changed. They would try to work out new terms so that although both sides might lose, they would each lose a little rather than one side losing a lot. "Share the pain, share the gain", in other words.

In Japan, very few contract disputes result in legal action. In most cases, disputes are resolved under the broad guideline of "sharing the pain". Often outside parties such as parent companies, suppliers, banks or other companies within the same family of companies will intervene or provide guidance towards a resolution of the situation. In the Japanese culture, it is viewed as a personal failure when someone is forced to take legal action, unlike the North American context where the legal route is the norm. A legal dispute between business partners in Japan is viewed as a sign that the relationship was not established properly to begin with, or that one partner is being too stubborn or uncompromising.

Finally, if you negotiate a confidentiality agreement with a Japanese company, it is important to understand that there is a difference between the Western and the Japanese sense of confidentiality. Generally speaking, the Western concept is much tighter than the Japanese concept. Information disclosed in confidence to one Japanese company may be shared far more freely than a Westerner would expect with other linked companies. To the Japanese, there is no breach of confidentiality in sharing information with these sister companies. This again highlights the fact that Westerners working in Japan must have people on their side who understand the Japanese culture and the Japanese approach to doing business.

The following examples illustrate some of the risks to intellectual property that can occur in Canada-Japan collaborations, and some of the ways intellectual property can be protected. Although the examples suggest actual situations, the people and circumstances described are fictitious.

CASE STUDIES

I *Joint Ownership of Patents*

Canadian researcher Mr. MacDonald enters into a collaborative research agreement with Japanese researcher Mr. Sato in the field of monoclonal antibody research. They agree in writing that they will advise each other of any patent applications they file in this field during the term of their collaboration and for a specified number of years after the term has expired. They further agree that all such patents filed by either of them during the term of their agreement will be jointly owned, and exploited for commercial purposes only with the consent of both parties.

During the term of the collaboration, Mr.Sato files a large number of patent applications in Japan and elsewhere in the world. Taking the typical North American approach, Mr. MacDonald files patent applications only in Canada and the United States. However, because of the long regulatory approval procedure in both Canada and the United States, the patented product is not likely to be marketed within the lifetime of the Canadian and American patents.

Mr. Sato and Mr. MacDonald have to agree on the terms of any licence granted because all of the patents —Japanese, North American, European, etc. — are jointly owned. Therefore, in spite of licensing delays in North America, Mr. MacDonald is in a position to be compensated for the fruits of his collaboration with Mr. Sato. And he is in a much better position than he would have been had he relied solely on his ownership of patents in Canada and the United States.

Conclusion:

Because of the Japanese propensity for filing multiple patent applications, it is