STARATEGY FOR PROTECTING INTELLECTUAL PROPERTY RIGHTS (IPRS) RELATED TO INVENTION AND RESEARCH RESULTS IN FISHERIES IN JAPAN

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IP POLICY OF GOVERNMENT OF JAPAN

MAFF Intellectual Property Strategy 2020
Cool Japan Strategy
Geographical Indication
Foods with Function Claims
Use Invention for Foods
Improvement of IP Enforcement
Building a Value Chain Based on Customer Needs

Primary
Production of agricultural, forestry and fishery products

Based on consumer and market needs and processing needs,
- Switch to products suitable for processing
- Improve production methods to raise the quality of products, etc.

Secondary
Food processing

Based on consumer and market needs,
- Introduce new processing technologies to improve product quality
- Introduce HACCP and other measures for manufacturing products safely and securely, etc.

Tertiary
Food distribution and sales

Based on consumer and market needs,
- Ascertain sales channels (supermarkets, JA, direct sales locations, roadside stations, etc.)
- Consider product PR methods (such as labeling of origin of ingredients), etc.

Consumers/Markets

What are consumers and markets demanding?
(Market research, clarify targets, etc.)

Quoted from “MAFF - Close to Your Daily Life -” Publication: December 2015
MAFF Intellectual Property Strategy 2020

Export Value of Agricultural, Forestry and Fishery Products and Foods

2013
“Washoku” registered as an Intangible Cultural Heritage of Humanity of UNESCO

2014
611.7 billion yen

2015
Expo Milano 2015 under the theme “Feeding the Planet, Energy for Life”

2016 Target
700.0 billion yen

2020
Convening of Tokyo Summer Olympics and Paralympics

2020 Target
1 trillion yen

Quoted from “MAFF - Close to Your Daily Life -” Publication: December 2015
MAFF Intellectual Property Strategy 2020

Export Value of Fishery Products

(Unit: Billion yen)

- 2012: 170.0
- 2013: 221.6 (30% increase from 2012)
- 2014: 233.7 (5% increase from 2013)
- Target: 350.0

Quoted from “MAFF - Close to Your Daily Life -” Publication: December 2015
Cool Japan Strategy

Quoted from “OISHII JAPAN” http://www.maff.go.jp/e/oishii/index.html
Cool Japan Strategy

Features of “Washoku”

- Deep ties to New Year’s and other regular annual events
- Emphasis on the beauty of nature and changing of the seasons in the presentation
- Nutritionally well-balanced and healthy diets
- Various fresh ingredients and respect for their natural flavors

Quoted from “MAFF - Close to Your Daily Life -” Publication: December 2015
Cool Japan Strategy

Ranking of Favorite Foreign Cuisine

- Japanese cuisine: 66.3%
- Italian cuisine: 46.4%
- Chinese cuisine: 42.5%
- Korean cuisine: 24.6%
- American cuisine: 21.9%
- French cuisine: 18.8%
- Thai cuisine: 13.4%
- Indian cuisine: 12.5%
- Mexican cuisine: 10.3%
- Middle Eastern and Arab cuisine: 9.7%

Multiple responses possible. Number of responses as a percentage of number of respondents. Cuisine from one's own country was excluded from the choices.

Source: Prepared based on JETRO's Survey on Japanese Foods Directed at Overseas Consumers

Quoted from “MAFF - Close to Your Daily Life” Publication: December 2015
Cool Japan Strategy

"Hospitality Partner through Japanese Food" in which travelers are welcome to enjoy regional food ingredients.

Quoted from “MAFF - Close to Your Daily Life -” Publication : December 2015
Geographical Indication

Quoted from MAFF(Government of Japan), 2016, “Geographical Indication (GI) Protection System in Japan”
Geographical Indication

Image of GI: example of @@ apple (fictional product)

Producing area
- Natural factor: climate, soil, varieties
- Human factor: traditional production methods, historical or cultural events

Characteristics of Products
- Quality: high sugar content, crisp texture
- Reputation: traded at high price in the market, awarded famous prize in Japan
- Others: purely red color, large in size

GI
- @@ apple

The indication of the product name, in which characteristics of the product are essentially attributable to @@ region

Quoted from MAFF (Government of Japan), 2016, “Geographical Indication (GI) Protection System in Japan”
Geographical Indication

What Japan’s New GI System Expects to Achieve

[Introducing the GI protection system]

- Differentiation as a regional brand product which is reflected in the pricing
  - Only products that abide by specific quality standards can receive GI status, which guarantees the quality of regional-branded products

- Since the injunction against illicit use is made by the government, which enables producers to protect their own brands without legal expenses

- Only products which abide by quality standards are introduced to the market
  - GI mark helps differentiate the products

- Overseas expansion of truly Japanese local produce
  - By attaching GI mark on to GI registered products, truly Japanese local produce will be evident, and differentiated in the destination country of export

Regional brand protection and utilization leading to revitalization of rural villages

Inheritance of traditional food culture

Protection of consumer’s benefits

Spur export of agricultural, forestry and fishery products and foodstuffs

Quoted from MAFF (Government of Japan), 2016, “Geographical Indication (GI) Protection System in Japan”
Geographical Indication

Quoted from MAFF(Government of Japan), 2016, “Geographical Indication (GI) Protection System in Japan”
Geographical Indication

Quality Control after Registration

1. Groups of producers/processors provide guidance or conduct inspection to comply with production method stipulated in the specification, based on rule concerning production process management.
2. Minister of Agriculture, Forestry and Fisheries regularly monitors if the production process management of producers/processors groups is conducted appropriately.

- Available GI and GI Mark only for the product which meets quality standard in specification.
- Checking method, frequency, and the personnel should be decided by the groups of producers in regard to their guidelines for quality.
- Outsourcing to external organisations is possible

Quoted from MAFF(Government of Japan), 2016, “Geographical Indication (GI) Protection System in Japan”
Geographical Indication

Measures against Illicit Use

1. Members of the registered group of producers selling the products with GIs, which do not meet the GI standard
2. Producers/processors who do not belong to the registered group of producers, selling the products as GI

A person who finds these illicit uses may notify it to the Ministry of Agriculture, Forestry and Fisheries
- Minister of Agriculture, Forestry and Fisheries may issue an injunction to correct the unlawful use of GIs by producers/processors.
  - A person who finds illicit use of GI when they do not comply, penal provisions are imposed.

Quoted from MAFF (Government of Japan), 2016, “Geographical Indication (GI) Protection System in Japan”
Foods with Function Claims

Quoted from Food Labelling Division, Consumer Affairs Agency (Government of Japan), July, 2015, “The system of "Foods with Function Claims" has been launched!”
Foods with Function Claims

Quoted from Food Labelling Division, Consumer Affairs Agency (Government of Japan), July, 2015, “The system of "Foods with Function Claims" has been launched!”
Foods with Function Claims

- Foods in General: Any food labeled as a nutritional supplement, a health supplement, or a nutrient controlling food falls under this category.
- Foods with Health Claims: Can label a function claim
  - Foods for Specified Health Uses
  - Foods with Nutrient Function Claims
    - Foods with Function Claims

Quoted from Food Labelling Division, Consumer Affairs Agency (Government of Japan), July, 2015, “The system of "Foods with Function Claims" has been launched!”
Use Invention for Foods

• JPO revised the Examination Guidelines for Patent and Utility Model related to the Use Invention for Foods in April 2016, in order to harmonize the Examination Practice of JPO with the system of "Foods with Function Claims".

• Overview of the revision of Examination Guidelines for Patent and Utility Model in Japan related to the Use Invention for Foods is as follows.

https://www.jpo.go.jp/iken_e/back_20160323_guide.htm
Use Invention for Foods

• (1) If there is the limitation of use in a claimed invention of foods, the examiner recognizes that the limitation of use has the meaning of specifying the claimed invention.

• (2) However, in cases where the invention is animals or plants, even if there is the limitation of use in a claimed invention, the examiner interprets such animals and plants as the animals and plants themselves without limitation of use because such a limitation of use only indicates the utility of animals and plants.

Use Invention for Foods

• Example:

• [Claim 1] A food composition for use in preventing a hangover containing an ingredient A as an active ingredient. - - - allowable after revision 2016

• [Claim 2] A food composition for use in preventing a hangover according to claim 1, wherein the food composition is a fermented milk product. - - - allowable after revision 2016

• [Claim 3] A food composition for use in preventing a hangover according to claim 2, wherein the fermented milk product is yogurt. - - - allowable after revision 2016

Use Invention for Foods

• Explanation:

• The claimed invention “A food composition for use in preventing a hangover containing an ingredient A as an active ingredient” and the cited invention “a food composition containing an ingredient A” are not different except a limitation of use application.

• In this case, the examiner specifies the claimed invention in consideration of the limitation of use application such as “for use in preventing a hangover” provided that both of the following conditions (i) and (ii) are satisfied.

https://www.jpo.go.jp/iken_e/back_20160323_guide.htm
Use Invention for Foods

• (i) “The use in preventing a hangover” is derived from discovering of an unknown attribute that promotes alcohol metabolism by an ingredient A.

• (ii) The use application which is derived from the attribute is different from any known uses and novel.

• The same way of specifying the claimed invention also applies to a fermented milk product and yogurt which are more specific concept of a food composition.

https://www.jpo.go.jp/iken_e/back_20160323_guide.htm
Improvement of IP Enforcement

• The Government of Japan has revised the Japanese patent enforcement system numerous times in the last fifteen years.

• For example, the following revision has been implemented in order to strengthen the protection of Intellectual property in Japan.
Improvement of IP Enforcement

• (1) Prompt and precise examination and appeal/trial of patent applications
• (2) Establishment of IP High Court
• (3) Reinforcement of measures against counterfeits and pirated copies
• (4) Promotion of cooperation and international harmonization of the Intellectual Property system
• (5) Reinforcement of trade secret protection
• (6) Protection of Intellectual Property in new areas (Software and Biotech)
Improvement of IP Enforcement

Explanatory Session (技術說明會)
1 Attorney for the Plaintiff (原告代理人)
2 Technical Advisor (專門委員)
3 Judge (裁判官)
4 Judicial Research Official (裁判研究所官)
5 Attorney for the Defendant (被告代理人)

Quoted from Guidebook of the IP High Court (2016.7)
Improvement of IP Enforcement

A breakdown of technical advisors by their affiliation (as of April 1, 2016)

Quoted from Guidebook of the IP High Court (2016.7)
OYSTER'S PATENT BATTLE IN JAPAN

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Ichinen-Tamakaki oyster from Harima-nada open sea (R)

Quoted from Website of Maruto Suisan
Steamed Oyster (Tama-Seiro (R))

• By steaming and freezing, Maruto Suisan can provide delicious and nutritious oysters even in summer.

• Heated and Safe.
  • Big oysters that cannot raised in any other breeding districts.
  • Processed in February and March when glycogen is contained the most.

• The process of steaming keeps the extract and the taste inside.
  • The home (Harima-nada open sea) has been limited, and the flavor is uniform.
Steamed Oyster (Tama-Seiro (R))

Quoted from Website of Maruto Suisan
Prime Minister Prize

Maruto Suisan was awarded the Prime Minister Prize at the Festival of Agriculture, Forestry and Fisheries of Japan in 2014, and has become recognized as a manufacturer of high-quality Steamed Oyster (Tama-Seiro (R)).

Quoted from Website of Maruto Suisan
Litigation of Infringement of Patent

• Just after Maruto Suisan was awarded the Prime Minister Prize in 2014, “Kunihiro” started to sell steamed oysters. Kunihiro is a company doing business around “oysters” located in Hiroshima.

• In a short while, Maruto Suisan found out that its patent was infringed by Kunihiro. Shortly, Maruto Suisan sent a letter of warning to Kunihiro, but Kunihiro did not stop selling its steamed oysters.
Litigation of Infringement of Patent

• Therefore, Maruto Suisan launched a legal action at Osaka District Court in Japan, in order to be granted an interim injunction against the sales of steamed oysters of Kunihiro.

• Half a year later, Osaka District Court issued an interim injunction to Kunihiro.

• Further half a year later, Maruto Suisan reached a reconciliation with Kunihiro, because Kunihiro stopped sales of its steamed oysters and discarded all the stock of its steamed oysters.
Litigation of Infringement of Patent

• In consequence, the Steamed Oyster (Tama-Seiro (R)) of Maruto Suisan keeps almost 100% of the market share of steamed oysters in Japan. The Steamed Oyster (Tama-Seiro (R)) brings Maruto Suisan excellent earnings every year.

• Maruto Suisan is putting more effort into research and development in order to create some breakthrough products using oysters, and into filing a number of patent applications in order to protect such breakthrough products.
CONCLUSION

• Over the last 10 years, the Government of Japan has implemented a policy mixture on the basis of MAFF Intellectual Property Strategy 2020, together with Ministry of Economy, Trade and Industry of Japan (METI), Ministry of Health, Labour and Welfare (MHLW) and other official organizations.

• This policy mixture includes (1) Cool Japan Strategy, (2) Geographical Indication, (3) Foods with Function Claims, (4) Use Invention for Foods, and (5) Improvement of IP Enforcement.

• This policy mixture of the Government of Japan carried out the mission successfully, because the above mentioned policy mixture has achieved some positive results, especially in the field of fisheries (for example, famous patent litigation case "Oyster's Patent Battle in Japan").
Thank You!

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