

## *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 4<sup>th</sup> 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**

**Time:** 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	<b>The project and its possible aims</b> - input statements:

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

### **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 Goubing, 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 Jyh-An LEE, Chinese University HK  
Professor LEE Su-Hua, National Taipei University  
Ms. Yanbing Li, Research Fellow, ARCIALA  
Professor LIU Chuntian, Dean IP School, Renmin University, Beijing  
Professor Kung-Chung LIU, External Director of ARCIALA, Singapore Management  
University  
Professor LOY Weeloon, 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

March 5-6, 2016 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)**

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 Jyh-An LEE, Chinese University of HK

Professor LEE Su-Hua, National Taipei University

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

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

Professor LOY Weeloon, National University Singapore

Professor Ichiro NAKAYAMA, Kokugakuin University

Professor Masabumi SUZUKI, Nagoya University

Professor Guo He, Renmin University, Beijing

Professor Ming-Yan Shieh, National Taiwan University, Taiwan

Professor Bryan Mercurio, Chinese University of HK

Professor Haochen Sun, 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 3<sup>rd</sup> VIPP Roundtable

September 30 and October 1, 2016 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 Weeloon 2. Professor CUI Guobin 3. Professor LIM Heng Gee (Universiti Teknologi 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, National Soul 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 Jyh-An LEE, Chinese University of HK

Professor LEE Su-Hua, National Taiwan University

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

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

Professor LOY Weeloon, National University Singapore

Professor Ichiro NAKAYAMA, Kokugakuin University

Professor Masabumi SUZUKI, Nagoya University

Professor Ming-Yan Shieh, National Taiwan University, Taiwan  
Professor Cheung-Lung SHEN, National Chengchi University, Taiwan  
Professor Hao-Yun CHEN, National Taiwan University of Science and Technology,  
Taiwan  
Professor Lung-Sheng CHEN, National Chung Hsing University, Taiwan  
Professor Hsiao-Fen HSU, Donghai University, Taiwan  
Professor Jerry FENG, National Chengchi University, Taiwan  
Professor CUI Goubing, Tsinghua University, Beijing  
Dr. Danny Friedmann

### **Summary of the 3<sup>rd</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> VIPP Roundtable - 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	<p><b>Welcome Greeting</b>  <b>Professor Liu Chuntian</b>  <b>Professor Huang Wushuang</b>  <b>Professor Reto Hilty</b>  <b>Professor Kung-Chung Liu</b></p>
14:35-16:00	<p><b>Innovation, Economic Development and IP in India and China—IT Industry Study Group: Preliminary findings</b>  <b>Professor CHEN Xiangdong, School of Economics and Management, Beihang University (Beijing)</b>  <b>Professor Biswajit Dhar, Jawaharlal Nehru University (New Delhi)</b>  <b>Professor Reji K. Joseph, Institute for Studies in Industrial Development (New Delhi)</b></p>
16:00-16:20	Coffee break
16:20-17:00	<p><b>Determinants of quadic patenting: Market access, imitative threat, competition and strength of intellectual property rights</b>  <b>Professor HUANG Can, School of Management, Zhejiang University</b></p>
17:00-17:30	<p><b>Patent Policies of Agricultural Research Institutes in the Asian Region</b>  <b>Professor Rujitha Shenoy</b>  <b>Professor LIM Heng Gee</b>  <b>Professor Jerry Fong</b></p>
17:30-18:30	<p><b>Professor Deep-Linking and Making Available to the Public in Asia</b>  <b>Professor WAN Yong</b>  <b>Effectiveness and Efficacy of Patent Regime</b></p>

	<b>(e.g. pre-grant opposition and Section 3(d) of the Indian Patent Act) in Preventing the Evergreening of Pharmaceutical Patents Professor Rujitha Shenoy</b>
18:30	Welcome Dinner

### **April 8 (Saturday), 2017**

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

### **Summary of the 4<sup>th</sup> 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 5<sup>th</sup> 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 5<sup>th</sup> 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
- 5<sup>th</sup> VIPP roundtable in Seoul on Sep.15-16, 2017.
- 6<sup>th</sup> 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 Roundtable of the “VIPP for Asian IP Cooperation Project”

Nagoya, JAPAN

Date: April 14-15, 2018

Venue: 221 Conference Room, 2F, Asian Legal Exchange Plaza (ALEP),  
Graduate School of Law, Nagoya University

April 14th (Saturday) 14:00	Departure from the Hotel - Students of Nagoya University will meet you 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 15th (Sunday) 9:00	Departure from the Hotel
	- Students of Nagoya University will meet you 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
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 5<sup>th</sup> 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 6<sup>th</sup> 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 6<sup>th</sup> 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 6<sup>th</sup> 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.

**6<sup>th</sup> 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?