

Trilateral Cooperation...
Successes, Opportunities,
and Challenges

INDUSTRY COMMENTS

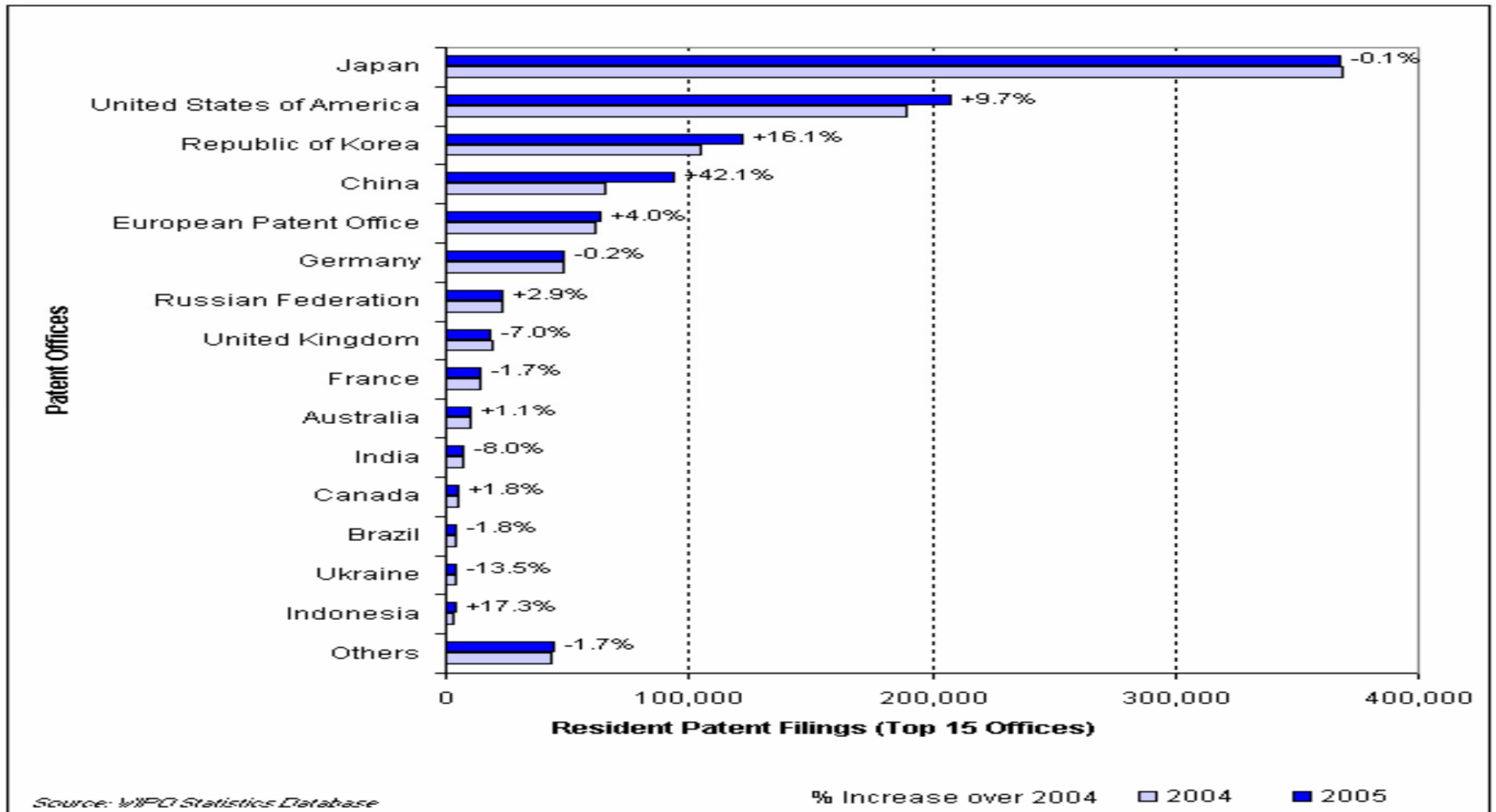
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Answers That Matter.

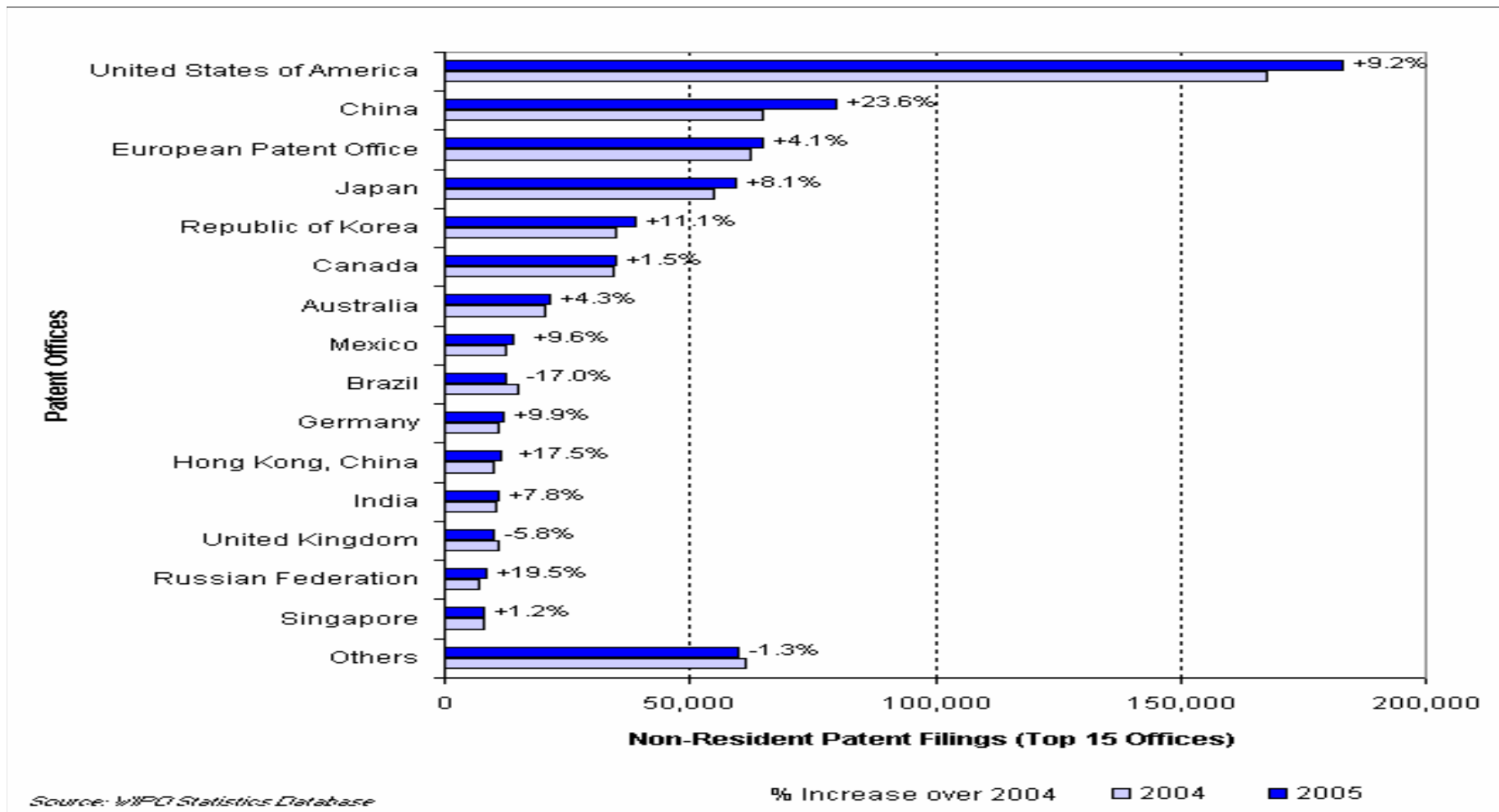
Users of the world's patent systems have been urging cooperation for some time...

- In a fast moving global economy, global patent protection requires filing in the US, EPO, and Japan
- Important inventions are often filed well beyond these three offices (to developed countries (e.g. Canada, Australia), as well as developing countries (e.g., China, Korea, India, Brazil))
- Duplicative searches by the offices, with divergent patentability criteria, are not only inefficient; they can cause considerable uncertainty in business investment decisions
 - This is true for patent applicants as well as third parties
- Developing countries, who are trying to implement IP regimes, have difficulty in finding an appropriate model to emulate
- Thus, industrial enterprises, including the member companies of NAM, applaud any efforts at combining the work of the major patent offices (USPTO, EPO, and JPO) in searching and examination
- This could go a long way toward reducing backlogs and attendant delays in the offices, and providing clearer guidance to applicants and third parties
- **But maybe we should go further...**

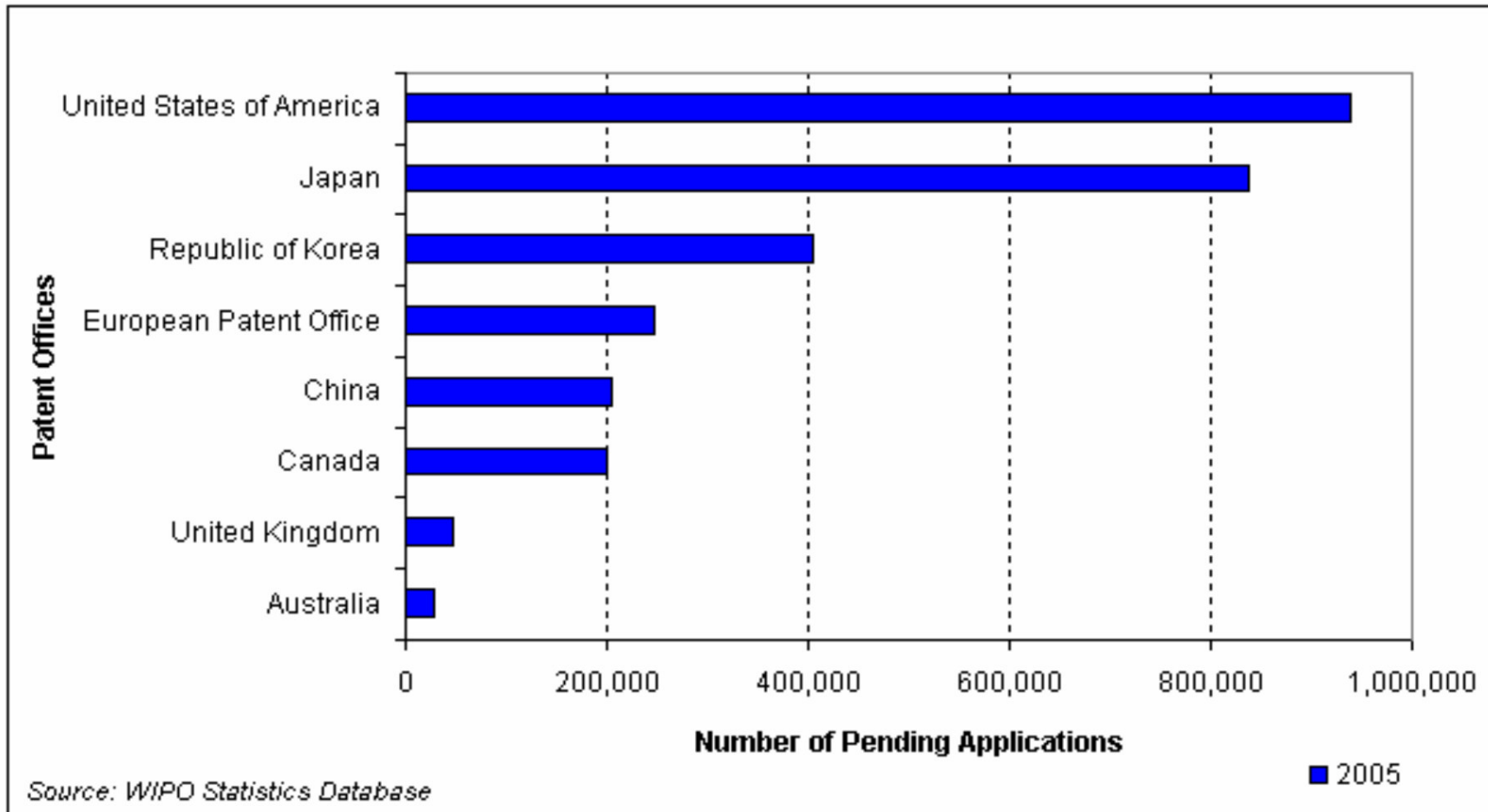
A new world order? Who is filing patent applications:



Where else are they filing?



A growing backlog...



Some interesting facts from WIPO Statistics Report...

- In 2005, about 1,660,000 patent applications were filed worldwide, which is an increase of 7% over 2004.
- The average annual rate of increase in total patent filings since 1995 is 4.7%.
- Patent filings by residents increased at an average annual rate of 6.6% and by non-residents at 7.6%.
- The patent offices of Japan and the United States of America are the largest recipients of patent filings followed by China, the Republic of Korea and the European Patent Office.
- These five patent offices account for 77% of all patents filed in 2005, which represents an increase of 2% over 2004 (75%).
- With an increase of almost 33% over 2004, the patent office of China became the third largest recipient of patent filings (up one place) in 2005.

Users of the patent system in Industry have clear needs:

- A system of patent acquisition that is efficient, fair, and reasonably predictable
- Objective criteria of patentability
 - Global definition of prior art
 - Some agreed upon global standard of accessibility of the art
 - An agreed upon standard of non-obviousness/inventive step
- Similarly, there should be fair and transparent procedures to adjudicate patents (both as to enforcement and validity challenges)
- A system which has cooperative, non-duplicative searching and examination, according to objective patentability criteria, would be welcomed by applicants

Certainly, there has been progress...

- Examiner exchanges are essential
- See this note from the Trilateral Office Web site:
 - *“A pre-requisite to re-using other Offices' results is harmonisation of procedures. The exchange of examiners has become an important tool to achieve this. **The close interaction between examiners working in the same technical areas in different Offices enhances the understanding of working methods and the building of mutual trust.**”*
- Progress on agreement on a common application format (see, e.g., Industry Trilateral Report on Global Patent Application- 14 November 2006 and Report on the Global Patent Application Project 7 November 2007 by Jeff Hawley)
- PCT supplemental searching options (1 January 2009)
- Patent Prosecution Highway

Cooperation needs to begin with USPTO, EPO, JPO

- Clearly, it is still true that the overwhelming majority of cases are filed in the USPTO, EPO, and JPO
- Cooperation between the offices has been significant
- The Trilateral Offices can lead the way in setting the standard
- Cooperation can then be extended to other offices