Foreword

A patent is now talked about much as a wonder boy, but we can say that it is still in its infancy, compared to ownership, which has a far longer history. Although its origin dates back to the Venetian patent system in the 15th century, the patent started to gain the significance we recognize today only after the emergence of factory-based machine industry during the Industrial Revolution in the 18th century. A patent system came about as a result of a time when the conventional industrial structure changed drastically, bringing about the era of mass production and mass sales. In short, the current patent system evolved as a response to the needs of the times, backed by the machinery and chemical industries which flourished during the 18th and 19th centuries.

We must not forget that a patent is not a universal right, like ownership, which exists beyond time, but has instead arisen from an industrial structure at a certain point in time. In other words, when the industrial structure changes along with changing times, the significance or raison d’être of the patent system must also change. Once, during the period of the French Revolution, a patent was appraised as a natural human right, but such a notion was a theory elaborated in an attempt to deprive the monarchy of its authority to grant exclusive rights. In a strict sense, a patent right was born out of the climate of the industry at a certain time in history. This also applies to copyright.

However, after a system is established, it is very hard to change or abolish it. The more people or companies involved in a system, the greater the number with an interest therein, and the greater the energy that will be required to change such a system. In the case of the patent system, almost all countries in the world have their own respectable patent offices, and most companies have their own patent divisions (or intellectual property divisions), accumulating an enormous amount of patent assets to date. A huge number of people are concerned with the patent system, namely, patent attorneys, lawyers, intellectual property judges, personnel at intellectual property divisions of private companies, employees of patent research companies, and university professors specializing in intellectual property. Furthermore, there is even an international body dealing with patent issues, the World Intellectual Property Organization (WIPO). It
is not an easy task to change the direction of a giant ship carrying such a large number of stakeholders.

Nevertheless, the world is currently going through dramatic changes, and in the future, the present time will be evaluated as a revolutionary period equal to or greater than the Industrial Revolution. The field of intellectual property is also being hit by violent waves of changes, such as the impact of digitization, economic globalization, and the sharp increase in the number of patent applications. In society, we can see the emergence of new concepts such as free software and creative commons, which cannot be explained or reasoned based on our conventional intellectual property system. It is not easy to achieve a drastic reform of the system as mentioned above, but sooner or later reform must be carried out. Without reform, the existence of the patent system will be in danger. The Japan Patent Office has set out to discuss a comprehensive reform of the patent system. The Institute of Intellectual Property needs to, at the very least, arm itself with a theoretical framework in preparation for responding to such reform, as this may be the mission entrusted it. From this standpoint, I believe this book will be the first step in the course of exploring the essence of the patent system on a global scale. The enormity of the patent system reform issue is vast as international aspects must also be taken into consideration. This book may not be able to give an answer, but I hope that it will, in some ways, clarify the issue and become the impetus for further discussion.

In my youth, I studied at the Max Planck Institute in Munich, Germany, and while studying there I had a dream that in the future a similar institute may be established in Japan. With this aim in mind, 20 years ago, I took the initiative to collect signatures from more than 100 scholars and attorneys in this field, pursuing the establishment of an institute specializing in intellectual property that would compare with the Max Planck Institute, submitted a written petition for the establishment of the institute to the Ministry of International Trade and Industry, and finally realizing the establishment of the Institute of Intellectual Property. I am filled with deep emotion to see the Institute celebrating its “coming-of-age” its 20th anniversary. The first chairman of the Institute was Mr. Gaishi Hiraiwa, then Chairman of the Tokyo Electric Power Co., Inc. (TEPCO) (who subsequently became Chairman of Nippon Keidanren). Next, Mr. Ichiro Kato, former President of the University of Tokyo, served as chairman for a long time, and then I myself succeeded to the post. Mr. Hiraiwa passed away in 2007, and Mr. Kato also passed away on November 11, 2008.

On a personal note, I became an assistant to Professor Kato in 1969 enabling my study at the University of Tokyo to continue. This was the starting point of my career as a researcher of intellectual property law.
The future of the patent system

Professor Kato, who was a great and prominent scholar in civil law, held important posts including the presidency of the University of Tokyo and the chairmanship of the Institute of Intellectual Property. The Institute achieved significant progress under the leadership of Professor Kato as its chair from 1991 to 2005. The Institute will be forever indebted to the contributions of Professor Kato and I would like to take this opportunity to pay tribute to his memory on behalf of the Institute of Intellectual Property.

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