



Newsletter

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The purpose of establishing the Center for the Legal Systems of Intellectual Property

The mission of the Waseda COE Program, led by Professor Tatsuo Uemura, is to establish a stable corporate legislation for Japan through the analysis of the existing problems of Western legislation. In order to pursue this mission the Center for the Legal Systems of Intellectual Property has formed a research organization to carry out various projects. Policy proposals are to be delivered through an independent, private third party, which will contribute to the sound development of IP legislation, currently under the dominant leadership of the Japanese government. In order to engage in policy-making discussion up front, it is essential to have academic policy proposals that are based on substantial research and analysis, in addition to verifying policy proposals that are made by government bureaucrats. Our projects include the development of a global network of researchers and scholars and the design of a global database system for the resolution and judgementing of IP disputes. Solving IP disputes is the motive as well as the means for the implementation of each project. Conducting empirical and philosophical research, tracing back to the fundamental structure of IP law, will help us to discuss IP legislation academically, independent of the changing trend of IP law. In order to make returns to the public, it is important to inform other universities and legal professions of this valuable knowledge, and to invite researchers from other universities and various organizations or associations to join our research group. Collaborating with another department for IP expert education at Waseda law school is necessary. In accordance with the points

mentioned thus far, our organization aims to take bold steps to implement policy proposals from an academic standpoint over the next five years of the COE project.

Overview

(1) Project

The Center for the Legal Systems of Intellectual Property has three major projects. The first is to develop an English database of IP dispute cases (precedents) in Asian regions including Japan. The project requires relations with scholars and practitioners in the respective Asian nations to collaborate on cases and translate them into English. Linking an English database with the existing IP database of the Western nations will facilitate the second project, which focuses on collaborating with researchers and practitioners globally, as well as developing younger researchers with IP expertise in Asia. To go along with the results of these two projects, a third project will deliver IP related policy proposals in an independent think tank. In this sense, three projects are conducted independently, but are connected very closely.

(2) The Center for Legal Systems of Intellectual Property

The center consists of internal and external members. Core (internal) members lead each project. There are ten core members: five instructors, one research associate, and four research assistants (RA). External members are expected to participate in each project as advisory staff. Currently six persons are working as external members. A monthly planning meeting is to be held for updates on the status of each project, to check progress, to examine new projects and so on.

English database Project of Intellectual Property Judicial Precedents of Asian countries including Japan

1. Purpose and method

The purpose of this project is to provide a useful means for researchers and practitioners to develop an international legal framework for intellectual property rights. The use of common materials written in English has the ability to create to a certain degree a universal understanding across different countries. To this purpose, the project will select important judicial precedents of Asian IPR cases acknowledged by the researchers and practitioners in each country, add summary and notes, and then translate everything into English. Next, an open database accessible to anyone in the world on the Internet will be constructed. This project will also include the English translation of Japanese IPR judicial precedents. Traditionally, no similar effort had been made to organize Japanese IPR precedents systematically or to translate them into English. In this respect, this project has a significant meaning for Japan in that the excellent judicial precedents of Japan that had not been introduced to the world formerly because of a language barrier will now have world appeal.

2. Current status

At Waseda University, we have been working on this project since FY2003 at the 21st century COE project started by the Ministry of Education, Culture, Sports, Science and Technology. Young researchers from our university visited the Asian countries of China, Thailand and Indonesia. There, they met the concerned parties in person to develop close relationships both in terms of human and material support in order to implement this project. Basically, the project will proceed in the following steps: ①Scholars and practitioners will select the important judicial precedents of each country, summarize them in one sentence, and make a list of about 300 cases, ② researchers at Waseda or practitioners of

whatever country will check the list from the viewpoint of a third party, and select precedents that have value enough to be translated,

③scholars and practitioners of that country will summarize the selected precedents and add notes, ④translate the summaries and notes, and revise.

Current progress status of the project in each country is as follows:



(1) China

In China, since the circumstances of precedents differ by region, the project is divided into the three regions such as Beijing, Shanghai, and Guangzhou. Professors in universities of these three areas must select the important precedents and make a list by the end of September 2004. Waseda University and the Chinese practitioners must check the list by the end of July, and Chinese scholars will add summaries and notes by the end of December. A cooperative relationship with researchers and practitioners in Beijing, Shanghai, and the Guangzhou area has been already established. The project will proceed immediately when the conditions for rights and financial agreements are ready.

(2) Thailand

In Thailand, the Central Intellectual Property and International Trade Court supports the project. The list of judicial precedents stated in 2-② has been already submitted. Checking of the list will be done by the end of May. The Central Intellectual Property and International Trade Court has already organized a thoroughgoing project team, a committee (The English-Database of Thai IP Cases Committee) of about ten judges, and the project will proceed as soon as an

agreement is signed.

(3) Indonesia

Negotiations are currently underway for cooperation with the Institute for Law & Technology at Indonesia University (Fakultas Hukum Universitas Indonesia), Supreme Court of the Republic of Indonesia, and Ministry of Justice and Human Rights Republic of Indonesia. A formal agreement is expected soon so that we can start the project in full-scale.

(4) Japan

By the end of May, 100 cases will be selected respectively from precedents in three categories such as Patent · Design Law, Trademark · Unfair Competition Prevention Law, and Copyright Law. In corporation with the Center for Advanced Study and Research on Intellectual Property (CASRIP), the University of Washington, the Institute of Intellectual Property will start translation of Supreme Court judicial precedents, then move to precedents by the lower courts one by one. Informal consent has been set with a Supreme Court to link our achievement of this project with their website.

Events

1. The Mock Trial on Intellectual Property Case with US and Japanese Law

With the Tokyo District Court, the Research Center for Legal Systems of Intellectual Property hosted a mock trial on a patent dispute with both US and Japanese legal procedure at the Tokyo District Court on December 16, 2003. About 100 people gathered at the en bank court room and 400 at the creditor assembly hall as audience. It was the first time to hold such a mock trial at the Tokyo District Court and one of major press in Japan covered that event. (Nikkei Shinbun, December 17, 2003)

On the same patent infringement case, two trials were conducted in one day: one with Japanese law in the morning and other with US law in the afternoon. After the trials, a symposium was held on Intellectual Property in US and Japan, with discussion on the result of the

mock trial. Real judges and lawyers participated in the trials and twelve jurors were selected for the US trial. The case was about a patent on a method for determining the free calcium ion concentration in a blood sample collected into a syringe while reducing error in determination due to use of heparin. Japanese trial and US trial reached different conclusions since no required result was set in advance. In the technology of plaintiff, the pledget is placed in a syringe after freezing process while the pledget got frozen in a syringe in the technology of defendant. In Japanese trial, it was concluded that defendant's products did not infringe the patent because the order of the process was essential part of the patent, making two technologies different. On the contrary, US jurors reached that the product infringed the patent because the technologies were basically the same in spite of the difference of the process order.

Four cameras placed each for judge, plaintiff, defendant, and witness, recorded all the process of the trials in the en bank court room, showing them simultaneously at the screen of the creditor assembly hall. Digital Recording Studio (DRS), a recording system, which is developed by Nagoya University, could deal with four cameras and audios together, synchronize four recorded contents and stored them as MPEG2. Law students at law schools and judges and legal trainees will be able to use this excellent record of the mock trial as educational resource.



Participants are as follows, excluding organizers.

Japanese Trial

Plaintiff	Mr. Seiji Ohno, Lawyer
	Ms. Hisako Tanaka, Lawyer
Defendant	Mr. Eiji Katayama, Lawyer
	Ms. Nao Ebata, Lawyer

Mr. Hiroshi Kobayashi, Lawyer
 US Trial
 Judge Randarl Rader, Court of Appeals for the
 Federal Circuit
 Mofa Team (Morrison&Foerster LLP) Plaintiff
 Mr. A.C.Johnson
 Mr. Craig Celniker
 Mr. Bartlet
 Finnegan Team(Finnegan Henderson Farabow
 Garret & Dunner LLP) Defendant
 Mr. Michael Kelly
 Mr. John Lowe
 Mr. Naoki Yoshida
 Professor Martin Adelman
 Professor Toshiko Takenaka
 Interpretation: Nakamura & Partners
 Record: Totsu Sangyo Corporation
 Simultaneous interpretation:
 Simul International, Inc.



2 . Japan and Korea Intellectual Property Symposium

The Research Center for Legal System of Intellectual Property held a Japan and Korea Intellectual Property Symposium from February 24th to 26th in 2004. Korean and Japanese researchers had a discussion about the issues including “Observation of IP dispute from the aspect of private international law”, ”Private International law issues on IP”, ”Japan-Korea FTA and IP”, and “Development of IP laws after WTO enacted”.

Speakers and contents are as follows.

Day 1 February 24, Tuesday 15:00 -18:00
 “Observation of IP Dispute From the Aspect of Private International Law”
 Joint research conference

Chairman: Masato Dougauchi, Professor of Law, the University of Tokyo

1. Raising an issue by Shoichi Kidana, Professor of Law, Dr., Waseda University
 2. Reviewing problems of IP dispute matter in Preliminary Draft Convention adopted by the Special Commission of Hague on 30 October 1999

Kwang-Hyun Suk, Associate Professor of Law, Department of Law, College of Law, Hanyang University

3. Main points and issues on a draft of ALI (American Law Institute) in 2002

“Main Points and Issues on a Draft of ALI in 2002”, Kong Woong Choe, Lawyer, Chief Judge (retired), Patent Court, Korea (retired); Counsel, Yoon & Yang, LLP.

“Rules of International Private Law on International IP Disputes – the meaning and issues of ALI Project”, Takaya Itoh, Research Associate, School of Law of Aoyama Gakuin University

4. Main points and issues on Max Planck Institute for Intellectual Property

“Issues on Max Planck Institute for Intellectual Property”, Satoshi Watanabe, Professor, School of Law, Osaka Professor, School of Law, Osaka University

“Regulation related International Jurisdiction on IP disputes - a draft by Max Planck Institute (2000.1) ”, Kyung-Han Sohn, Lawyer, Vice President of Korea Private International Law Association, Senior Partner Aram International Law Offices

Day 2: February 25, Wednesday 10:00 -12:30
 ”Private international law issues on IP”

(Open seminar
 held with Institute of Comparative Law)
 1. International Trial Jurisdiction of IP Dispute in Korea
 Kwang-Hyun Suk, Associate Professor of Law,

Department of Law, College of Law, Hanyang University

2. Applicable Law on IP disputes in Korea
Kyung-Han Sohn, Lawyer, Vice President of Korea Private International Law Association, Senior Partner Aram International Law Offices

Joint research conference 15:00-18:00
"Japan-Korea Free Trade Agreement and IP"

1. Japan-Korea FTA and IP Related Regulation
"Japan-Korea FTA and IP Related Regulation",
Hyojil Ahn, Professor, Dr, Kwangwoon University

"Japan-Korea Free Trade Agreement and IP Related Laws", Tetsuya Imamura, Research Associate, Waseda University

2. Research Plan in the Future
Shoichi Kidana, Professor of Law, Dr., Waseda University

Day 3: February 26, Thursday 9:00-12:00

"Development of IP Laws after WTO Enacted"
Chairman Ryu Takabayashi, Professor of Law, Waseda University, the Research Center for Legal System of Intellectual Property

1. Characteristics of Korean IP legislation: Hyojil Ahn, Professor, Dr, Kwangwoon University

2. Impact of WTO/TRIPs on Recent Developments and Thereafter in Korea -From Harmonization to Localization-: Sang Jo Jong, Professor of Law, College of Law, Seoul National University

3. WIPO Internet Treaties and Korean Copyright System: Dae-Hee Lee, Professor of Law, Department of Intellectual Property, College of Law, Inha University, Incheon, Korea

4. Japanese Developments in the Field of Copyright since Accession to WTO: Hiroshi Saito, Dr., Senshu University

5. Development of Industrial Property Law in Japan after WTO enacted: Shoichi Kidana, Professor of Law, Dr., Waseda University

3. IP Enforcement in Asia

The Research Center for Legal System of

Intellectual Property held an international symposium titled as "IP Enforcement in Asia" at IBUKA MASARU International Conference Hall, Waseda University on March 22, 2004. This symposium featured the enforcement of Intellectual Property Right in Asia. In the first part of the session, IP professionals and researchers from various Asian countries presented conditions of IP enforcement in Asia. In the second part, panelists reported and discussed about a specialized court with Intellectual Property Jurisdiction since Japan was moving to establish a specialized court for IP Jurisdiction. In this part, judges from Thailand and South Korea, which had a specialized court for IP, gave observation on its operation. In the third part, panelists discussed whether constructing a database for IP precedents in Asia was necessary or not, relating with the Waseda University's project of IP precedents database in Asia.

Participants from outside of Waseda University were as follows.



10 : 00 Opening: Professor Tatsuyo Uemura

The first session 'Issue of the IP Enforcement in Asia', starting at 10 : 10

- "IP protection in China and Shanghai Courts", Zhang Xiao Du, Judge of Shanghai High People Court, China

- "Analysis about Background of Legal Execution of IPR", Guo He, Professor of Renmin University of China

- "Challenging Chinese Enterprises in Intellectual Property after WTO Entry", Zhang Ping, Associate Professor of Beijing University of China

- "Current and Future IP Enforcement in Korea", Do, Doo Hyung, Lawyer of Korea

- "IP Enforcement in Malaysia", P. Kandiah, Lawyer of Malaysia, Kandiah & Associates SDN. BHD
 - "IP Enforcement in Japan", Shyunichi Doi, Secretary of Strategic Council on Intellectual Property, Japan
 - "Issues of the IP Enforcement in Thailand", Ruangsit Tankarnjananurak, Judge and Secretary of the Central Intellectual Property and International Trade Court, Thailand
- Coordinator: Tatsuki Shibuya, Professor of School of Law, Waseda University

The second session 'Creation of a specialized court with Intellectual Property Jurisdiction', starting at 13 : 30

- "The Central Intellectual Property and International Trade Court", Phattarasak Vannasaeng, Chief Judge of the Central Intellectual Property and International Trade Court, Thailand
 - "The Creation of a Specialized Court with Intellectual Property Jurisdiction in Asia" , Suvicha Nakvachara, Deputy Chief Judge of the Central Intellectual Property and International Trade Court, Thailand
 - "Patent Court of Korea", Lee, Hoe Kee, Judge of Patent Court of Korea
 - "IP Courts in Singapore", Farah Namazie, Barrister at Law of Singapore, Namazie & Co.
 - "Japanese Procedure of handling IP disputes -History and Future-", Makoto Jozuka, Director of 1st Division Administrative Bureau, Supreme Court of Japan
- Coordinator: Ryu Takabayashi, Professor of School of Law, Waseda University

The third session 'The Expectation of IP Disputes Database' <panel discussion>
16 : 00

- Sripibool Visit, Judge of the Central Intellectual Property and International Trade Court, Thailand
- Lee, Han Ju, Chief Judge of Southern District Court of Seoul, Korea
- P. Kandiah, Lawyer of Malaysia, Kandiah & Associates SDN. BHD

Farah Namazie, Barrister at Law of Singapore, Namazie & Co.

Tatsuki Shibuya, Professor of School of Law, Waseda University

Makoto Jozuka, Director of 1st Division Administrative Bureau, Supreme Court of Japan

Ichiro Nakayama Deputy Secretary of Strategic Council on Intellectual Property, Japan

Moderator Ryu Takabayashi, Professor of School of Law, Waseda University

17 : 30 Closing: Professor Ryu Takabayashi

4 . Intellectual Property Law and its procedure in Thailand

The Research Center for Legal System of Intellectual Property invited acting judges including Chief Judge of Thai Intellectual Property International Central Court to be a speaker at Waseda University on March 26, 2004. Speakers and speech titles are as follows.

- "The hearing of IP cases in the Provincial Court", Phattarasak Vannasaeng, Chief Judge
- "Procedures and Rules", Suvicha Nakvachara, Deputy Chief Judge
- "Associate Judges", Ruangsit Tankarnjananurak, Judge and Secretary
- "Over-Criminalization", Sripibool Visit, Judge



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