

Intellectual Property Management in Asia: The Human Factor

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Outline

- ◆ Pre-introduction
- ◆ Introduction
- ◆ Basic “business culture” factors
- ◆ Recent trends
- ◆ Recommendations

Reminders / Announcements

- ◆ This series produced by US-Asia Technology Management Center
 - ◆ Slides archived at <http://asia.stanford.edu>
- ◆ Financial support: Squire Sanders Dempsey LLP
- ◆ For-credit students:
 - ◆ All materials must be submitted prior to scheduled exam time of this course
 - ◆ Email both to <shirley dot sun at stanford dot edu> and <rdasher at stanford dot edu>
- ◆ On-line course evaluations

Brief review of series - 1

- ◆ Discussions of the various types of IP
 - ◆ Patents
 - ◆ Copyrights
 - ◆ Trademarks
 - ◆ Trade secrets
 - ◆ (Technology standards)
- ◆ Different countries:
 - ◆ Different legal systems, although trend toward harmonization
 - ◆ Different enforcement patterns
 - ◆ Have impact on IP strategy, even down to how one writes patent claims

Review of series - 2

- ◆ **Presentations on representative cases**
 - ◆ **Technology development in China**
 - ◆ **Software service businesses in India**
 - ◆ **Stanford technology licensing to companies in Asia**
 - ◆ **Two different cases of standards in China**
 - ◆ **Wireless communications (WAPI)**
 - ◆ **Chip design specifications (VSIA)**
 - ◆ **Cisco Systems**
 - ◆ **Outsourcing and offshoring**

We need to consider the human factor(s) in IP management

- ◆ **For example, what is a patent worth?**
 - ◆ **Method of calculation**
 - ◆ Value it brings to product(s), value of those product(s) in market(s)
 - ◆ Defensive value of the monopoly right: competitive advantage
 - ◆ Value to subsequent research of the knowledge that the inventors gained
 - ◆ Pro rated value as part of R&D portfolio (for costs as well as market value)
 - ◆ A lawyer friend said, “Nothing, until you’ve demonstrated that it will hold up in court.”
- ◆ **IP value depends crucially on human factors: negotiation, business and management strategy**

Human factors in IP management

Obvious: Negotiation Patterns

- ◆ Haggling over price
 - ◆ “Bazaar” tactics -- may not work well for establishing value of abstract things (like IP)
 - ◆ Instead, may reduce apparent credibility
 - ◆ Important to give reasons to justify demands
- ◆ Sequential problem solving (U.S.) versus leaving everything on the table until the end (Asia)
 - ◆ Asia-style: minimize negative impact (loss of face) of public compromise
 - ◆ U.S.-style: give something up early to show good faith

Less obvious: what negotiation is all about (the end state)

U.S.: Building a machine

- ◆ Establish absolute rules for business relationship
- ◆ All details in contract; expect no changes unless new negotiation
- ◆ Violations: appeal to outside authority to establish responsibility
- ◆ May lead to insufficient attention to relationship

Asia: Getting married

- ◆ Maintaining the relationship is more important than the rules
- ◆ Contract more symbolic; expect partner to bend terms for you (somewhat)
- ◆ Violations: use bargaining to reach a new working solution
- ◆ May lead to accusations of unreliability

Deep “Business Culture” Factors

- ◆ Basic goals of the company
- ◆ Basic concept of the business process
- ◆ Market motivation
- ◆ What motivates the people across the table?
- ◆ Decision making and implementation (throughout the organization)
- ◆ Conflict and crisis management

Basic goals of the company: What is a board member to do?

- ◆ **U.S.:** Increase shareholder value (leads to focus on regular revenue and profit increase)
- ◆ **Japan:** Company is a primary social institution & belongs to the community
 - ◆ Responsibility for maintaining employment, stable economic growth
 - ◆ Profit is society's reward for a job well-done
- ◆ **China (GC):** Company is an extension of the (Confucian) family
 - ◆ Conflicting goals may lead to surprising board decisions

Basic concept of the business process

◆ **U.S.:** Basis is the transactions

- ◆ Flexibility in choosing new partners
- ◆ Expectations from current partners
- ◆ Negotiations to set rules of game (see earlier slide)

◆ **Japan:** Basis is the long-term relationships

- ◆ Distinct persuasive arguments: future business is an important incentive
- ◆ Tendency to form groups (e.g. keiretsu) -- close relationship with one customer may limit other market opportunities

Market motivations: beyond demographics

◆ **Example:** car-navigation systems

- ◆ Popular among young, early adopter markets in Asia, slow to penetrate the U.S. “auto superpower” market
- ◆ Why? What is the basic “meaning” of owning a car?

◆ **Example:** Internet cellphone services

- ◆ Slower to penetrate U.S. market than in Japan, Korea, China
- ◆ Major external factors: NTT DoCoMo policies toward 3rd party service providers, telecom deregulation in Korea
- ◆ Led to quite different patterns of use: cellphones as primary platform for email, etc.

What motivates the people across the table?

- ◆ **Japan (and Korea):** tradition of lifetime employment for managerial track in large firms
 - ◆ Main motivation: promotion up the pyramid to get best possible retirement situation
 - ◆ Illiquid labor markets: no mid-career opportunities outside own firm
 - ◆ Result: even more risk-averse behavior as eligibility for promotion time approaches
- ◆ **China:** personal risk management in a changing social structure (economy + politics)
 - ◆ Importance of *guanxi* (favor-based relationships)

Decision-making patterns

◆ **Japan:** consensus

- ◆ The entire group is a “key person” -- need to eliminate roadblocks as well as convince (a) champion(s)
- ◆ Persuasion and decision-making occur in different settings, both processes largely happen off-stage
- ◆ Formal meetings for validation of informal agreements (but discretion must be maintained)

◆ **China:** Confucian patriarchy with Taoist dynamics

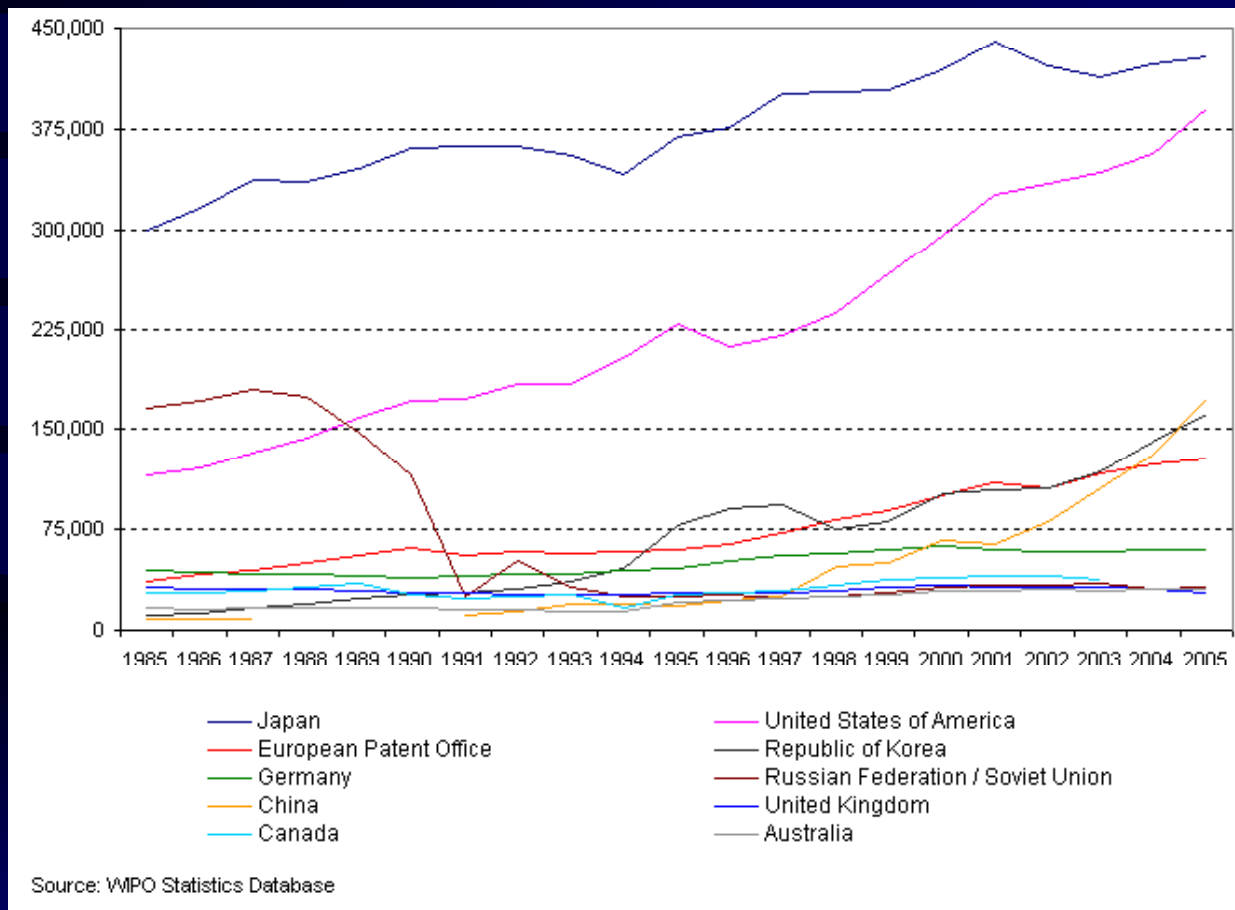
◆ **Korea:** apparent lack of progress in negotiations until the very end; then multiple concessions and trade-offs

How are conflict and crisis managed?

- ◆ **U.S.:** appeal to outside, objective authority
 - ◆ Establish responsibility and designate punishment
- ◆ **Japan:** find a new equilibrium for both parties
 - ◆ Stage 1: open conflict avoided or communicated through silence
 - ◆ Stage 2: negotiate (off-stage) appropriate offers of compensation for damage, distress
 - ◆ Stage 3: make a sacrifice to equalize suffering (so that perpetrator suffers, too)
 - ◆ President resigns, etc.

Some recent trends

Filings in world top-ten patent offices

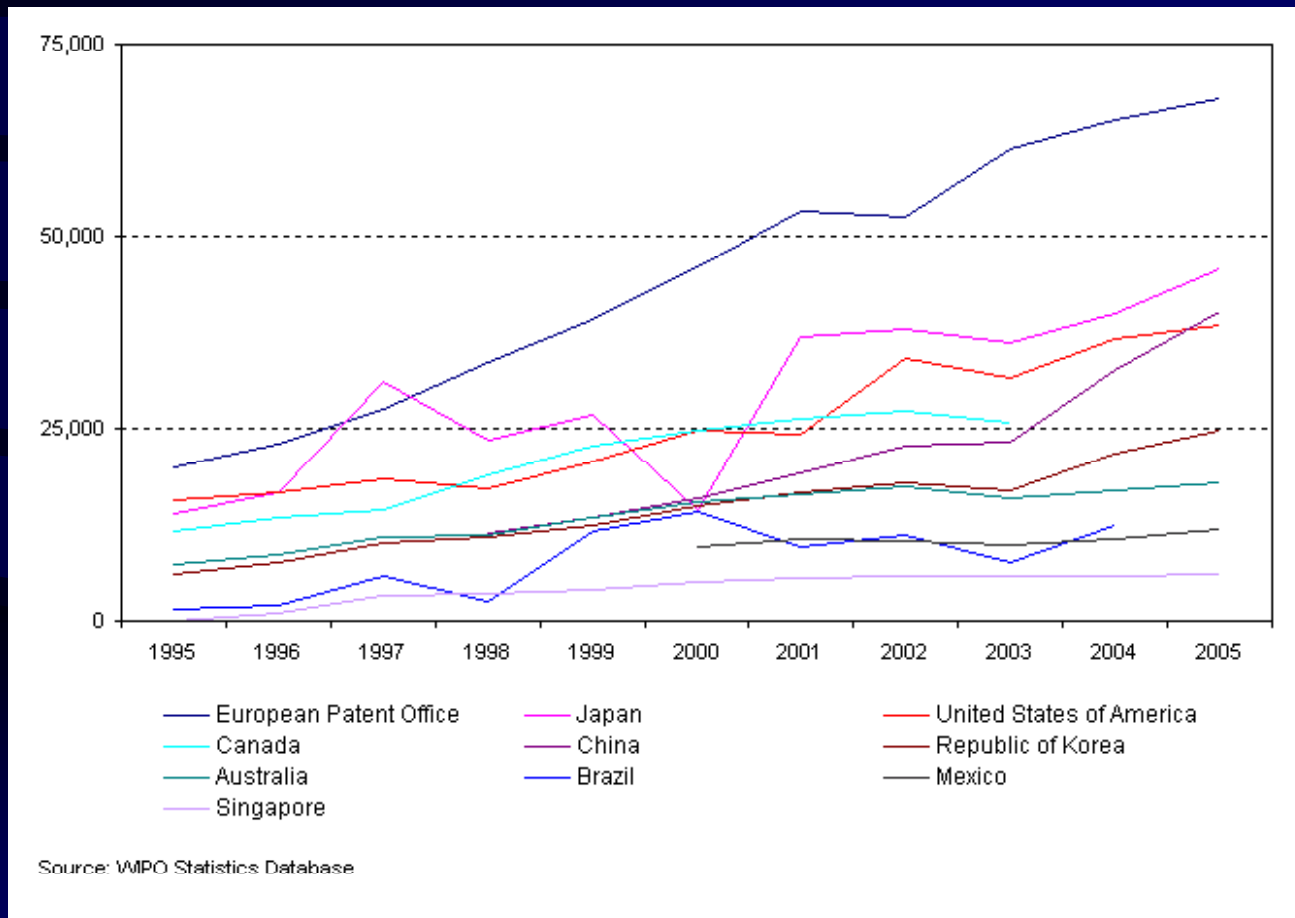


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WIPO report, 10/16/2006

PCT (international) patent filings via WIPO

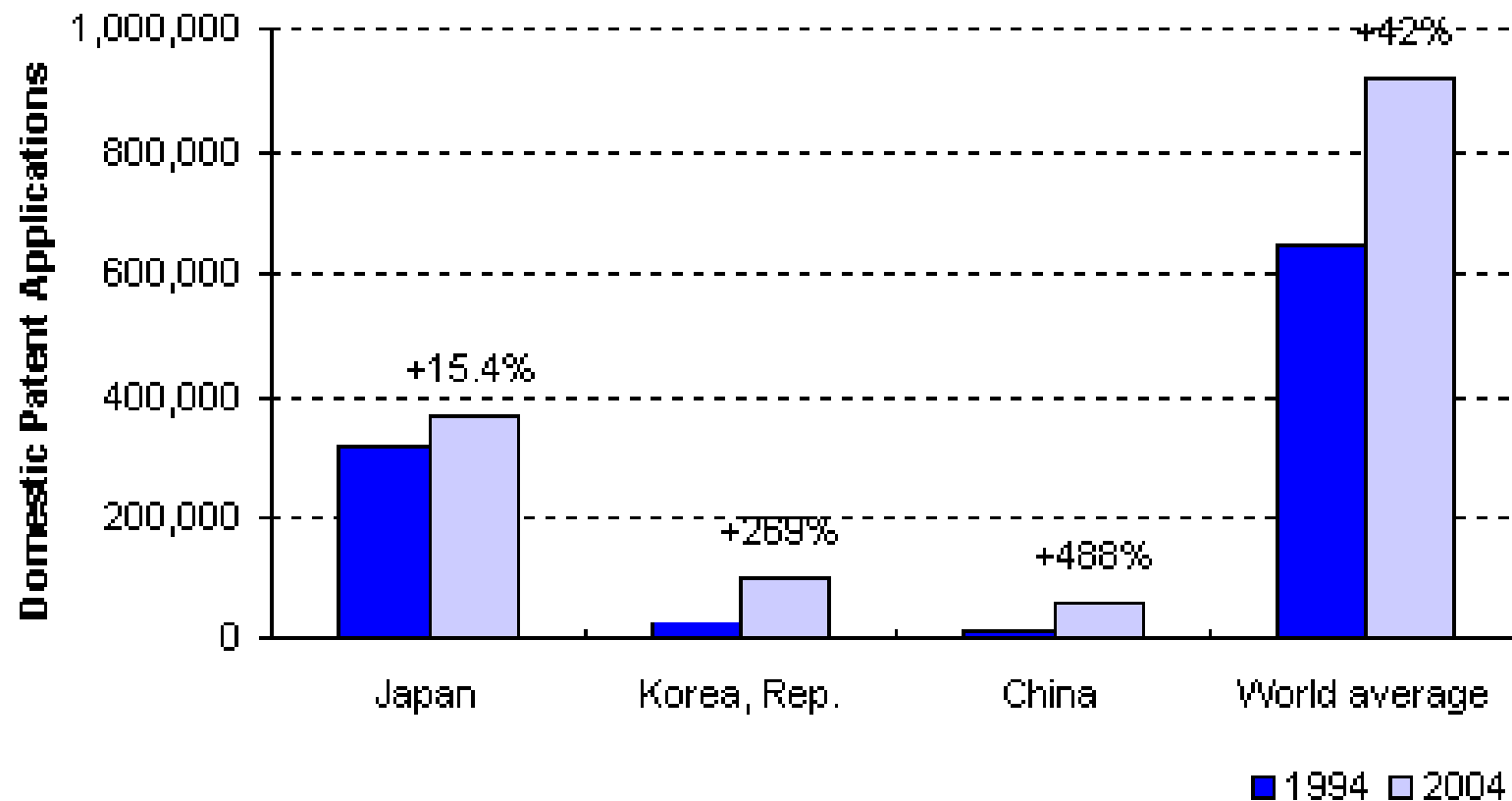


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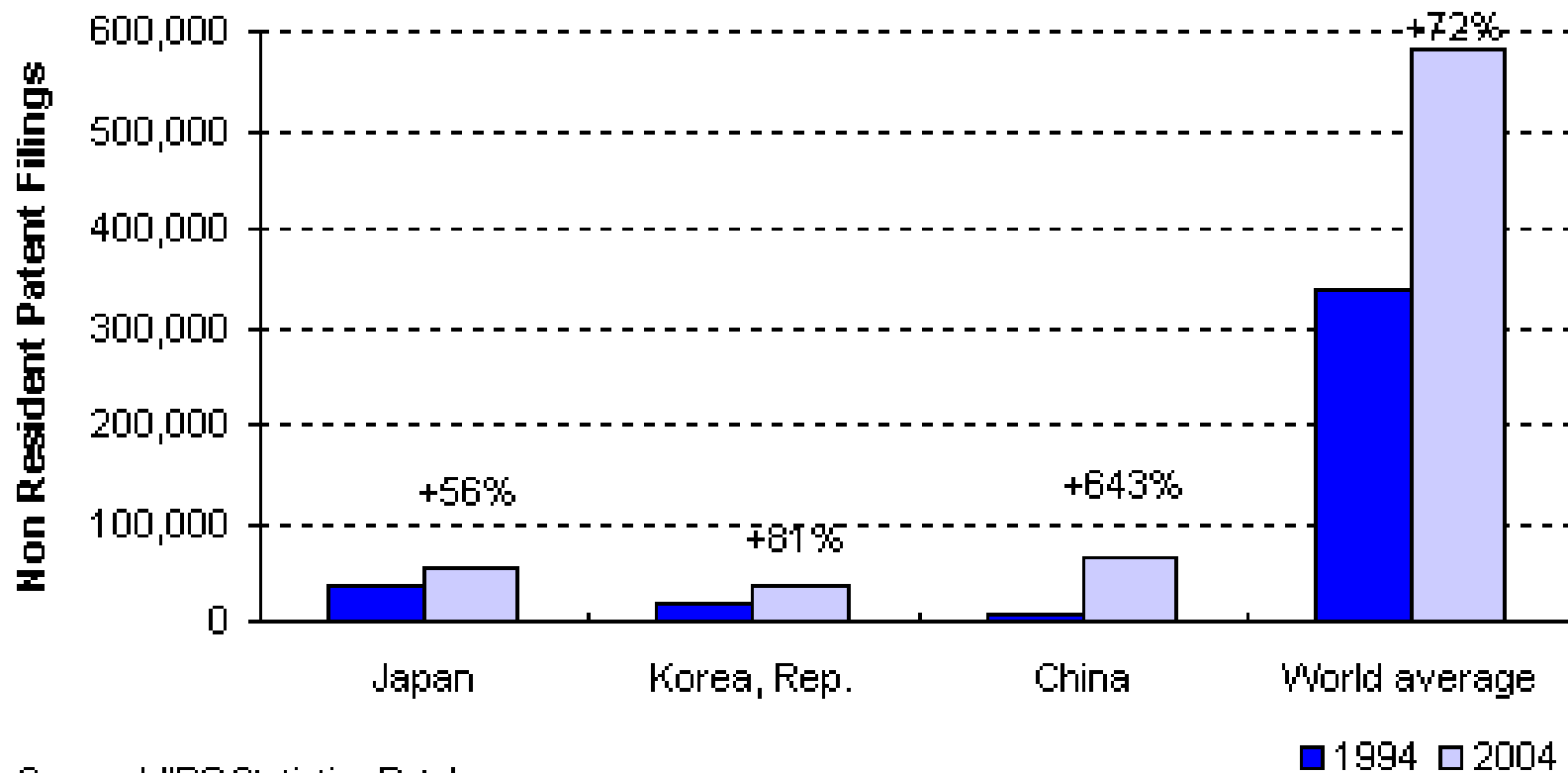
WIPO report, 10/16/2006

Patent filings by residents in NE Asia



Source: WIPO Statistics Database

Patent filings by non-residents in NE Asia



IP trends in context

- ◆ Increasing importance of Asia for technology-intensive businesses
- ◆ Increasing importance of international business perspectives (non-resident patent filings)
- ◆ Business contexts:
 - ◆ Growth of Asia (especially China) markets
 - ◆ Growth of Asia-wide supply chains (e.g. components are shipped to China for assembly, then exported to U.S., Europe, rest of world)

Final points

Important take-away points

- ◆ It is important to consider your IP in Asia, even if you don't plan to do business there right away
 - ◆ Need to file internationally for international protection
 - ◆ Need to watch Asia to see what kind of related business is going on -- possible opportunities, possible competitors
- ◆ IP management in Asia requires several skill sets
 - ◆ Knowledge of the IP and its technical context
 - ◆ Knowledge of local markets, business opportunities (e.g. for product localization, to ID potential licensees)
 - ◆ Knowledge of local business culture

Local business partners

- ◆ Don't assume that just because (A) is a resident of (X), s/he knows how to manage your business in (X)
 - ◆ Should demonstrate market and business knowledge, prior track record
 - ◆ Follow up on names of contacts that are given
- ◆ Interview study of Silicon Valley start-up teams (2005): strong preference to form teams around people the entrepreneur has worked with before
 - ◆ But, returnees to Asia may have difficulty with *new* business culture elements there

Recommendations, continued

- ◆ Develop more than one cultural mentor
 - ◆ Importance of local legal knowledge
- ◆ Continue to be actively involved after the project has started
 - ◆ Travel budget, time budget
- ◆ Watch for changes
 - ◆ In the markets, business environment
 - ◆ In the motivations of your business partners