during negotiations. The business card serves the function of identifying the name of an individual for future reference and the translated side helps with the pronunciation of names.[2]

Typically, the Western businessperson or attorney is accustomed to introducing himself or herself while simultaneously shaking hands. The Japanese accommodate the Western tradition of shaking hands. The formal order in Japan, however, is to exchange business cards before bowing and shaking hands. The Western businessperson or attorney will accordingly make more of an impression if he or she greets a Japanese counterpart by presenting a business card in both hands with the Japanese translation face up. After exchanging cards in this fashion the greeting is completed with a bow. The art of bowing is something that Western businesspersons and attorneys never really master, but the demonstration of respect works to earn respect. In Japan the depth of the bow depends on the rank of the individual and the respect to be shown.

Face-to-face meetings with the Japanese are rarely conducted "one-on-one." Instead, team bargaining is common. Because of this, it is advisable to consider having a team present on your side of the table as well. Use of the team approach makes it possible to adequately cover all areas (scientific, legal and business) to be discussed during the negotiations and avoid embarrassment or wasting time.

Facing an opposing team comprised of a large number of individuals across a conference table may be somewhat disconcerting. In one negotiation my colleague and I found ourselves on the opposite side of the table from 13 individuals representing the Japanese company we were visiting. I promptly invited the CEO of the Japanese company to switch from his side of the table to our side of the table in order to "balance the proceedings." Every time negotiations got bogged down I turned to the CEO and asked for his help. My pleas for help were generally responded to by the CEO with good-natured assistance. Despite the seriousness of most negotiations, humor can often assist the proceedings.

Learning Patience

A mistake that Western businesspersons and attorneys often make during their first negotiation in Japan is in underestimating the time required for any negotiation. One has to learn patience in dealing with the Japanese. It may seem at times that the same discussions occur day after day and that the negotiations do not resolve anything. What one might expect to negotiate in one or two days in Europe may take twice as long in Japan. On important matters, it is not uncommon for the Japanese to interrupt the negotiations with one or more intervening days during which the parties consider each other's position. These breaks in the negotiations are often used by the Japanese negotiating team to

1. In contrast to the phrase "throw in the towel" (which originated when a towel was thrown in a boxing ring in recognition that a boxer was beaten), the phrase "sajo wo nageru" originated in the middle ages of Japan from the act of a physician/pharmacist throwing away his or her spoon/spatula in recognition that further medical treatment for a patient was hopeless.

2. To avoid embarrassment, it is recommended that all translations be checked with a reliable source before distributing one's business card.

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brief their superiors, compare notes and prepare for the resumption of the negotiations.

As in any licensing negotiation, the length of time required for meetings can be shortened if the parties work from a meeting agenda and if draft agreements are submitted well in advance of the meeting. Being able to refer to written text is especially important in any negotiation. During my first visit to Japan, I grossly underestimated what I could accomplish within a fixed time period. I have since learned the importance of carrying a portable computer and printer for such meetings. During my first visit to Japan I also made the mistake of letting the Japanese team I was negotiating with know when my flight back home was scheduled to depart. Nothing was agreed upon until the departure time approached. Realizing that my scheduled return was being used to achieve a tactical advantage, I revised my travel schedule and informed the Japanese team that I was prepared to stay as long as necessary to resolve the matter under discussion. Agreement on issues seemed to come much more quickly after that.

◄ Extent of Authority ►

Whereas the Western businessperson or attorney typically will have authority to negotiate within certain limits, the individuals present on the opposite side of the negotiating table often do not have the authority to conclude a final agreement. Moreover, any final agreement may depend not on the decision of one individual but on the consensus of a group of individuals. Western businesspersons or attorneys who are accustomed to having the authority to "strike a deal" are frequently frustrated by the length of negotiation that is required without being able to finalize an agreement or obtain a binding commitment from the opposite side of the table. One reason negotiations may extend over a period of several days is that the Japanese have well defined levels of authority and everything must go through the proper chain of command in a prescribed way. Generally, one person cannot speak for another. Until consensus of the group has been reached it is not possible to finalize an agreement.

Often what is not said can be as important as what is stated. In one negotiation the first meeting was conducted around a small circular conference table that was too small for the eight people in the room to sit at the table. The meeting had undertones of obvious hostility and the size of the conference room was an indication of that hostility. The company that I represented was being accused of patent infringement and we were refusing to take a license on the ground that the patent rights actually belonged to us as the result of prior agreements between our respective companies. Over a period of days, as a relationship of trust and respect was developed between both parties, the meetings were progressively held in larger conference rooms with higher levels of management. To resolve our impasse with the Japanese company and to permit the individuals to save "face," a compromise based on a token royalty was proposed. The day I was ushered into the boardroom with its enormous conference table I knew that the other side was finally ready to agree to our compromise licensing terms.

Lack of patience can result in "off-the-cuff" comments said in frustration concerning the pace of negotiations. Such comments can have unexpected consequences. I discovered one time that a subordinate from my company's Tokyo office had leaked to the opposing side the limits our side was prepared to accept. This was not done to be malicious. It was done to be helpful. The Japanese subordinate in my company's Tokyo office was merely seeking to assure that both sides came to an agreement and that I did not have to go back to the United States "empty-handed." The incident taught me to be careful even with members on "my team." It also taught me that communication at different levels can and will occur during a negotiation and that at times such communication can be used to advantage by those negotiating to fix something "behind the scenes."

Communicating By Interpreter

While most Japanese have at least some facility with English, the use of an interpreter for any serious licensing negotiation is essential. A Japanese company may insist on using interpreters even if all of the members of the Japanese negotiating team speak excellent English. The use of an interpreter is sometimes used to gain extra time in considering a response.

Careful selection of the interpreter is very important. If technical subject matter is to be discussed someone with a technical background should be used as an interpreter. Younger Japanese often have an excellent command of English. Young interpreters, however, may be inexperienced in human relations and they may be so conscious of the social order that they are ineffective as interpreters. In the presence of older, higher ranking Japanese executives it is not uncommon to have interpreters (and especially young interpreters) "water down" translations to avoid upsetting or offending the Japanese negotiators.

In one negotiation I was offered the services of a member of our Tokyo office as an interpreter and I made the mistake of accepting the offer to save money. I subsequently discovered that the individual had lived for years in South America, and he had an accent that other Japanese had difficulty understanding. Moreover, notwithstanding the fact that the individual was an employee of my company, I discovered that the individual was not translating what I was saying because he felt that what I was saying would offend the other side.

One of the worst things that can befall any Japanese is to be shamed and made to lose "face." It is especially important for people who have professional status of any kind to protect their "face." Maintaining "face" means that one can not admit ignorance or inability or allow anyone to besmirch their name without serious consequences to their self-image and sense of well-being. This is why interpreters will avoid translating anything that

might cause a loss of face. Thus, whereas Westerners are in the habit of "calling a spade a spade," the Japanese have been conditioned to speak vaguely and when necessary to resort to circumlocutions rather than make a frank statement that might give offense.

When a Western businessperson or attorney realizes that what he or she is saying is being filtered or sanitized in order to avoid communicating anything that might be considered unpleasant, a considerable amount of frustration can occur. In an effort to "compensate" for the inability to communicate except through an interpreter, the Western businessperson or attorney may try talking faster and louder. He or she may also repeat several times what is being said. This only results in a very unfavorable impression. It is often better to say too little than too much, even though it may take much longer to arrive at an understanding. There is also the problem of being too logical. When a Westerner runs into resistance, his or her natural tendency is to try and "carry the day" with pure logic and reasonableness. Westerners are often surprised and upset when this approach doesn't work.

Part of communicating effectively is learning to understand what is really being said. The Japanese are programmed by a deep desire to make a favorable impression. They will not be direct if they feel it would be unpleasant to the person with whom they are communicating. One has to learn when an answer means "no" even though the individual is nodding his or her head "yes." When a Japanese businessperson says that he will think about a proposal, it invariably means no. When the Japanese businessperson says he understands, it means that he understands what you have said, but he is not agreeing to anything.

Establishing Binding Relationships

The Western businessperson and the Japanese businessperson have different perspectives concerning the immediacy of matters. Long term to the Western businessperson may be two years. The Japanese typically think in terms of 10 years or more. One thing that most Western companies fail to do is to cultivate long-term relationships with Japanese business people. Such relationships take time to develop. Western companies make the mistake of constantly sending different people to negotiate matters. Individuals are promoted or transferred so frequently in Western companies that rarely does any relationship with a Japanese counterpart last more than three years. This means that if good relationships are established — relationships having the potential of providing a long-term advantage to a company — that advantage is thrown away every time someone new enters the "playing field." American management tends to pay too little attention to the disruption caused by personnel turnover.

As soon as an agreement is signed Western companies also frequently make the mistake of ignoring the relationship established during negotiations. The interests of the parties are permitted to diverge. There is a constant need to nurture and adjust a relationship with the Japanese if any useful relationship is to succeed.

During or upon the completion of negotiations, it is not uncommon to receive an invitation to join individuals of an opposing negotiating team for dinner or another social function.[3] It is during such functions that binding relationships can best be developed.

At the end of any negotiation it is common for gifts to be exchanged. Western business people visiting Japan are not automatically expected to follow the custom of gift giving, but it is advisable since it demonstrates both an awareness of Japanese customs and sincerity in establishing the right kind of ties with their Japanese counterparts. While gifts can be given only to the key individuals of the opposing negotiating team, it is better to have gifts for each member of the opposing team. The gifts do not have to be of the same value. The gifts should be wrapped and handed to the members with both hands similar to the way a businesscard is given to a member of the opposing team. Alternatively, gifts can be given to theleader of the opposing negotiating team for distribution.[4] If a gift is received from the opposing team the gift should not be opened in front of the giver unless permission to open the package is given.

Conclusion

Successful licensing negotiations with the Japanese frequently require patience and the development of mutual trust and respect during face-to-face meetings. If there is any likelihood that multiple licensing negotiations will occur with the same Japanese party, it is recommended that steps be taken to cultivate and maintain a long-term relationship.

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3. Unlike the United States custom of sometimes inviting a guest into one's home, the Japanese almost never invite guests to their homes, and rarely does one ever meet the spouse of a Japanese business person.

4. Care should be taken in the selection of gifts. I have seen gifts that were made in Japan given to a Japanese negotiating team!