

Analytical study on the international intellectual property system

1. The situation surrounding intellectual property in the international framework

Firstly, in the section on “Recent Developments in the Field of Medicines” , the secretariat reported on the trends in discussions at the WHO regarding the pandemic treaty, and Committee Member Fujii gave a presentation on the discussions at the CBD and WHO regarding access to and benefit-sharing of genetic resources and their genetic information, as well as the response of industry.

At the Committee, there was an exchange of opinions on the impact of the change of government in the US on the negotiations for the pandemic treaty and on access to and benefit-sharing (ABS) of digital sequence information (DSI).

Secondly, in the section on “the status of discussions in specialized intellectual property forums such as WIPO and the WTO/TRIPS Council”, the JPO reported on the background to the negotiations on the Design Law Treaty at WIPO, while the secretariat reported on the organization and analysis of WTO disputes related to the TRIPS Agreement.

At the Committee, there was a discussion about the background and circumstances surrounding the inclusion of a grace period in the Design Law Treaty, the EU's request for consultations regarding the determination of global licensing conditions for SEPs by Chinese courts, and other topics.

2. The situation surrounding intellectual property in bilateral and regional economic partnership agreements

Firstly, the secretariat reported on the implementation status of the items stipulated in the CPTPP IP Chapter for the three countries of Mexico, Canada and Australia, based on a literature survey, a questionnaire survey and a hearing survey of domestic companies, and a questionnaire survey of domestic law firms.

At the Committee, it was pointed out that it is important to analyze the situation in light of the fact that there are different types of provisions, such as obligatory provisions, provisions requiring an obligation to make efforts, and suspended provisions, that there are cases where measures are taken through implementation rather than through institutional reform, and that there are cases where other RTAs, such as USMCA, are involved.

Secondly, the Secretariat reported on the effects of the introduction of the CPTPP IP Chapter on the economic and IP protection environment in the three countries of Mexico, Canada and Australia, based on a literature survey, a questionnaire survey of domestic companies, a hearing survey and a hearing survey of local law firms.

At the Committee, in addition to the subjective evaluations from the questionnaires, the importance of economic effect analysis using objective data was pointed out. Specifically, it was proposed to focus on the effects of joining the Madrid Protocol, and the secretariat conducted a preliminary, trial analysis, and opinions were exchanged on the methods and results.

3. The situation surrounding the intellectual property system in each country

Mr. Ota, Director of the Intellectual Property Rights Department at JETRO's Beijing office, gave a presentation on China's intellectual property policy, and the secretariat also reported on recent notable IP-related court decisions in China and trends in IP system revisions.

At the Committee, opinions were exchanged on the quality of patents and the registration situation in China, and it was introduced that the patent allowance rate is said to be around 60% or less, that the decisions made at the examination stage are not overturned very often in appeals against examiner's decision of refusal, and that nearly half of the cases in which invalidation trials are requested are invalidated. In addition, the nature of the numerical targets in the five-year plan (e.g. the rate of conclusion of first instance lawsuits), the use situation of the licensable patent system, and the EU's WTO complaint relating to Anti-suit Injunction were also discussed.

4. Discussion of traditional knowledge

The secretariat reported on the protection systems for traditional knowledge in other countries, including the content of relevant laws in the countries surveyed, examples of disputes and examples of utilization, as well as protection of traditional knowledge and international agreements, trends in the protection of traditional knowledge in international organizations. In addition, the Japan Patent Office gave a presentation on the WIPO Treaty on Intellectual Property Genetic Resources and Associated Traditional Knowledge, and Committee Member Tanoue gave a presentation on the discussions surrounding “indigenous peoples and local communities” in the Convention on Biological Diversity (CBD).

At the Committee, the relationship between the WIPO treaty and ABS, and the possibility of extraterritorial application of ABS were discussed. Regarding the former, it was explained that although there are no provisions in the treaty regarding ABS, it is up to each country to decide how to relate ABS to the patent disclosure requirement for genetic resources, and regarding the latter, although it does not go as far as extraterritorial application, it is possible to check whether or not the domestic laws of other countries are being observed. There was also a discussion about the meaning of the term “local communities” in the phrase “indigenous peoples and local communities”, and it was explained that while there is a discussion that extends beyond minority groups and communities that are similar to indigenous peoples, there are also opinions from indigenous peoples and others to separate the two.