



Japan's National IP Strategy: Comparative Analysis

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Outline

- **Background**
- **Basic IP Law and Its Implementation**
 - IP Headquarters
- **New Legislation**
 - Technology Transfer Systems
 - Others
- **Impact of Legislation**
- **Comparison between US and Japan**

Background

- **METI-JPO “Pro-Patent Policy” Initiative**
 - Mr. Hisamitsu Arai
 - Major patent law revisions during his tenure as JPO Commissioner (Damages)
- **Political Landscape**
 - JPO/METI
 - Committees (Experts)
 - Competition with other ministries and agencies
 - Industry groups (Nippon Keidanren, JIPA, etc.)
 - IP Professionals (JFBA, JPAA etc.)

Basic IP Law

- **Enacted: November 2002**
- **National Strategies**
 - To enhance competitiveness by enriching Japan with IP rights (IP-based nation)
 - Intellectual Creation Cycle
- **Creation of IP Strategy Headquarters within Cabinet**
 - To develop a uniform IP policy
 - To coordinate activities at the ministry and agency levels

IP Headquarters

Composition

- **Prime Minister Koizumi and his cabinet members**
- **Secretariat**
 - Headed by Mr. Hisamitsu Arai
 - Bureaucrats dispatched from related ministries and agencies, and courts
- **Experts**
 - Industry representatives, professors and lawyers

IP Headquarters

- **Annual Review**
 - Set a target for each measure, that is executed by a ministry or agency
 - Revise the target if necessary
- **Expert Task Forces**
 - Medical method patents
 - Media content
 - Enforcement

First Strategic Program

- **Published: July 2003**
- **270 measures to make Japan an IP based nation**
- **Content**
 - **Creation, Protection and Exploitation of IP**
 - **Media contents business**
 - **Human resources**

Further Developments

- **2004 Strategic Program**
 - Published: May 2004
 - 400 measures (11 month target for JPO Examination waiting period; IP High Court etc.)
- **2005 Strategic Program**
 - Published: June 2005
 - Even more measures (secret order, anti-counterfeiting treaty etc.)



New Legislation

Creation: Technology Transfer

- **Japanese Bayh Dole Act**
 - Enacted: 1999
 - Universities retain IP rights in result of publicly funded research
- **TLO Promotion Act**
 - Enacted: 1999
 - A variety of support to facilitate universities to create their TLOs

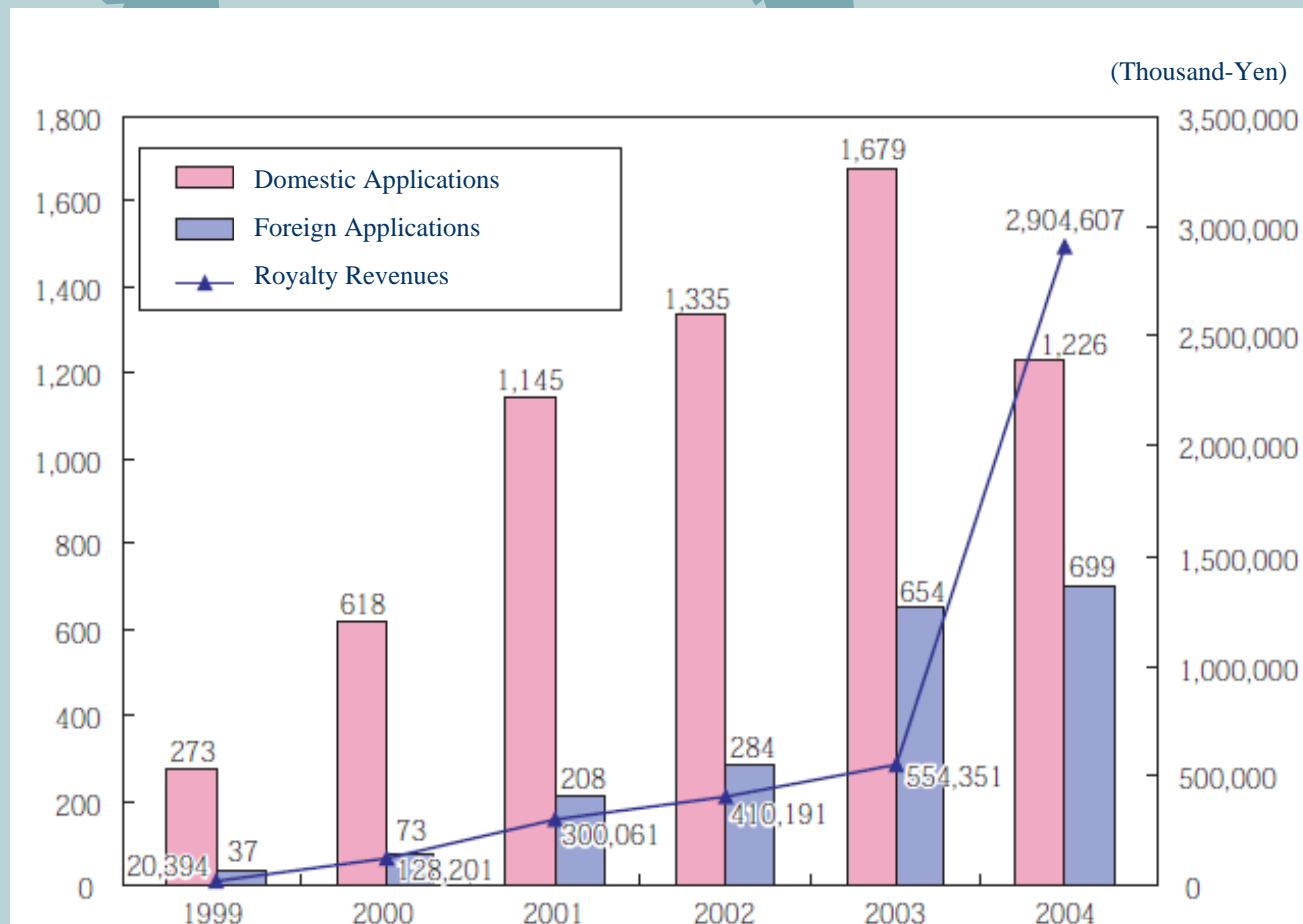
Technology Transfer System

University Inventions

- **Pre-Basic IP Law**
 - Professors retain IP rights in university inventions
- **Post-Basic IP Law**
 - Universities can adopt an IP policy to obtain IP rights in university inventions from professors

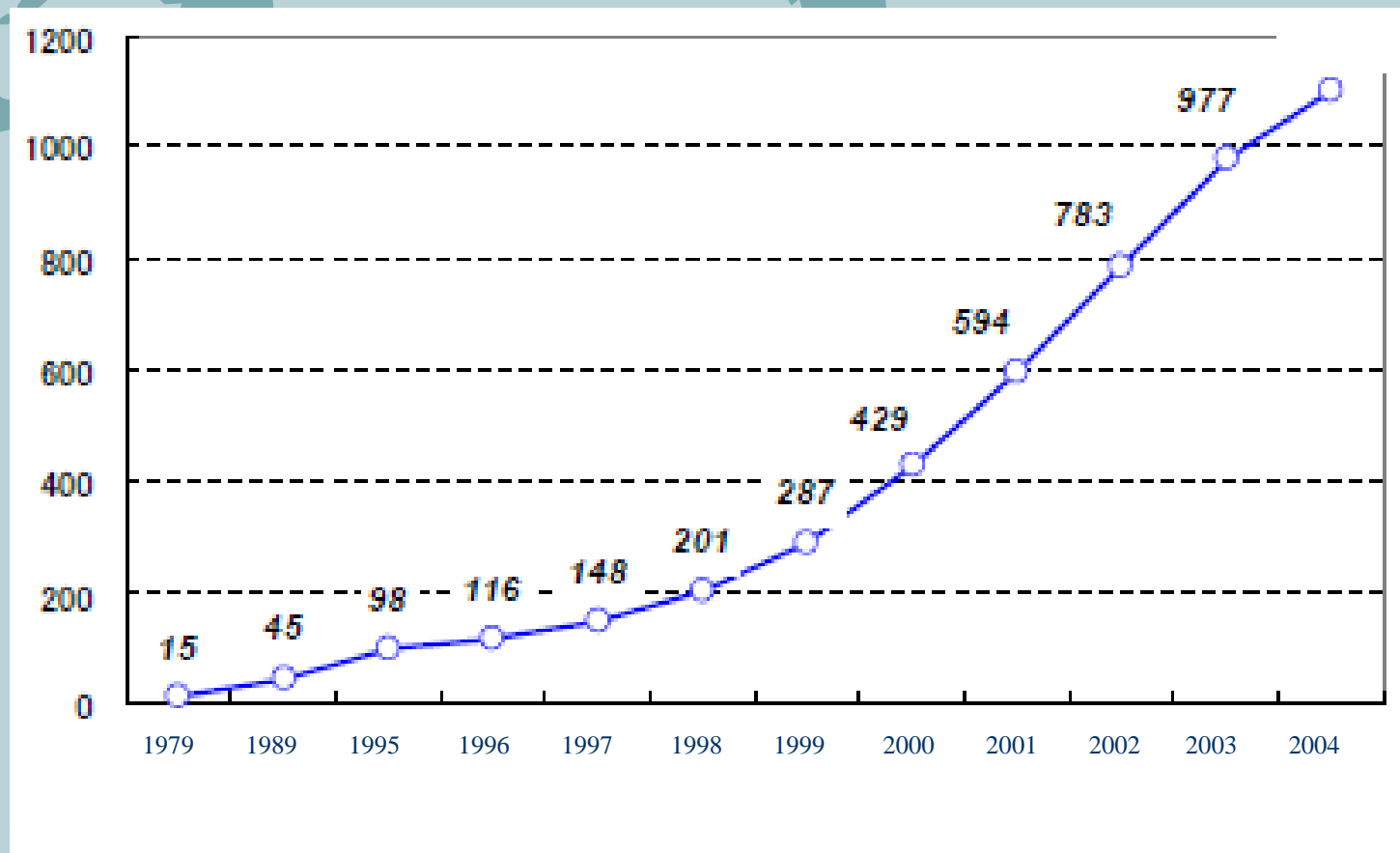
Impact of Legislation

- Increase in Patent Applications and Royalty Revenues



Impact of Legislation

- Increase in number of tech. ventures



Other Legislation

- **Protection**

- Revision of examination guidelines on medical method patents

- **IP Enforcement Restructure**

- **2003 Civil Proc. Revision**

- Exclusive jurisdiction: First instance-Tokyo & Osaka Dist. Ct.; Appeal-Tokyo High Ct.

- **April 2005: IP High Court**

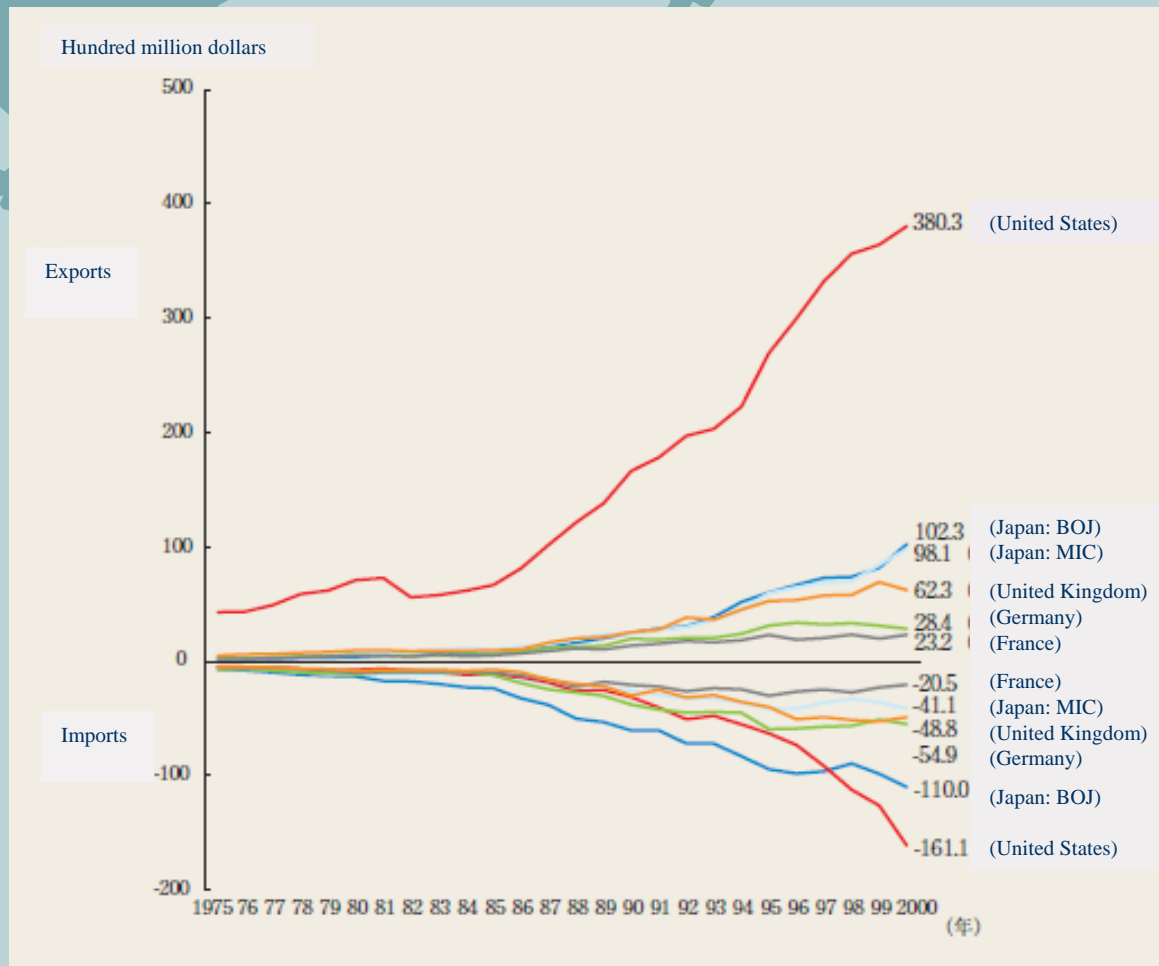
- Semi-independent from Tokyo High Court

Other Legislation

- **IP Enforcement Restructure (Cont.)**
 - Defense of invalidity
 - Consolidation of opposition/invalidity proceeding
- **Human resources**
 - Law schools
 - IP professional schools
 - Extension programs for business people, engineers and scientists

Technology Trade Balance

Major Countries



Comparison

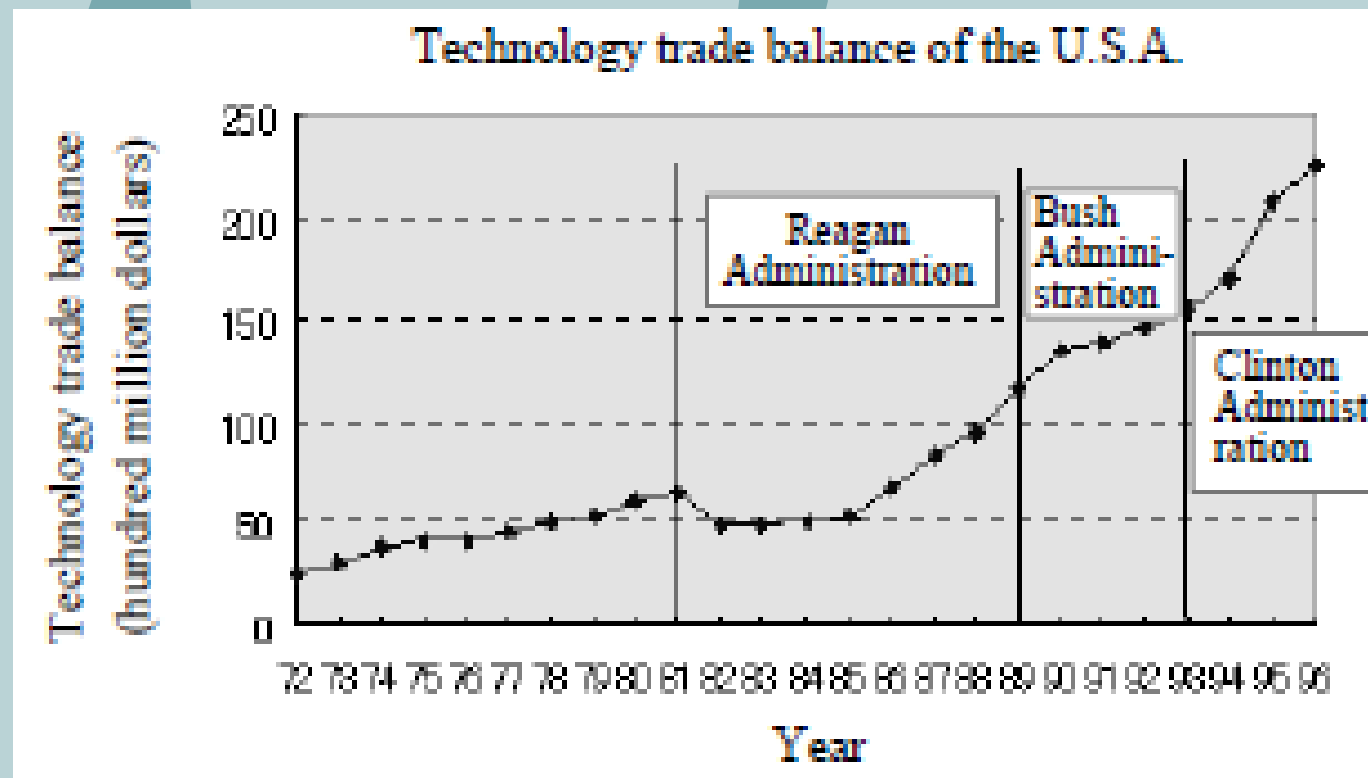
US Japan

- '80 *Chakrabarty*
Bayh Dole Act
- '82 CAFC
- '85 Young Report
- '88 Omnibus Trade Act

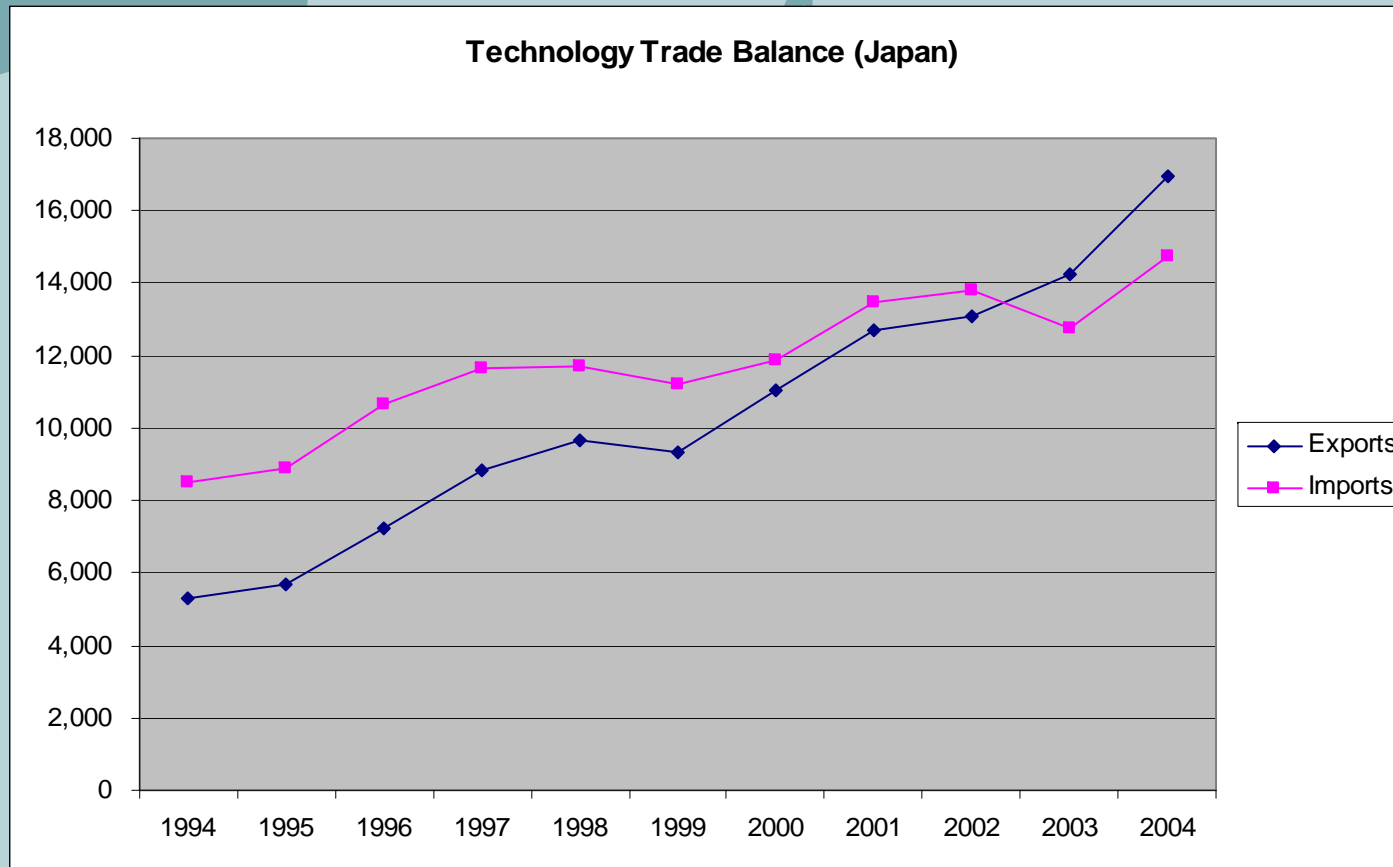
- '97 21st C. IP Report
- '98 *Ball Spline*
- '99 Bayh Dole Act
- '02 IP Basic Law
- '03 IP Headquarters
Strategic Program
- '05 IP High Court

Technology Trade Balance USA

- Matoaki Suzuki, Powerful and Overwhelming IP Activities in the Pro-patent Era (http://www.jfe-steel.co.jp/archives/en/nkk_giho/88/pdf/88_20.pdf)



Technology Trade Balance Japan



Negative Affect?

- **Patent troll problems (US): No serious problem yet in Japan**
 - No enhanced damages for willful infringement
 - Reasonable litigation cost
 - Check & balance mechanisms
 - Experimental use exception
 - Compulsory license
- **Impact on academic culture**
 - Inequity among faculty in different departments
 - Restriction on freedom of study and research

Conclusion

- Japan made a commitment to concentrate its investment on IP
- The commitment is manifested in Basic IP Law and IP Strategic Programs
- Japanese economy recently shows a sign of recovery, which tends to support positive effects from the adoption of national IP policy.