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by

Prof. Dr. Khaw Lake Tee
University of Malaya, Malaysia.

TEACHING AND TRAINING OF INTELLECTUAL PROPERTY IN UNIVERSITIES AND OTHER TERTIARY EDUCATIONAL INSTITUTIONS IN MALAYSIA - PRESENT SITUATION AND FUTURE DIRECTIONS

Prepared by

Dr Khaw Lake Tee, Associate Professor,
Faculty of Law University of Malaya, Kuala Lumpur

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INTRODUCTION

Intellectual property was, until recently, not a subject traditionally found in the curriculum of a law school. If it was taught at all, it was only as a minor component of another course, such as business law, media law or the law of torts. In some law schools, the subject was offered not as a unit but individually as patents, trademarks or copyright law. Needless to say, the number of people who actually received formal instructions in intellectual property was limited, and legal practitioners who were involved in intellectual property practice were introduced to the subject on the job. However, developments in the last thirty years or so in many parts the worlds, have ensured the law of intellectual property a berth in the curriculum of most law schools, and created an awareness of the need for skills training in certain aspects of intellectual property practice. The situation in Malaysia is no different, although it is only in the last five years or so that the need for a more systematic and rational approach to the teaching and training of intellectual property has been become more apparent.

In this paper, I propose to examine the teaching and training of intellectual property law in Malaysia. I will first outline the current situation, then identify the salient features of the existing system, discuss the present and anticipated needs, and consider some changes to the present approach to teaching and training of intellectual property in this country.

OUTLINE OF THE CURRENT SITUATION

The teaching of Intellectual Property in Malaysia is currently conducted on a formal as well as an informal basis.

Formal Teaching of Intellectual Property

Formally, intellectual property is taught, or at least offered as subject, at the University level in all the four public-funded law schools in Malaysia, that is, the University of Malaya, the National University of Malaysia, the International Islamic University and the MARA Institute of Technology. It was first offered at the University of Malaya and the MARA Institute of Technology in 1984, in the National University of Malaysia in 1989, and in the International Islamic University in 1992.

These law schools offer Intellectual Property (more commonly known as Intellectual and Industrial Property in most of the institutions) as an optional subject or elective for the third and final year students. At the International Islamic University, the course is offered to the second and third year students. At the MARA Institute of Technology, which offers a three-year Diploma in Law and a 4-year Advanced Diploma in Law, the subject is currently taught at the latter level only. At the University of Malaya, the subject is also offered at the graduate level. Also offered at the University of Malaya at the Masters level is the law of copyright.

Typically, the syllabus for the undergraduate degree course covers the traditional subjects of patents, trademarks and passing off, copyright, designs and trade secrets. They are taught over two semesters by way of lectures or seminars and supported by tutorials, except at the International Islamic University, where the subject is offered in one semester only. The course is usually, although not formally, divided into two parts: one part comprises copyright, industrial designs and confidential information, and the other is made up of patents, trademarks and passing off. Because of the diversity and scope of the subject matter, the number of contact hours ranges from 3-4 hours per week for about 25 weeks to 5 hours

per week for about 13 weeks. Assessment is by way of coursework and an examination at the end of the course.

At the postgraduate level, the syllabus also covers the traditional subjects. The course is taught by 25 two to three hour seminars. At the University of Malaya, the students are assessed by two seminar papers and a written examination at the end of the course. The copyright course which is offered at the University of Malaya is divided into two parts. In Part 1, the students are introduced to the princples of the law of copyright. In Part 2, the students are required to write two seminar papers of about 10,000 words each on selected topics relating to the law of copyright. The seminar papers constitute part of the assessment for the course, a written examination at the end of the course constituting the other.

At the MARA Institute of Technology and the National University of Malaysia, some aspects of intellectual property laws, such as copyright, confidential information and trademarks, are also taught as part of Mass Media law in the School of Mass Communication and Department of Mass Communication respectively.

Informal Teaching and Training of Intellectual Property

Informally, the teaching and training of intellectual property takes various forms such as workshops, seminars, conferences and short-term courses. These sessions or courses may be conducted, often with the cooperation of regional or international organisations, by government ministries or agencies, private organisations or law offices. The focus of these sessions or courses vary - from a general introduction of the subject matter of intellectual property to skills training of a specific kind, and in particular relating to patent drafting and examination.

These informal means of disseminating knowledge and practice of intellectual property laws are usually conducted for the benefit of persons who are involved in intellectual property work or related industries, with or without any legal training.

CHARACTERISTICS OF THE CURRENT SYSTEM OF TEACHING AND TRAINING OF INTELLECTUAL PROPERTY IN MALAYSIA

From the brief outline given above, we can pick out six main features in the current situation.

First, we have established the necessary foundation for the teaching of and training of intellectual property in Malaysia; the subject is offered at all the law schools in Malaysia. One of the main problems, however, is the shortage of intellectual property lecturers.

There is currently only a small pool (more like a puddle) of law teachers and practitioners involved in the teaching and training of intellectual property. In the past, this problem had delayed the introduction of the subject in the curriculum. Having introduced the subject, the shortage of intellectual property lecturers has forced law schools to rely on part-timers who are either lecturers from the other law schools or private practitioners, and in cases where such remedial measures were not available, to suspend the programme not too long after its introduction. For instance, in the University of Malaya, the course ran for two academic sessions before it was suspended for five years. It was re-introduced only in the 1991\92 session and has been offered ever since. The same situation was obtained in the National University which had to rely on a part-timer for the three years during which the course was conducted.

However, it is envisaged that this shortage may be alleviated in future with the return of university lecturers who have been sent overseas for further studies in intellectual property or by the recruitment of intellectual property lecturers.

Secondly, the syllabi as currently followed in all four law schools are more or less similar. Given that the primary aim of the courses is to introduce and discuss, at the undergraduate level, the legal principles underlying the various branches of intellectual property, the similarities are understandable, and indeed unavoidable. Inevitably, there is a certain amount of duplication and overlap in the teaching of intellectual property in the various law schools. While unavoidable and to a certain acceptable, it must be seriously considered whether in the face of limited manpower and resources we can afford such duplication and overlap.

With four law schools offering intellectual property law, there is also a certain amount of duplication in the collection of resource materials. In the face of limited funds and difficulties in obtaining access to the latest materials, which are usually foreign, this situation is not desirable.

Thirdly, there is no systematic or formalised training for those involved in intellectual property law practice, and in particular, patent agents or examiners, and if there is any at all, it is done on a piecemeal and ad-hoc basis. Although provisions are being made under the amended Patents Regulations for the conduct of examinations for those wishing to qualify as patent agents, no clear plans are known as yet.

Fourthly, there is little or no interdisciplinary approach to the teaching and training of intellectual property. The subject matter of intellectual property straddles across a wide of range of disciplines - the arts, science, technology, designs, commence and economics. The intellectual property lecturer or student may have no background in any of the disciplines. Intellectual property as taught in the law

schools are purely caselaw- and statute-driven. Similarly, the arts, science or economics student may not be introduced to the subject.

Fifthly, there is a great deal of cooperation amongst university lecturers, intellectual property lawyers and the Ministry of Domestic Trade, whether as teachers or advisers.

Last, but not least, intellectual property lecturers are not exposed to the practical aspects of intellectual property law.

PRESENT NEEDS

As alluded to earlier, intellectual property has become an important area of the law in Malaysia, and indeed in the rest of the world. The catalysts for this trend may be summed up as follows: 1) developments in technology which have enabled copyright works to be disseminated on a wider scale and at the same time facilitated easier and cheaper means of replicating works, both legally as well as illegally; 2) the establishment of our own patent registration system, thus doing away with the previous system of registration of patents in the UK; 3) the linkage between trade and intellectual property leading to the conclusion of the TRIPS agreement has also emphasised the importance of intellectual property to the economic and social development of a country; 4) information technology has also brought into fore the importance of intellectual property particularly in relation to the protection of computer software, and the creation and protection of multimedia works. Malaysia's current industrialisation and development plans have also made intellectual property an important area of the law.

All these factors have worked towards securing intellectual property as an important component in the programme of any law school. It is and should no longer be an esoteric area of the law. There is an urgent need to prepare a pool of persons well-versed in intellectual property laws in order to meet national and

international demands. This pool of people should not be confined to undergraduate or graduate law students only. It is equally important to train legal persons who are involved in the drafting, implementation, interpretation and enforcement of intellectual property laws, such as judges, lawyers, legislators, draftsmen, enforcement and custom officials. Knowledge of intellectual property should also be imparted to creators of works, publishers, business persons, economists, inventors, scientists, engineers and consumers. It is now an important discipline and should be understood even if only at the very basic level.

The study of intellectual property is not and cannot be, for practical reasons, confined to a mere examinantion and understanding of the legal principles and cases involved. At least three of the components of intellectual property, patents, trademarks and industrial designs, require registration before certain proprietary rights may be enjoyed. Invariably involved in the registration process are drafting, documentation and examination on the part of registering authority. These tasks require not only a knowledge of the relevant legal principles, but also certain skills on the part of the registering authority and the applicant. In certain cases, in particular those relating to patents, drafting skills are not sufficient; they must be complemented and supplemented by skills of a technical or scientific nature. A scientific or technical background is thus an essential requisite. Clearly, skills training is an important part of preparing people for the practice of intellectual property. However, skills training is usually not available or offered at the universities offering intellectual property as a subject. Such training involves practical as well as theoretical work and universities are usually more well-placed to offer the latter than the former. The skills required may be acquired on the job but ideally, there should also be formalised training sessions.

The provision of formalised skills training is all the more imperative in view of the amendments to the Patents Regulations 1986. The new regulation 45A requires any person desiring to be registered as a patent agent to, inter alia, sit and pass an examination in the following subjects: technology, Malaysian patent law and

practice, Malaysian trade mark and designs law and practice; and foreign industrial property law and practice.

Currently, the amount of research and writing on Malaysian intellectual property laws still leaves much to be desired. Consequently, there is heavy reliance on foreign materials. It is hoped that with the growing importance of intellectual property, and its teaching and training, there will be more research and publications on Malaysian intellectual property laws.

FUTURE OF TEACHING AND TRAINING OF INTELLECTUAL PROPERTY IN MALAYSIA

Having established the foundation for the teaching and training in intellectual property, and taking into account the various feataures outlined above and current developments and needs, it is perhaps timely to consider the future direction of the teaching and training in intellectual property in Malaysia. We can of course continue with the current system of formal and informal teaching and training by upgrading and improving existing facilities. Alternatively, we can rationalise existing resources and manpower and adopt a more integrated approach in the teaching, training and research of intellectual property law by combining its academic and practical aspects. We should also endeavour to attract scholars and researchers who specialise in intellectual property law. With these objectives in mind, I would like to suggest the establishment of a Centre for Intellectual Property Law with the following thrust activites

to coordinate all teaching and training activities in intellectual property law, including the training of intellectual property lecturers;
to coordinate and conduct, with the cooperation of the Ministry of Domestic Trade, the examinations for patent agents;
to coordinate and initiate research activities in intellectual property law;