

Patent Inflation in Japan

<http://swpat.ffii.org/gasnu/jp/index.ja.html>

仕事組

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Japan, although a world champion in the number of patents, has been rather passive in the patent inflation movement. The patent officials in the government bent their patent law in reaction to pressures from the US government and the local patent lawyers. The subject was hardly discussed anywhere. Prof. Konno of Tokyo University has tried to prevent the patent inflation movement by publications and even by appealing to the highest courts. In early 2002 his last appeal was rejected by the supreme court on the grounds that he as an individual was not entitled to sue the Japanese Patent Office (JPO).

Contents

- JPO¹

*<http://lists.ffii.org/mailman/listinfo/traduk>

¹<http://www.jpo.go.jp>

- **KONNO Hiroshi: The Karmarkar Patent and Software – Is Math Patentable?**²

In this book which received great public attention in Japan, Prof. Konno, a famous specialist of operations research (applied mathematics) from Tokyo University, explains what is behind the recent drive to extend the scope of patentability to software and mathematics. The book starts from a few fascinating examples of real advances in mathematical research, namely Narendra Karmarkar's interior point method of linear programming. This method was a truly rare achievement of ingenuity with great value for large-scale industrial planning. If any mathematical achievement could be suitable for patenting, then it was this method. The AT&T laboratories did receive a patent for this method in 1988. However the Karmarkar patent did not create very significant revenues for AT&T while causing significant inconvenience to the industry and destroying much of the positive interaction cycles that had previously characterised the cooperation between linear programming research and industry in the US. The AT&T Laboratories no longer produced any Nobel Prize winners after they became patent-oriented, and Karmarkar himself was isolated from the network of mathematic researchers, who soon left him lagging far behind. Konno captures the reader with a fascinating introduction to linear programming, interwoven with a dramatic account of the battles that accompanied the Karmarkar patent within the mathematics community and the patent system. Konno was on the podium or in the first row during the conferences where the drama around Karmarkar, linear programming and mathematical patents evolved. Moreover it was Konno who filed an opposition to the Karmarkar patent in Japan. He shows that the Japanese Ministry of Trade and Industry (MITI) pushed the Japanese patent office to bend Japanese patent law in an inconsistent direction. Lawyers at the time explained that it was not necessary to be consistent but to go with the tide, which was inevitably pro software patents. The MITI acted under the pressure from these lawyers and from the US government. Konno's vivid examples suggest however that software patents are not here to stay. They do not correspond to any need of the software industry. They have stifled innovation and resulted in a massive blood transfer from the software industry to the litigation business. They created a new market of about 2 billion USD per year for the patent law professionals. 'You needn't be named Hercule Poirot to see who is the driving force behind all this', Konno remarks. But there is hope, because the young generation has not lost sight of the problems.

²<http://localhost/swpat/papri/konno95/index.ja.html>

- **Software Patents in the USA**³

Corporate patent lawyers and lawyers in general wield great influence in the United States. One Japanese book is titled “Litigating a Country to Death – The United States of America”. Like in Britain, the patent system ran out of control rather early in the US. In the 80s, this was partially reinterpreted as an american national “pro-patent” policy by which Japan and east-asian tiger states could be kept at bay. The US has been and is allowing patent lawyers to determine its policy in multi-lateral rounds such as WIPO as well as in bilateral negotiations. These patent lawyers have, without much regard for US national interest, been using the muscle of the US government in order to press other countries into allowing patentability of everything under the sun according to US standards. At WIPO, the US is pushing for a Substantive Patent Law Treaty (SPLT) which rules out any limitation on subject matter and threatening to walk out if this is not achieved. Be it WIPO, WSIS or OECD, wherever unlimited patentability is not the target, the US delegation boycotts the work and instead relies on bilateral muscle-flexing. Jordan signed a bilateral agreement with the US in this sense in 2000. Japan was heavily lobbied and followed in every detail, even to extent of passing a law that obliges Japan to push for software and business method patents worldwide. US pressure has made itself felt in Europe, so that many, including French president Chirac, have spoken about a strategic need to resist the US pressure. Whether this US pressure is really based on US national interest may be doubted. But without doubt the USA is in the position of the early adopter of software patentability. While others were still not taking the (illegal) expansionism of their local patent offices seriously, software patents became – very much against the will of most US software businesses – firmly entrenched in the USA, leaving US companies no choice but to adapt. About 2/3 of the European (illegal) software patents are in US hands, and many at the US companies (and at some large european companies who are active in the US market) would like to be able to leverage their assets in Europe also.

³<http://localhost/swpat/gasnu/us/index.en.html>