



# WINDS FROM JAPAN

Licensing Executives Society Japan

## CONFERENCE PROGRAMS ARE BEING LINED UP

- Come and join the 2002 Osaka Conference -

### By **Jinzo Fujino**

This year, the cherry trees in Japan started blooming in late March. In Osaka where the LES International Conference is to be held next year, their full blossom period lasted for about 10 days until April 10. Last winter was unusually cold and often we had snow fall. Many members of LES Japan were concerned about the adverse influence of the cold temperature on the cherry blossoms. Actually and fortunately, however, it started a bit earlier and lasted longer than what we had expected.

Setting the dates for the International Annual Conference was one of the more difficult tasks for the organizing committee of LESJ to deal with. Based on statistics of weather reports and cherry blossom for the past few years, LES

Japan chose April 7-10, believing and hoping that this period would present a full bloom of cherries to the participants to the 2002 Osaka Conference. The fact that even the cold climate this year did not put off the timing of the cherry viewing season, made the Committee feel confident that our choice of the date would very probably be the right one.

#### Educational Programs

The second announcement of the LESI 2002 Osaka Conference is now available. In line with the theme of the Conference, "International Cooperation Toward the Prosperity of Human Beings," a number of attractive sessions and workshops have been lined up. Following the Welcome Reception on Day 1 (April 7), two plenary sessions are

Keep your schedule open  
For  
The 2002 LESI Conference in Osaka  
April 7-10, 2002

scheduled for the morning of Day 2. In the afternoon, 10 workshops are available. On Day 3, Plenary Session 3 and 5 workshops will offer invaluable talks by guest speakers and panelists, followed by an afternoon excursion. Day 4 features another two plenary sessions and two workshops. Let me briefly introduce each of the workshops.

#### Workshop Series A:

Series A offers 5 different types of discussions (1A-5A) relating to health care products, biotechnology and chemical industries. It includes analysis of the industry (2A) and an overview of the emerging styles of "e-pharmaceutical businesses." Practical issues such as determination of the value of platform technology in licensing (3A) and utilization/protection of gene-related intellectual properties (4A) are also covered.

#### Workshop Series B:

Series B is directed to managerial and quasi-legal aspects including IP management, ADR and licensing in general. Based on the analysis of technology licensing practices in Japan (1B), it will extend also to their extra-territorial aspects (2B). The rest of the workshops cover current issues of ADR (3B) and counterfeit issues involving copyright, trademark and design (4B) and development and protection of digital archives (5B).

#### Workshop Series C:

Series C covers a wide variety of emerging issues ranging from e-commerce to environmental technologies. The first session covers patent issues in e-commerce including business method patents (1C) and the second session will discuss licensing business in cyberspace (2C). Sessions 3C and 4C will discuss various legal aspects of IP issues: jurisdiction and the execution of judgments in cyberspace (3C) and the interplay of trademarks and domain names (4C). Session 5C will examine and discuss issues arising out from the licensing-in and licensing-out of environmental technologies.

#### Workshop Series D:

The LESI annual conference is ideal as a forum to discuss regional and global issues in connection with technology transfer (TT). In Series D, European issues will be focused in

Session 1D and pan-American issues in Session 2D. Session 3D will be of special interest for practitioners in America and Europe as it covers legal and technical infrastructures for TT in APEC. In 4D and 5D, success stories of TT are to be analyzed using case studies of APEC and Israel.

#### Workshop Series E:

It is just recent that Japanese universities have become serious in seeking opportunities for licensing their own inventions. With this background, Series E focuses on the topic of university-industry collaboration. For their comparative review, attendees from all corners of the world will be interested in learning about technology licensing organizations (TLO) in Japan (1E) and the status-quo of university-industry cooperation (2E). Sessions 3E and 4E will analyze how traditional technologies have been successfully transplanted or transformed into modern businesses (3E) and forecast future development of the traditional products and designs native to Asia (4E). Session 5E will overview the role and importance of the cosmetics business as we enter the 21st century, thus rounding up the workshop sessions.

In addition to these educational programs, four plenary sessions will surely enhance the value of the Conference as an educational forum. The plenary sessions are scheduled with speeches by distinguished practitioners in technology transfer into and outside of Japan. Details on specific topics and speakers will be announced on August 1, 2001 on the website of LES Japan. Those who are interested are recommended to visit the LES Japan web site at: [www://lesj.org](http://www://lesj.org).

#### Attractions

The educational programs are not the sole charm of an international conference. For attendees from other parts of the world, excursions and tours may be precious opportunities to be exposed to the host country's culture and history.

On April 6, a day earlier than the registration, attendees are suggested to enjoy a full day bus tour to Kobe and Mount Rokko. The tour includes such additional attractions as visits to a pearl gallery and a sake brewery museum. You will also enjoy barbecue of Kobe beef for lunch. Before the formal registration,

you will have an opportunity to enjoy another full day bus tour extending to a world-longest suspension bridge and the renowned Otsuka Museum of Art. From the bridge, tourists will be amazed to see the gigantic natural swirl of sea water under the bridge, if nature benignly collaborates to show you this wondrous spectacle. The Otsuka Museum is known as its collection of famous artworks delicately reproduced on ceramic tiles.

Attractive post-registration tours are also lined up. Monday, April 8 offers 3 full-day optional tours: Japanese Cooking Class; Visit to Traditional Confectionery House/Kimono Dyeing House in Kyoto, and Osaka One Day Tour.

Tuesday, April 9 is a day for conference excursion. Depending upon your personal interest and sightseeing experience, you may want to spend your afternoon time in either of the following places: Nara, Kyoto, Himeji or the Panasonic Hall of Science & Technology. In each tour, a bus will take you to your destination and back to your hotel with someone from LES Japan.

Wednesday April 10 will offer 3 full-day bus tours to Nara, Kyoto and Yoshino. The Nara One Day Tour will take you to famous temples and shrines in Nara city, the first permanent capital of Japan. First stop will be at *Kofukuji* Temple built in the 8th century with a gracious five-storied pagoda in the garden. You will also enjoy a visit to *Todaiji* Temple where the Great Sitting Buddha meditates. One of the musts in Nara is *Horyuji* Temple, the world oldest wooden structure, and registered as a World Heritage. *Kasuga Jinja* Shrine where thousands of lanterns made from stone and bronze are placed in the garden will be another facet of this ancient city, which precedes Kyoto as Japan's cultural center.

Needless to say, Kyoto has many historical treasures and they cannot be all covered by a mere one-day tour. However, the Kyoto One Day Tour will visit places selected for busy people. Two temples are already listed: *Kinkakuji* Temple where you can enjoy the

golden pavilion and an authentic Japanese garden and *Kiyomizu Dera* Temple where visitors will enjoy a sweeping view of the city of Kyoto from its lofty terrace. The Kyoto Tour is not limited to old temples. You will visit to a theater in *Gion* and enjoy traditional dance and music. Please remember that the capacity of reserved seats is limited to 40. Theater-lovers are suggested to register as soon as possible. Registration will be accepted on a "first come, first served" basis.

Tour to Yoshino may appeal to LES members who are not attracted to stereotype tours to sight-seeing spots in ancient capitals like Kyoto and Nara. Yoshino is somewhat different. It consists of undulated hills literally covered with cherry blossoms. Cherry trees in Yoshino are mostly of the *yama-zakura* species (white-mountain cherries) and differ from ones commonly seen in parks and along streets in cities and towns. This tour will use public transportation in addition to a bus ride. For those who join this tour, let us hope a stroke of good luck will fall upon you, enabling you to see a gorgeous landscape blanketed with cherry blossoms in slightly different shades and hues.

#### Information on site

Parts of program information are readily available from the Second Announcement of the 2002 Osaka Conference. Updated information will be made available on the web-site of LES Japan as of August 1, 2001 ([www://lesj.org](http://www://lesj.org)). You can also have access to the site through the link of LESI home-page ([www://lesi.org](http://www://lesi.org)). The final program will be available in print in the September issue of *les Nouvelles*.

Please join us, for this wonderful chance to work and play! We guarantee that you will have a memorable and wonderful experience! We look forward to seeing you in Osaka in April 2002.

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*NGB Corporation, IP Research Institute, Tokyo*

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# Recent IP News from Japan

By **Shoichi Okuyama**

## 1. Judicial Reform Taking Shape

An overall picture with some specifics of the judicial reform that has been under discussions for some time in Japan has begun to emerge.

On April 4, 2001, the Commission for Judicial System Reform released a draft of the civil judicial reform plan to the public. According to the draft, it will become mandatory to lay out a plan of the whole litigation process at its onset in order to shorten the average pendency time of such specialty suits as intellectual property infringement and medical malpractice lawsuits. Currently, it takes 21.7 months to process intellectual property infringement suits (in 2000) and 33.4 months for medical malpractice suits (in 1999) on average before the first instance courts. These pendency times are to be cut in half.

Also, on April 20, 2001, the same commission disclosed another draft on the education and qualification of legal professionals. In this draft, two or three year law school educations at graduate level are proposed. Some 70 to 80 percent of graduates of such law schools are expected to pass the new bar examination. They may take the bar examination only three times. Such law schools are expected to start accepting students in 2003 or 2004. The number of those who will then pass the bar examination are expected to increase 50% to 1,500 by 2004 and to 3,000 soon thereafter. The total number of attorneys at law is expected to increase from about 20,000 currently to about 70,000 in 20 years. The numbers of judges and public prosecutors are planned to increase from the current levels of 2,100 (excluding summary court judges) and 1,300 by 500 and 1,000, respectively, according to this draft. The final report will be issued in June 2001.

Furthermore, March 6, 2001, a bill was submitted to the Diet in order to allow attorneys at law to incorporate their firms. Since the

Federation of Japanese Bar Association is in agreement with this bill, it should pass the Diet and become a law very soon.

## 2. Nikkei Reports 15,000 Business Method Patent Applications Filed in 2000

In the March 15, 2001 issue of the Nihon Keizai Shinbun newspaper ("Nikkei" for short), it was reported that the number of "business model" patent applications filed in 2000 was five times more than the previous year and amounted to 15,000. Their definition of what "business model" patents mean is not clear. Also, according to same article, NEC filed 1,600 business model applications last year up from 100 in 1999.

## 3. Madrid Protocol System

Japan started operating under the Madrid Protocol system from March 2000. During the year 2000, Japanese applicants filed 144 International Applications designating 1,212 states in cumulative total. On the other hand, Japan was designated in 2,217 International Applications. It is clear from these numbers that foreign applicants are more aggressive in utilizing this system. The total number of International Applications under the Madrid Protocol system was 22,968 in 2000.

## 4. Tokyo and Osaka High Courts Say Secondhand Game Software May Be Sold

On March 27, 2001, the Tokyo High Court rendered a decision to uphold a lower court decision that allowed the sale of secondhand computer game software. The court stated that the computer game software in question was a "cinematographic work" as provided in the Copyright Law, but the so-called distribution right provided for cinematographic works in the Copyright Law is applicable to movies that are subject to a unique distribution system and their video tape reproductions only. Under the Japanese Copyright Law, the unauthorized resale of cinematographic works is prohibited because the original producers hold their distribution rights. Since, unlike motion pictures, computer

games are originally produced for wide distribution to begin with, they are not subject to the distribution right provided in the Copyright Law. In other words, since computer games are produced and sold in large numbers to the public, the producers of the games have plenty of opportunities to profit from the sales and should not be able to enjoy the extra protection provided basically for ordinary motion pictures under the limited distribution. The Tokyo High Court concluded that the conclusion of the lower court was correct and rejected the appeal even though its reasoning was quite different from that of the Tokyo District Court, which found that the game software was not a cinematographic work under the definition of the Copyright Law in May 1999.

On March 29, 2001, the Osaka High Court reversed a lower court decision in which the sale of used computer software was found to infringe on the distribution right. The reasoning of the Osaka High Court was very similar to that in the Tokyo High Court decision although they differ in details.

Both cases are under appeal before the Supreme Court.

#### 5. The First Domain Name Dispute Decided by an Arbitration Panel

On February 7, 2001, a panel set up by the Industrial Property Arbitration Center issued a decision concerning a domain name dispute for the first time since JPNIC published the localized

uniform dispute resolution rules last year. The subject domain name was "goo.co.jp," which is currently used only as a pointer to a pornographic site held under a different domain name. No informational content is found in the goo.co.jp web site. This domain name was pitted against "goo.ne.jp," which is owned by NTT-X (a group company of the Japanese telecom giant) for its popular search engine service. The registration of goo.co.jp occurred earlier than that of goo.ne.jp, but the owner of goo.co.jp once asked for a monetary reward for its domain name, although under the Japanese domain name rules it is prohibited to transfer domain names. The owner of goo.co.jp filed a lawsuit in an attempt to overturn the arbitration decision.

#### 6. Patent Law Amendment Considered for 2002

The Ministry of Economy, Trade and Industry and the Patent Office are considering the amendment of the Patent Law in 2002. One aspect of the amendment is to align the Japanese law with the Patent Law Treaty, which requires more relaxed treatments for formality problems, such as missed deadlines. Another aspect under discussion is whether to provide stronger protection to software inventions.

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*Editor, WINDS from Japan*  
*PhD, Okuyama & Co., Patent Attorney*

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# Summary Report from Monthly Seminars

By Yoichiro Iwasaki

## [TOKYO SESSIONS]

**January (1/26)**

**"Judicial System Reform and Recent Cases of Patent Infringement"** by Hideo OZAKI, Attorney at Law, Ohba & Ozaki Law Office

**February (2/15)**

**"Review of Major Court Decisions In Year 2000"** by Osamu TAKURA, Attorney at Law, Takura Law Office

**March (3/14)**

**"License Negotiations-- A Businessman's View"** by Yoichiro IWASAKI, Consultant for International Alliances

**April (4/18)**

**"The Scope of Liability of Internet Providers and Related Issues"** by Takashi YAMAMOTO, Attorney at Law, Tanso & Yamamoto Law Office

## [OSAKA SESSIONS]

To be reported in the next issue

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*Editor, WINDS from Japan  
Consultant*

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## Editors' Notes

We are pleased to know that about 30 people have attended the 2001 International Conference in Cape Town on behalf of LES Japan. Reportedly, the total number of LES delegation occupies roughly a 10 % of the total conference attendees. LES Japan has formally announced the forthcoming conference in Osaka in 2001, and the editors of this journal believe that those who attended the Conference in Cape Town were well impressed with the demonstration by our colleagues.

In line with the announcement, this issue includes as a cover article, detailed program introduction. As is mentioned in the article, form for registration will shortly be placed on the website of LESJ and *les Nouvelles*. Anyone who wants to receive a copy of the Second Announcement, which was delivered in hard copy at the Conference in Cape Town, is suggested to visit the website of LESJ ([www://lesj.com](http://www://lesj.com))

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