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INTELLECTUAL PROPERTY TEACHING IN CHINA—ITS DEVELOPMENT AND PERSPECTIVE IN THE 21st CENTURY

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Since the end of last century, the government of the Qing Dynasty adopted a series of new laws and regulations, which were drafted after the modern type of Western countries. In the field of intellectual property, Regulations for Rewards for the Promotion of Technology, the first patent legislation in China, were enacted by Emperor Guangxu in 1898; Regulations on Trademarks Regulation for Trial Implementation, prepared by an Englishman, then the Director-General of Chinese Customs, were promulgated in 1904; and the Da Qing Copyright Law, the first copyright statute in Chinese history, was published in 1910. Jingshi University, the predecessor of Peking University, was founded in 1898, with a law department for teaching legal science and theory. However, for a long period, owing to the backwardness of the economy and culture in old China, intellectual property law was correspondingly quite underdeveloped. Before 1949, intellectual property teaching was almost nonexistent in China.

I was a law student at the Law Department of Peking University and studied there for four years in the 1940s. I am happy to have had the opportunity to attend lectures given by China's first generation legal masters, such as Prof. Yu Qichang and Prof. Tang Jixiang, both of them are the earliest students of Jingshi University. During my four years' study, there were no courses on patent law, trademark law and copyright law. I had never met the term "intellectual property" or "industrial property."

1. BEGINNING AND DEVELOPMENT OF INTELLECTUAL PROPERTY TEACHING IN CHINA

After the founding of the People's Republic of China, some teaching in trademarks, patents and copyrights was included in the civil law course in the university legal education, which was, obviously, under the influence of the former Union of Soviet Socialist Republics. Later on, owing to the situation known to all of us, legal education suffered a serious setback and then completely stopped during the "Cultural Revolution."

After the 3rd Session of the 11th Central Committee of the Communist Party of China, the drafting of a patent law, a trademark law and a copyright law, was put on the agenda of legislation. A "Patent Law Drafting Group," sponsored by the State Commission of Science and Technology, was established on March 19, 1979. I had the great honor to be involved in that Group. Following the advancement of the drafting work and the establishment step by step of a patent system, it became necessary to consider the training of intellectual property human resources.

It was arranged for a few graduate students of the Information Institute of the China Academy of Science, enrolled through strict national examination, to study patent law. Prior to their dispatching to study patent law abroad, a seminar was organized in the Huairou County (at the northeastern suburb of Beijing) in August-September 1979. Some young

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experts from the China Council for Promotion of International Trade (CCPIT) and from Shanghai were also enrolled in the seminar. I had the great honor to be invited to give lectures on patent law at the seminar. This was the first lecture on patent law in my life. Probably, it was also the first lecture on patent law in Chinese history.

For training qualified talents in the patent field, Mr. Wu Heng, the Permanent Vice-Minister of the State Commission of Science and Technology, consulted with Mr. Guo Yingqiu, the Permanent Vice-President of the People's University of China, establishing a patent training institute in the University. The State Commission of Science and Technology is responsible for the financial budget and teaching staff in science and technology. Vice-president Guo agreed with such suggestion.

However, owing to subjective and objective reasons, such a suggestion was not put into practice. It is a pity that the establishment of a regular intellectual property institute was postponed for many years.

In the summer of 1985, I went to Geneva to attend the ATRIP meeting at the headquarters of the World Intellectual Property Organization (WIPO). During that time, I visited Dr. Arpad Bogsch, the then Director General of WIPO, in his office. Dr. Bogsch said to me that China had established administrative and judicial organizations, as well as intellectual property agencies in the fields of patents, trademarks and copyright. He added that China should consider establishing an intellectual property institute for training IP talents. I fully agreed with him and suggested that, when he visited China, he should arrange a visit to the recently organized State Commission of Education. Later on, when he visited Beijing, Dr. Bogsch had a meeting with Mr. Huang Xinbo, Vice-Minister of the State Commission of Education responsible for foreign affairs. They reached a common understanding and decided to initiate an expert level meeting for discussing detailed matters. In May 1986, a WIPO delegation, including Prof. Curchod, Prof. Ledakis and Prof. Dessemontet, visited Beijing and had a series of meetings with a Chinese delegation, including a professor from Peking University, a professor from Tsinghua University and myself, as the main speaker for the Chinese side. All detailed matters had been thoroughly discussed and the WIPO delegation provided a report in 1987. Because of the lack of finances, the establishment of an IP Center in Beijing and three Centers in Shanghai, Wuhan and Sian could not start. However, the State Commission of Education decided that an Intellectual Property Institute should be established in the People's University of China. This was the first intellectual property education unit in Chinese history. Later on, many IP institutes, schools or centers were established in Peking University, Shanghai University and many other higher learning institutions.

2. PERSPECTIVE OF INTELLECTUAL PROPERTY TEACHING IN CHINA

As mentioned above, during the 20 years after the adoption of reform and opening up policy, rapid development and great success have been achieved in the field of intellectual property teaching. However, owing to the economic globalization and rapid growth of new technology, Chinese intellectual property teaching must be further improved. In my view, the following aspects should be mentioned for improving the intellectual property teaching in China in the coming 21st century.

(a) Intellectual Property Education Should be Further Consolidated, Enlarged and Standardized

Chinese legal education has developed vigorously in the last 20 years, from four law schools and four law departments to more than 300 law schools and law departments at present. As far as I know, intellectual property law is taught in many law schools and law departments. There are some law schools and law departments in which intellectual property law is not taught because of the lack of qualified teaching staff.

Recently, the Ministry of Education issued a document with binding force, which was suggested by the National Instructive Committee on Legal Education. The document provides that 14 "Kernel Courses" (or "Core Courses") should be taught in every law school and law department in China. Constitutional law, civil law, criminal law, civil procedure law, criminal procedure law, international law, as well as intellectual property law and others are included in the "Kernel (Core) Courses." "Kernel Courses" are different from required courses. Required courses are decided by every institute and university. So, they may be different from each other. "Kernel Courses" should be taught in every law school and law department of the above-mentioned 300 universities and institutions. Now, the "Kerne l Course," is being compiled by some experts from the Intellectual Property Institute of the People's University of China. In the not too distant future, intellectual property law teaching in China will be further consolidated, enlarged and standardized.

(b) Strictly Combined with the Developments of Hi-Tech and Economic Globalization, Quality of Intellectual Property Teaching Should be Improved with Major Efforts

On account of the rapid development of hi-technology, with information technology and biotechnology as its core, the construction of an intellectual property legal system and its education meets serious challenges. It is decided that Chinese education should face modernization, the whole world and the future.

For example, the rapid development of information technology, especially Internet, provides many new issues with respect to intellectual property law. Two "Internet Treaties", i.e., the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, approved on December 20, 1996, have some provisions for protecting information networks. Certain countries, such as the United States of America, have enacted relevant laws. In the current revision of the Chinese Copyright Law, some experts suggest that such new topics should be added in the Law. However, intellectual property teaching must include such issues, i.e., a few steps forward beyond the existent laws, in order to enable the students to work smoothly after their graduation.

In conforming to the above-mentioned situation, law of the Internet, or cyberspace law, should be added in the curriculum, at least as an elective course. According to our experience, the bachelor-of-law degree should prolong the study of law from two years to three years. Doctors degrees should be granted by an intellectual property teaching unit and not, as is presently the case, by a civil law teaching unit.

(c) To Enlarge and Strengthen the On-the-job Training of Intellectual Property Professionals

After the approval of the State Council, the Chinese Intellectual Property Training Center, sponsored by the Chinese Patent Office (now the Chinese Intellectual Property Office) and supported by some foreign-related intellectual property agencies, was established in 1998. The main function of the Center is to normalize, institutionalize and standardize the training of on-the-job professionals.

The Center has already started to function. Many seminars and symposiums have been organized. Textbooks are currently being compiled. It will become a very important place for the all-life training of IP professionals in the 21st century.