

VIPP Roundtable: Nurturing an Active IP Community in Asia

Background

In the last 10-15 years or so, IP professors working on Asia have built up contact mainly through conferences. In addition, some Asian IP forums and even association have been set up in recent years. However, undeniably there is a need for and desirability of having a small group of visionary IP professors to meet regularly, in the form of roundtable that serves as a platform and advocacy for enhancing understanding and improvement of Asian IP research and regimes.

Under the auspices of the Applied Research Center for Intellectual Assets and the Law in Asia (ARCIALA), Singapore Management University (SMU), and the German Max Planck Institute for Innovation and Competition, the first VIPP (Visionary IP Professors) Roundtable was convened in SMU, which was followed by the second in Chinese University of Hong Kong in March 2016, and the third in National Taiwan University in September 2016. The 4th Roundtable is scheduled to be held on April 7-8, 2017 in Hangzhou, with subsequent ones at an interval of 6 months.

In the last three roundtables, we have exchanged knowledge, thoughts and experiences, solicited comments on and cooperation partners for research proposals, and promoted awareness of our common interests and different approaches and the huge potential in regional comparative study. The uninhibited and intimate setting of the roundtable, more in line with Asian tradition, made the free flow of idea among Asian IP scholars possible, which is a valuable supplement to large-scale conferences. It was felt in the third roundtable that VIPP needs to reach out and do some branding. So we decided to put VIPP onto the website of ARCIALA as the first step. In what follows the agenda, list of participants and the summary of each roundtable are detailed:

The First VIPP Roundtable

Date: 27 August 2015

Venue: Sakura Boardroom, Level 4, SMU Lab (Stamford Rd.),
Singapore Management University

| | |
|---------------|---|
| 09:00 – 09.30 | Registration |
| 09:30 – 09:50 | Introduction Professor Kung-Chung Liu and Professor Reto Hilty |
| 09:50 – 10:50 | The project and its possible aims |

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| | - input statements: Professor Liu Chuntian Mr. Hsu Weu-Fu Professor Gopalakrishnan - discussion |
| 10:50 – 11:10 | Coffee break |
| 11:10 – 12:10 | Subject matters of the project - input statements Professor Masabumi SUZUKI Professor CUI Goubing Professor LEE Su-Hua - discussion |
| 12:10 – 13:10 | Lunch |
| 13:10 – 14:10 | Research questions and methodologies - input statements Professor Feroz Ali Professor Ichiro NAKAYAMA Professor LOY Weeloon - discussion |
| 14:10 – 15:10 | Possible outcomes during/as results of the project - input statements (approx. 7 min. each) Professor Ida Madieha Azmi Professor LEE Hwang Professor Jyh-An LEE - discussion |
| 15:10 – 15:50 | Organizational issues |
| 15:50 – 16:10 | Coffee break |
| 16:10 – 17:20 | Charting a road map for the project and next steps |
| 17:20 – 17:30 | Closing remarks Professor Reto Hilty and Professor Kung-Chung Liu |

Participants

Professor Ida Madieha AZMI, International Islamic University Malaysia

Professor Irene CALBOLI, Deputy Director, Applied Research Center for Intellectual Assets and the Law in Asia (ARCIALA), Singapore Management University

Professor CUI Goubin, Tsinghua University, Beijing

Professor Gopalakrishnan, Cochin University, India

Professor Reto HILTY, Director, Max Planck Institute of Innovation and Competition,

Munich, Germany

Mr. HSU Wei-Fu, General Counsel, MediaTek

Professor Feroz Ali, MHRD Chair Professor at IIT Madras

Professor LEE Hwang, Korea University

Professor LEE Jyh-An, Chinese University HK

Professor LEE Su-Hua, National Taipei University

Ms. LI, Yanbing Research Fellow, ARCIALA

Professor LIU Chuntian, Dean IP School, Renmin University, Beijing

Professor LIU Kung-Chung, External Director of ARCIALA, Singapore Management University

Professor LOY Wee Loon, National University Singapore

Professor Ichiro NAKAYAMA, Kokugakuin University

Professor Masabumi SUZUKI, Nagoya University

Dr. Jia WANG, Research Fellow, ARCIALA

Summary

1. Everyone, present or absent, has conveyed the conviction that the stability, prosperity and integration of Asia is a desirable goal, and the enhancement of cooperation in the area of intellectual property laws and regimes via academic efforts is instrumental to the achievement of that goal, notwithstanding the difficulties we might encounter along the way.

2. We have explored the following research topics:

IP, Innovation, and Economic Growth

Emerging methods of dispute settlement such as investor-state dispute settlement, commercial arbitration and etc.

Economic integration and IP

Fostering innovative SMEs

The innovative climate of selected Asian countries

To separate IP negotiation from trade talks

The Constitutionality of IP Provisions of FTA and regional agreements

To explore “success stories in Asia”

A database associated with statistics on IP licensing or other transactions.

Patent

(1) Patent policy

domestic patent policies, regional patent policies and international patent policies

patent policy for SMEs

industry-specific patent policies: food, pharmaceutical, environmental patent policies)

(2) Patent law

Patent enforcement

Patent linkage in the pharmaceutical sector

Exhaustion (national, regional and international)

Employee inventions

(3) Empirical study

A database associated with statistics on patent licensing or other transactions

To examine functioning of the Asian Patent Offices

To examine the current status of patenting (domestic and foreign) and its working (importation and manufacturing)

How Asian countries have made use of flexibilities of the TRIPS Agreement to grow, become innovative and competitive.

To explore whether or not the domestic industries really benefit from a common patent granting system

To explore why no industry would be taker of compulsory licensing in specific economies

To determine the effectiveness of pre-grant opposition in breaking the information asymmetry

To determine the effectiveness of section 3(d) of the Indian Patent Act in curbing the grant of secondary patents for known substances

(4) Harmonization

Resource sharing in patent search and examination

To harmonize substantive provisions that are in conflict and that could be made uniform with minimum changes.

To promote the idea of unitary patent system among several Asian countries

A common patent code

(5) Interplay between patent and competition law

(6) To develop follow-up project to the Patent Declaration

Copyright

Enforcement (criminal sanctions, administrative enforcement)

The impact of sharing

User generated content

Copyright law and new business models

3. Outreach

Asian voice of IP

Advising IP policy makers

Developing IP curriculums

Overall declaration on patent regime

IP textbook based on high-profile Asian IP cases about transactions, strategic decisions, or business models

4. We have reached the following resolutions:

(1) We will meet regularly at a six-month interval.

(2) After confirming with the absentees, the next roundtable will be held between March 5-6, 2016 (Saturday and Sunday) in the Chinese University of Hong Kong.

(3) The second roundtable will be a half-and-one day event, starting from the afternoon of March 5 and ending in the afternoon of March 6.

- (4) While in principle every participant will fly him/herself in, anyone who has financial needs should contact Professor Jyh-An LEE as soon as possible.
- (5) The Faculty of Law of CHKU will provide two-night accommodation.
- (6) Every participant is expected to propose his/her own concrete and feasible research question by the end of January 2016 at the latest, which will be circulated.

The 2nd VIPP Roundtable**Date:** 5-6 March 2016**Venue:** Chinese University of Hong Kong

| March 5 (Saturday), 2016 | |
|---------------------------------|--|
| 14:10-14:30 | Registration |
| 14:30-14:40 | Greeting and welcome address Professor and Dean Christopher GANE Professor Reto Hilty Professor Kung-Chung Liu |
| 14:40-14:50 | Confirmation of the transcript of the first roundtable and the agenda Professor Reto Hilty Professor Kung-Chung Liu |
| 14:50-16:00 | How to Enhance Exchange and Research on Asian IP Regimes? Professor Ming-Yan Shieh Professor Bryan Mercurio Professor Haochen Sun Dr. Danny Friedman |
| 16:00-16:20 | Discussion |
| 16:20-16:50 | Coffee break |
| 16:50-17:40 | GIs and fair use/fair dealing projects Professor LOY Weeloon Innovation practices of the government research institutes in selected Asian countries—With a Focus on Government Agricultural Research institutes Professor Ida Interest Distribution in Employee Inventions--An Asian Perspective Professor GUO He |
| 17:40-18:00 | Discussion |

| March 6 (Sunday), 2016 | |
|-------------------------------|--|
| 9:00-9:30 | Asian Patent Integration Professor LIU Chuntian What is the best IP system for Asian countries? Professor Sang Jo JONG |
| 9:30-10:00 | Discussion |
| 10:00-10:45 | Research project on patent system Professors Tamura, Suzuki and Nakayama |
| 10:45-11:00 | Discussion |
| 11:00-11:30 | Tea break |
| 11:30-12:10 | A comparative study on the law and policy of Standard Essential Patents (SEPs) Professor Feroz Ali Effectiveness and Efficacy of Patent Regime (e.g. pre-grant opposition and Section 3(d) of the Indian Patent Act) in Preventing the Evergreening of Pharmaceutical Patents Professor Rujitha Shenoy (on behalf of Prof. N.S. Gopalakrishnan) |
| 12:10-12:30 | Discussion |
| 12:30-13:30 | Lunch break |
| 13:30-14:10 | Examination of Mistakes Made During the Legal Transplantation of Patent Law in Asia Professor Shu-Hua LEE Competition Law Regulation over IPR Abuse Professor Hwang LEE |
| 14:10-14:30 | Discussion |
| 14:30-15:00 | Coffee break |
| 15:00-15:40 | Closing Plenary Session |
| | Professor Reto Hilty Professor Kung-Chung Liu, Professor Jyh-An Lee, Faculty of Law, CUHK |

Participants

Professor Sang Jo JONG, National Soul University, South Korea

Professor Professor Rujitha SHENOY, Cochin University, India

Professor Ida Madieha AZMI, International Islamic University Malaysia

Professor Reto HILTY, Director, Max Planck Institute of Innovation and Competition, Munich, Germany

Professor Feroz Ali, MHRD Chair Professor at IIT Madras

Professor LEE Hwang, Korea University

Professor LEE Jyh-An, Chinese University of HK

Professor LEE Su-Hua, National Taipei University

Professor LIU Chuntian, Dean IP School, Renmin University, Beijing

Professor LIU Kung-Chung, External Director of ARCIALA, Singapore Management University

Professor LOY Wee Loon, National University Singapore

Professor Ichiro NAKAYAMA, Kokugakuin University

Professor Masabumi SUZUKI, Nagoya University

Professor GUO He, Renmin University, Beijing

Professor SHIEH Ming-Yan, National Taiwan University, Taiwan

Professor Bryan MERCURIO, Chinese University of HK

Professor SUN Haochen, Hong Kong University

Dr. Danny FRIEDMANN, Chinese University of HK

Summary

1. VIPP Roundtable serves as platform and advocacy for enhancing understanding of and cooperation in Asian IP research and regimes.
2. In VIPP Roundtable we exchange knowledge, thoughts and experiences, solicit comments on and cooperation partners for research proposals and promote Asian awareness of our common interests and different approaches and the huge potential in regional comparative study.
3. The free flow of ideas in uninhibited and intimate discussions during the VIPP Roundtable is a cherished supplement to large scale conferences.
4. In the second VIPP roundtable we have talked intensively about R&D in public funded agricultural sector, employee invention, , the use and disuse of (pre-post grant) opposition, patent courts, the interplay between IP law and completion law in Asia (SEP), compulsory licensing, good faith (civil law) v. equity (common law) considerations in patent law etc.
5. In the second VIPP Roundtable we have decided to pursue joint research proposals based on the criteria that topics are relevant for Asia and at least 3 participants are

involved. The following grouping of topics and participants has surfaced:

R&D in public funded agricultural sector (Ida (contact), Reto),

Abuse of trademarks (Danny, contact)

Patent opposition and invalidation (Tamura (contact), Nakayama, Suzuki, Shu-Hua)

SEP &FRAND (JA Lee (contact), Hwang Lee, Feroz, Takayama)

Employee invention (Kung-Chung Liu (contact), Nakayama, Guo He)

6. The contacts for these four topics are entrusted with the task of inquiring the participants about their interested topics, coordinating to define the research question, research methodology (comparative study, survey, questioner etc.), and the contemplated output (report, book, position statement etc.).
7. It was also decided that the host institution will be given the opportunity to propose research topics or issues that are of important relevance to its jurisdiction and make research proposals based on the above-mentioned criteria.
8. Stand-alone project, such as Section 3(d) of the Indian Patent Act) in Preventing the Evergreening of Pharmaceutical Patents, is encouraged to carry on and make report on its findings and applicability to other jurisdictions in the next VIPP Roundtable
9. In addition, some of us voiced strong feeling or need to reach out to policy makers and industries and have impact on policy making. Yet, we understand the importance of being patient; at least we have to know first what we want to do and how to do it before we reach out.
10. However, we agreed that participants should approach their individual national patent offices to collect their view on IP cooperation and harmonization in Asia based on a common outline prepared by Kung-Chung and Reto.
11. We recognize the usefulness of having transcript of the VIPP Roundtable and will continue to compile the transcript. Plz submit the materials you have presented during the 2nd VIPP Roundtable soon to Kung-Chung. The transcript will be printed out and sent to you per post by Kung-Chung. Please do not disseminate the transcript.
12. The 3rd VIPP Roundtable will be held on September 30 (Friday) and October 1 (Saturday) 2016 in Taiwan by School of Law, National Taiwan University.

The 3rd VIPP Roundtable**Date:** 30 September – 1 October 2016**Venue:** School of Law, National Taiwan University

| September 30 (Friday), 2016 | |
|------------------------------------|--|
| 14:00-14:10 | Registration |
| 14:10-14:20 | Welcome Greeting Professor Reto Hilty Professor Kung-Chung Liu |
| 14:20-14:25 | Confirmation of the transcript of the second roundtable and the program Professor Reto Hilty Professor Kung-Chung Liu |
| 14:25-16:00 | Feedback and input from local observers 1. Professor Cheung-Lung SHEN (NCCU), Refinement of Patent Legal System and Jurisprudence in Asia—In terms of the Emerging Innovation in Technologies of Electronic Commerce and Finance 2. The Development of Biopharmaceutical Industry in Asia--Patenting, Enforcement and Public Health: (1) Drug Approval-Patent Linkage in Taiwan: Past, Present and Future (Professor Su-Hua LEE) (2) Pharmaceutical Patent and Competition Law (Professor Hao-Yun CHEN) (3) Patent Exhaustion Doctrine and Method of Medical Treatment (Professor Lung-Sheng CHEN) 3. Professor Hsiao-Fen HSU, Is Trademark or Geographical Indication the Right Fit for Boutique Agriculture?-- Challenges for Asia 4. Professor Jerry FENG (NCCU), Some Reflections on the Asian Pacific Copyright Code Proposed by Adrian Sterling |
| 16:00-16:20 | Discussion |
| 16:20-16:40 | Coffee break |
| 16:40-17:40 | Interview with national PTOs or IPOs 1. Professor LOY Wee Loon 2. Professor CUI Guobin 3. Professor LIM Heng Gee (Universiti Teknologi |

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| | MARA, Shah Alam, Malaysia) 4. Professor Sang Jo JONG 5. Professor Ichiro Nakayama |
| 17:40-18:00 | Discussion |

| October 1 (Saturday), 2016 | |
|-----------------------------------|---|
| 9:30-10:20 | Update 1. Professor Rujitha Shenoy (on behalf of Prof. N.S. Gopalakrishnan) Effectiveness and Efficacy of Patent Regime (e.g. pre-grant opposition and Section 3(d) of the Indian Patent Act) in Preventing the Evergreening of Pharmaceutical Patents 2. Professor LIM Heng Gee, Patent Policies of Agricultural Research Institutes in the Asian Region (on behalf of Professor Ida) |
| 10:20-10:40 | Discussion |
| 10:40-11:00 | Tea break |
| 11:00-12:10 | 3. Professors Tamura, Suzuki, Nakayama, Shu-Hua LEE, Revocation Proceedings of Patent : Comparison between Taiwan and Japan New Research Proposals 1. Dr. Danny Friedmann, Abusive Use of Trademark Law in Asia |
| 12:10-12:30 | Discussion |
| 12:30-13:30 | Lunch break |
| 13:30-14:30 | 2. Professor Kung-Chung LIU et al, As a Matter of Standard—The Regulation of SEP FRAND Licensing in Asia and Beyond 3. Professor CUI Guo-Bin, Copyright Filtering and the Reform of Safe Harbor Rule |
| 14:30-14:50 | Discussion |
| 14:50-15:10 | Tea break |
| 15:10-15:30 | Closing |

Participants

Professor Sang Jo JONG, Seoul National University, South Korea

Professor Professor Rujitha SHENOY, Cochin University, India

Professor LIM Heng Gee (Universiti Teknologi MARA, Shah Alam, Malaysia)

Professor Reto HILTY, Director, Max Planck Institute of Innovation and Competition, Munich, Germany

Professor Feroz Ali, MHRD Chair Professor at IIT Madras

Professor LEE Jyh-An, Chinese University of HK

Professor LEE Su-Hua, National Taiwan University

Professor LIU Chuntian, Dean IP School, Renmin University, Beijing

Professor LIU Kung-Chung, External Director of ARCIALA, Singapore Management University

Professor LOY Wee Loon, National University Singapore

Professor Ichiro NAKAYAMA, Kokugakuin University

Professor Masabumi SUZUKI, Nagoya University

Professor SHIEH Ming-Yan, National Taiwan University, Taiwan

Professor SHEN Cheung-Lung, National Chengchi University, Taiwan

Professor CHEN Hao-Yun, National Taiwan University of Science and Technology, Taiwan

Professor CHEN Lung-Sheng, National Chung Hsing University, Taiwan
 Professor HSU Hsiao-Fen, Donghai University, Taiwan
 Professor Jerry FENG, National Chengchi University, Taiwan
 Professor CUI Goubing, Tsinghua University, Beijing
 Dr. Danny Friedmann

Summary of the 3rd VIPP Roundtable

1. Local observers have reported on the following research topics that might be of relevance for Asian IP landscape: “Refinement of Patent Legal System and Jurisprudence in Asia—In terms of the Emerging Innovation in Technologies of Electronic Commerce and Finance,” “Development of Biopharmaceutical Industry in Asia--Patenting, Enforcement and Public Health: (1) Drug Approval-Patent Linkage (2) Pharmaceutical Patent and Competition Law (3) Patent Exhaustion Doctrine and Method of Medical Treatment,” and “Is Trademark or Geographical Indication the Right Fit for Boutique Agriculture?-- Challenges for Asia.
2. Update on the “Effectiveness and Efficacy of Section 3(d) of the Indian Patent Act in Preventing the Evergreening of Pharmaceutical Patents” has been made. New research proposals on “Abusive use of trademark law in Greater China” and “Copyright Filtering and the Reform of Safe Harbor Rule” have been discussed.
3. Feedbacks have been given to 1. and 2. The key concern throughout the discussion is “What is the research question?” or finding the right research question for Asian IP.
4. The existence of the Asian Pacific Copyright Code proposed by Adrian Sterling at Asia Pacific Copyright Association in 2015 has been brought to the attention of the absolute majority of the attendees for the first time, and some reflections on its vastness in coverage have been made.
5. Interview with PTOs or IPOs from mainland China, Malaysia, Japan and South Korea shows PTOs are keen in cooperating among themselves (especially in the form of Patent Prosecution Highway (PPH)), and less so in harmonization of IP Laws.
6. Professors Tamura, Suzuki, Nakayama, and Shu-Hua LEE have reported their study on “Revocation Proceedings of Patent: Comparison between Taiwan and Japan.” Issues, such a whether there will be a co-authored paper published and/or whether some lessons can be derived from the study for other Asian economies of civil law tradition and with similar patent system, have been discussed.
7. The research proposal for Patent Policies of Government-funded Agricultural Research Institutes in the Asian Region initiated by Ida was echoed by Professor Jerry Fong and will be activated.
8. Built on the SEP &FRAND group, a more concrete research topic (“The Regulation of SEP FRAND Licensing in Asia and Beyond”) and a common structure has been put forward by Kung-Chung. Professors Feroz Ali, Hwang Lee, Jyh-An Lee, Suzuki, Nakayama, Jong and Kung-Chung have registered their interest. In addition, Burton Ong (NUS) and Mr. KHOO Guan Huat from Malaysia have signed up to the project. As a result, the research project has formally taken off, which is aiming at publication of a book.

9. Professors Shu-Hua LEE and Hao-Yun CHEN have agreed to lead the work on patent linkage in Asia, which will weigh the justification of patent linkage against the background of existing supplementary patent or supplementary protection certificate (SPC). The group will also survey the legislation and practice of patent linkage in Asia in addition to public health and/or insurance infrastructure of individual countries. It is hoped that the group will come up with suggestions for Asian economies on how best to introduce patent linkage when they have to (factors to be considered etc.) or on how to improve their existent patent linkage regimes. VIPP will follow up on this in its 4th Roundtable.
10. It is felt that VIPP need to reach out and do some branding. An interim arrangement has been agreed upon: to put VIPP onto the website of ARCIALA as the first step. It has been proposed that we address ourselves as VIPP fellows in our writings in addition to our academic affiliation. Further discussion is needed for consensus to be reached on this proposal.
11. The 4th VIPP Roundtable will be held on April 7 (Friday) and 8 (Saturday) 2017 in Hangzhou by Renmin University.

The 4th VIPP Roundtable**Date:** 7 – 8 April 2017**Venue:** Shanghai at East China University of Political Science and Law

| April 7 (Friday), 2017 | |
|-------------------------------|---|
| 14:00 | Departing from the Hotel to ECUPSL |
| 14:30-14:35 | Welcome Greeting Professor Liu Chuntian Professor Huang Wushuang Professor Reto Hilty Professor Kung-Chung Liu |
| 14:35-16:00 | Innovation, Economic Development and IP in India and China—IT Industry Study Group: Preliminary findings Professor CHEN Xiangdong, School of Economics and Management, Behang University (Beijing) Professor Biswajit Dhar, Jawaharlal Nehru University (New Delhi) Professor Reji K. Joseph, Institute for Studies in Industrial Development (New Delhi) |
| 16:00-16:20 | Coffee break |
| 16:20-17:00 | Determinants of quadic patenting: Market access, imitative threat, competition and strength of intellectual property rights Professor HUANG Can, School of Management, Zhejiang University |
| 17:00-17:30 | Patent Policies of Agricultural Research Institutes in the Asian Region Professor Rujitha Shenoy Professor LIM Heng Gee Professor Jerry Fong |
| 17:30-18:30 | Professor Deep-Linking and Making Available to the Public in Asia Professor WAN Yong Effectiveness and Efficacy of Patent Regime (e.g. pre-grant opposition and Section 3(d) of the Indian Patent Act) in Preventing the Evergreening of Pharmaceutical Patents Professor Rujitha Shenoy |
| 18:30 | Welcome Dinner |

| April 8 (Saturday), 2017 | |
|---------------------------------|---|
| 9:30-11:00 | Patent Linkage in Asia—Some Policy Statement Professor Shu-Hua Lee Professor Hao-Yun Chen |
| 11:00-11:20 | Tea break |
| 11:20-13:00 | Principles for Copyright Code in Asia |
| 13:00-14:00 | Lunch break |
| 14:00-15:30 | IP Cooperation in Asia (Asian Patent/Trademark Convention/Office) |
| 15:30-15:50 | Tea break |
| 15:50-16:10 | Closing |
| 18:00 | Dinner and Night Cruise on the Huangpu River |

Summary of the 4th VIPP Roundtable (April 7 and 8, 2017, ECUPL)

1. Study group on the IP Policy of State-funded Agricultural Research Institutions in Asian Region
 - 1.1. Headed by Jerry Fong, with participants from mainland China (Professor HOU Yangkun, Beijing Institute of Technology (hykpost@263.net),) India and Malaysia
 - 1.2. ARCIALA can provide funding
 - 1.3. Best practices for Asian governments to secure food safety etc.
 - 1.4. The usefulness of IP (also applied by and licensed through national authorities)
 - 1.5. Report back to the 5th VIPP roundtable

2. Study group on the Principles for Deep-Linking, Framing, and Making Available to the Public in Asia
 - 2.1. Headed by Wan Yong and Cui Guobin
 - 2.2. To reflect on (and further develop) the paper of European Copyright Society on this issue and case law in Asia
 - 2.3. To come up with suggested principles for the determination of the scope of the Making Available to the Public Right, Legality of Deep-Linking, Framing, and Linking to unlawfully uploaded content, according to
Copyright law
Unfair competition law
 - 2.4. Report back to the 5th VIPP roundtable

3. Feroz and Rujita to come up with a 2 page writing on the benefit of Section 3(d) of the Indian Patent Act in preventing the evergreening within the same medical use for other Asian jurisdictions to follow.

4. Study group on National health, patent protection, patent linkage
To find justification for patent linkage and alternatives

Trade-off between patent linkage and patent extension, Supplementary Protection Certificate (SPC)

Take a more critical view on data exclusivity, patent linkage

To be sure, there is no international obligation to adopt patent linkage and to protect data exclusivity

5th VIPP roundtable in Seoul on Sep.15-16, 2017 (Re-scheduled to Japan, April 2018)

5th VIPP roundtable in Japan

5. Study group on IT Industry in India and China (hardware and software) —The role of IP

5.1.To reach common understanding and definition of IT industries

5.2.To reflect the main findings of the current literature and to identify the missing aspects.

5.3.To be conscious of the different components of IP and their respective role, such as patents mostly related to hardware, copyright mostly related to software, (is software as such patentable in China?) trademarks related to branding

5.4.What are the driving forces, factors for investment and development in IT as opposed to other industries?

The 5th VIPP Roundtable**Date:** 14-15 April 2018**Venue:** 221 Conference Room, 2F, Asian Legal Exchange Plaza (ALEP),
Graduate School of Law, Nagoya University

| April 14 (Saturday), 2018 | |
|----------------------------------|--|
| 14:00 | Departure from the Hotel - Meet students from Nagoya University at the hotel lobby at 13:50. |
| 14:40-14:45 | Welcoming Remarks - Dean(-to-be) & Professor Masabumi Suzuki |
| 14:45-15:00 | Opening Remarks - Professor Reto Hilty - Professor Kung-Chung Liu |
| 15:00-16:00 | Session 1: National Health, Patent Protection, Patent Linkage - Presentations by Professors Su-Hua Lee and Hao-Yun Chen - Discussion |
| 16:00-16:20 | Coffee Break |
| 16:20-18:00 | Session 2: Update on FRAND Licensing of Standard Essential Patents in Asia - Presentations by Professors Jyh-An Lee, Sang Jo Jong and Ichiro Nakayama - Discussion |
| 18:00 | Adjourn - Move to a restaurant for dinner |

| April 15 (Sunday), 2018 | |
|--------------------------------|---|
| 9:00 | Departure from the Hotel - Meet students from Nagoya University at the hotel lobby at 8:50 |
| 9:40-10:30 | Session 3: Brief of Section 3(D) of the Indian Patent Act in Preventing Evergreening within the Same Medical Use for Other Asian Jurisdictions to Follow - Presentation by Professor Ali Feroz - Discussion |
| 10:30-11:20 | Session 4: New Development in Asia (International Panel in IP Court in Korea) - Presentation by Mr. Sang Wook Han (Kim & Chang) - Discussion |
| 11:20-12:10 | Session 5: IP Cooperation in ASEAN - Presentation by Professor Sovath Phin (Pannasastra University, Cambodia) - Discussion |
| 12:10-13:30 | Lunch |
| 13:30-14:20 | Session 6: Principles of Deep-Linking, Framing, and Making Available to the Public in Asia - Presentation by Professor Yong Wan - Discussion |
| 14:20- 15:00 | Session 7: Emerging IP Issues in Japan (1) - Presentation by Professor Takeshi Maeda (Kobe University) - Discussion |
| 15:00-15:40 | Session 8: Emerging IP Issues in Japan (2) - Presentation by Professor Tatsuhiro Ueno (Waseda University) - Discussion |
| 15:40-16:00 | Coffee Break |

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| 16:00-16:40 | Session 9: Emerging IP Issues in Japan (3) - Presentation by Professor Yoshiyuki Tamura - Discussion |
| 16:40-17:40 | General Discussion - Remarks by Professors Reto Hilty and Kung-Chung Liu - Discussion |
| 17:40 | Adjourn - Move to a restaurant for dinner |

Summary of the 5th VIPP Roundtable (April 14 and 15, 2018 Nagoya University)

1. Study group on the IP Policy of State-funded Agricultural Research Institutions in Asian Region, headed by Jerry Fong

Resolution:

VIPP asks the study group to report back to the 6 VIPP roundtable

2. Study group on the Principles for Deep-Linking, Framing, and Making Available to the Public in Asia, headed by Wan Yong and Cui Guobin: To reflect on (and further develop) the paper of European Copyright Society on this issue and case law in Asia

Resolution:

Internet evolves, so does the application of linking technology to access copyright-protected works: simple linkage, hyper linkage, deep linkage, frame linkage, embedding etc.

Since copyrighted works are used in this content, parties involved tend to resort to copyright law.

However, copyright law has generally been overburdened to deal with suspicious new business models and stigmatized as blocking the application of new ICT technology. In addition, resorting to copyright has an unexpected side effect particularly in Asia, where copyright infringement is under heavy criminal punishment.

We need to define the various linkage technologies first. As a matter of principle, however, the starting point should be that the technology of linking to freely accessible websites as such (including deep linking) does not affect the right to make available to the public. Only under specific circumstances (e.g. certain forms of embedding foreign content in the own website) copyright law (or unfair competition law) might be infringed.

We then need to typify the actual business models that apply linkage technologies.

We can then decide if any specific business model that applies linkage technologies is violating any copyright by differentiating whether

- 1) the copyright owners would like to disseminate their works for free,
- 2) there is harm to the right holders,
- 3) there is really culpable intention on the side of linker.

bearing in mind that copyright should not be overburdened as unfair competition law can come to its rescue.

If there is no copyright infringement, we can then (still) decide whether the unfair competition law can be applied.

VIPP asks Wan Yong to redraft the principles and Cui Guobin to help along to report back to the 6th VIPP

3. Feroz and Rujita to come up with a 2 page writing on the benefit of Section 3(d) of the Indian Patent Act in preventing the evergreening within the same medical use for other Asian jurisdictions to follow.

Resolution:

VIPP is not endorsing 3(d) as such, but intends to provide some guidelines or check lists for countries which are contemplating to adopt 3(d), drawing their attention to the important factors, pre-conditions that they need to take into consideration, possible results, against their short term and long-term policy goals of satisfying accessibility and developing pharma development. VIPP asks Feroz to draft such a guideline/check list based on Indian experiences under his two recent studies for further discussion in the 6th VIPP.

4. Study group on National health, patent protection, patent linkage

Resolution:

1. General approval of the statement draft prepared by Shu-Hua and Hao-Yun
2. Need to cite the two declarations of MPI for Innovation and Competition

3. Delegate the further refinement to Shu-Hua and Hao-Yun.
 4. Any suggestions should be made within the following two weeks in writing.
 5. Any dissenting opinions will be preserved and exhibited in footnote.
 6. Further discussion and adoption of the statement in 6th VIPP Roundtable
5. It is important to keep the dialogue on promoting Asian patent cooperation with the practitioners going. VIPP welcomes SW Han to take the lead.

6th VIPP roundtable in KL, Malaysia on October 26, 27 2018.

6. Study group on IT Industry in India and China (hardware and software) —The role of IP
 - 6.1.To reach common understanding and definition of IT industries
 - 6.2.To reflect the main findings of the current literature and to identify the missing aspects.
 - 6.3.To be conscious of the different components of IP and their respective role, such as patents mostly related to hardware, copyright mostly related to software, (is software as such patentable in China?) trademarks related to branding
 - 6.4.What are the driving forces, factors for investment and development in IT as opposed to other industries?

The 6th VIPP Roundtable**Date:** 27 October 2018**Venue:** University of Malaya

| October 26 (Friday), 2018 | |
|----------------------------------|------------------------------------|
| 14:00 | Check in Hotel Pullman |
| 15:00-17:00 | Campus tour - University of Malaya |
| 19:00-21:00 | Reception |

| October 27 (Saturday), 2018 | |
|------------------------------------|---|
| 9:00 | Departure from the Hotel |
| 9:30-9:40 | <p>Welcome</p> <p>Dato' Associate Professor Dr Johan Shamsuddin Sabaruddin Dean, School of Law, University of Malaya</p> <p>Mr. KHOO Guan Huat, SKRINE (TBC)</p> <p>Professor Reto Hilty</p> <p>Professor Kung-Chung Liu</p> |
| 9:40-10:40 | <p>Session 1</p> <p>Adopting the “Statement on Intellectual Property Protection for Pharmaceuticals and the Drug Approval-Patent Linkage in Asia” prepared by Professors Su-Hua Lee and Hao-Yun Chen</p> <p>- Discussion</p> |
| 10:40-11:00 | Coffee break |
| 11:00-12:30 | <p>Session 2</p> <p>Discussing “Principles of Deep-Linking, Framing, and Making Available to the Public in Asia” prepared by Professor Yong WAN</p> <p>- Discussion</p> |
| 12:30-13:30 | Lunch |
| 13:30-14:30 | <p>Session 3</p> <p>Adopting “Guidelines or check lists for countries which are contemplating to adopt 3(d) of Indian Patents Act” prepared by Professor Feroz Ali</p> <p>- Discussion</p> |

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|-------------|--|
| 14:30-15:00 | <p>Session 4</p> <p>Charting New Frontier of Technologies and IP: Blockchain/Algorithm(Big Data)/AI</p> <p>Rapporteur: Benjamin Tham/Yuen Kit Kuan (research associate/ external research fellow), ARCIALA</p> |
| 15:00-15:40 | <p>Session 5</p> <p>“IPR effects on research, future local innovations and price of medicine: Lessons from CPTPP, ASEAN FTAs, and RCEP”</p> <p>- Presentation by Professor Sufian Jusoh, National University of Malaysia & Director IKMAS</p> <p>- Discussion</p> |
| 15:40-16:10 | Coffee Break |
| 16:10-17:00 | <p>General Discussion</p> <p>1. The way forward</p> <p>Open to sign-up of adopted statement/guidelines</p> <p>Workshop on “IP courts or specialized IP judges in Asia” in 2019</p> <p>New initiatives</p> <p>2. The 7th VIPP Roundtable</p> |
| 17:30 | Dinner |

Summary of the 6th VIPP Roundtable (October 27, 2018 University of Malaya)

- VIPP fellows thank KHOO Guan Huat from SKRINE for sponsoring the 6th Roundtable.
- VIPP asked Feroz to draft the guideline for further discussion at the 6th VIPP roundtable based on Indian experiences of Section 3(d) of the Indian Patent Act in preventing the evergreening within the same medical use for other Asian jurisdictions to follow.

Resolution:

Accepting the guidelines that Feroz has proposed, however

Asking Feroz to follow the format of “Statement on Intellectual Property Protection for Pharmaceuticals and the Market Approval Mechanisms in Asia” and further improve the guidelines by making them less India-centric and more broadly termed by the end of November, and

Deciding to circulate the updated guidelines by Feroz to all VIPP fellows and

asking for their approval by following the “**negative consensus**” rule, namely the guidelines will be deemed accepted by VIPP if there is no consensus in rejecting them; and

Launching the guidelines at the 4th IPSA Conference to be held by ARCIALA on Jan. 30-31, 2019 and opening for endorsement.

3. VIPP asked Su-Hua and Hao-Yun to further refine the statement on National health, patent protection, patent linkage for further discussion at the 6th VIPP

Resolution:

Accepting the “**Statement on Intellectual Property Protection for Pharmaceuticals and the Market Approval Mechanisms in Asia**”,

Asking a native speaker to read and confirm the language of the statement,

Circulating the checked Statement to all VIPP fellows and asking for their approval by following the “negative consensus” rule, namely the Statement will be deemed accepted by VIPP if there is no consensus in rejecting them; and

Launching the Statement at the 4th IPSA Conference to be held by ARCIALA on Jan. 30-31, 2019 and opening for endorsement.

4. VIPP is ready to reach out through the official launch of the above-mentioned Guidelines and Statement, we therefore ask Kung-Chung to explore the **feasibility of having VIPP’s own logo, website**, and even of having **some form of informal organization**, such as a club, society etc.
5. VIPP asked Wan Yong and Cui Guobin to reflect on (and further develop) the paper of European Copyright Society and case law in Asia while further working on the Principles for Deep-Linking, Framing, and Making Available to the Public in Asia, and to report back to the 6th VIPP

Resolution:

Urging WAN Yong to incorporate, abide by the following resolution of the 5th VIPP roundtable, redraft the Principles and follow the format of the “Statement on Intellectual Property Protection for Pharmaceuticals and the Market Approval Mechanisms in Asia” to report back to the 7th VIPP roundtable:

“Internet evolves, so does the application of linking technology to access copyright-protected works: simple linkage, hyper linkage, deep linkage, frame linkage, embedding etc.

Since copyrighted works are used in this content, parties involved tend to resort to copyright law.

However, copyright law has generally been overburdened to deal with suspicious

new business models and stigmatized as blocking the application of new ICT technology. In addition, resorting to copyright has an unexpected side effect particularly in Asia, where copyright infringement is under heavy criminal punishment.

We need to define the various linkage technologies first. As a matter of principle, however, the starting point should be that the technology of linking to freely accessible websites as such (including deep linking) does not affect the right to make available to the public. Only under specific circumstances (e.g. certain forms of embedding foreign content in the own website) copyright law (or unfair competition law) might be infringed.

We then need to typify the actual business models that apply linkage technologies. We can then decide if any specific business model that applies linkage technologies is violating any copyright by differentiating whether

- 1) the copyright owners would like to disseminate their works for free,
- 2) there is harm to the right holders,
- 3) there is really culpable intention on the side of linker.

bearing in mind that copyright should not be overburdened as unfair competition law can come to its rescue.

If there is no copyright infringement, we can then (still) decide whether the unfair competition law can be applied.”

6. To hold the 7th VIPP roundtable in Xiamen University in the first half of 2019 in Xiamen University.

After confirming with Professor Xiuqin LIN, dean of IP Institute, Xiamen University and Reto, it is confirmed that the **7th VIPP roundtable** will be held in **Xiamen University Malaysia in KL on May 10 (Friday) and 11 (Saturday), 2019.**

The 7th VIPP Roundtable**Date:** 10 – 11 May 2019**Venue:** Xiamen University Malaysia, Kuala Lumpur

| May 9 (Thursday), 2019 | |
|-------------------------------|---|
| 12:00 onward | Check in Hotel |
| 14:00 | Meet at the lobby of the hotel to leave for Xiamen Intermediate People's Court |
| 14:30-15:30 | Visit Xiamen Intermediate People's Court Roundtable discussion on IP protection from Comparative and Global Perspectives |
| 18:30 | Dinner |

| May 10 (Friday), 2019 | |
|------------------------------|---|
| 9.00 | Departing from the Hotel to venue <ul style="list-style-type: none"> • Meet student guide at the hotel lobby • Seminar Place: |
| 9:20 – 9:30 | Welcome Remark Professor Xioqin Lin Professor Reto Hilty Professor Kung-Chung Liu |
| 9:30 – 10:15 | Discussion and adoption of Statement on Anti-evergreening Provisions in the Patent Laws of Asian Countries |

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|---------------|--|
| 10:15 – 11:15 | Discussion The Principles for Dealing with Technologies and Business Models of Linking and Framing in Asian Jurisdictions (Draft) |
|---------------|--|

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|------------------------------|--|
| May 10 (Friday), 2019 | |
| 9.00 | Departing from the Hotel to venue <ul style="list-style-type: none"> • Meet students at the hotel lobby • Seminar Place: |
| 9:20 – 9:30 | Welcome Remark Professor Xioqin Lin Professor Reto Hilty Professor Kung-Chung Liu |
| 9:30 – 10:15 | Discussion and adoption of Statement on Anti-evergreening Provisions in the Patent Laws of Asian Countries |
| 10:15 – 11:15 | Discussion The Principles for Dealing with Technologies and Business Models of Linking and Framing in Asian Jurisdictions (Draft) |
| 11:15 – 11:30 | Break |
| 11:30 – 12:30 | Discussion Guidelines for Utility Models in Asia |
| 12:30 – 14:00 | Lunch |
| 14:00 – 15:00 | Discussion Proposal for Harmonized Trademark Search Database in Asia |
| 15:00 – 15:15 | Break |
| 15:15-16:15 | Presentation by IP Research Institute, Xiamen University One Belt One Road and IP Initiatives |

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| 16:15 – 17:00 | General discussion |