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Eric Easton

University of Baltimore School of Law, eeaston@ubalt.edu

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PROTECTING INTELLECTUAL PROPERTY RIGHTS THROUGH CIVIL LITIGATION: A SYMPOSIUM

Professor Eric B. Easton[†]

I. INTRODUCTION

On September 30, 1996, nineteen lawyers, law professors and judges from the People's Republic of China began a six-week program of classroom study, practical experience, and scholarly exchange that focused on the American system of protecting intellectual property rights through civil litigation. The essays and articles that follow represent a sampling of the presentations during the final, symposium phase of this program. This introduction will describe the program itself in some detail, introduce the participants, and offer some personal observations on the experience.

The program was funded by a \$107,000 grant from the United States Information Agency's Office of Citizen Exchange Programs to the University of Baltimore's Center for International and Comparative Law, in cooperation with the Maryland Department of Business and Economic Development. It was designed primarily to benefit young Chinese law professors and practitioners, many of whom I was able to meet in China during the previous summer and invite to Baltimore.

Through the intercession of senior officials of the State Council and Supreme People's Court, we were also privileged to invite a number of more senior scholars, judges, and attorneys. The result was an extraordinary, if not unprecedented, diversity of regional and professional perspectives

[†] Professor Easton is an Associate Professor at the University of Baltimore School of Law. He is also a Senior Research Associate for the Center for International and Comparative Law and Director of the Protecting Intellectual Property Rights Through Civil Litigation Symposium.

among the Chinese participants, which informed and enriched the experience for all involved.

The initial, two-week phase of the program included field trips to the U.S. Copyright Office, the Patent and Trademark Office, three federal courts, and one congressional committee involved in intellectual property rights. Participants were introduced to the American case method approach to legal education and given the opportunity to meet with American practitioners in copyright, patent, and trademark law.

In the second, three-week phase of the program, each of the Chinese participants was placed with an American law firm or other intellectual property-related organization to gain some first-hand exposure to the practice of intellectual property law in this country. Their experiences varied widely. Some were able to travel with their assigned organizations to Los Angeles, Denver, and New York City. Some were invited to meet with clients (or members) having intellectual property interests in China. Some attended depositions, hearings, and pretrial conferences, while others used the time and resources for research.

The final, week-long symposium phase of the program gave Chinese and American participants the opportunity to share their views on various aspects of intellectual property law. Although we are able to publish only a fraction of the exchanges that took place during the week, we have selected a representative sample of the presentations for this issue of the Intellectual Property Law Journal.

If there is any one idea that emerges from the experience it is this: the Chinese not only recognize, but embrace, the concept of intellectual property rights as fundamental to their own economic development and their participation in the world trade community. They are committed to building a legislative regime, administrative infrastructure, and enforcement mechanisms comparable in effectiveness and efficiency to any in the world. But they demand, and deserve, the respect of the fully developed countries for their progress to date, and patient support for their continuing struggle against cultural and practical obstacles to achieving their goals.

This idea is reflected in all of the Chinese presentations selected for publication here. These are not formal, documented articles, vetted by "higher authorities," but rather oral presentations by highly respected scholar/professionals that were prepared over the course of a very few, very busy weeks. Thus, their true value is not so much in their contribution to scholarship but in their direct contribution to understanding. And that, after all, is scholarship's only valid purpose.

II. THE PARTICIPANTS

The Chinese participants in the program were selected in a variety of ways, which accounted for the unusual diversity. Five of the participants were selected by a senior intellectual property officer of the State Council, Mr. Jia Mingru, while two judges were chosen by the Supreme People's Court through the good offices of Judge Jiang Zhipei, a well-known and widely traveled senior judge. I had the good fortune to meet both of these gentlemen in Beijing last summer.

Three of the participants came from Anhui University in Hefei. Anhui Province is Maryland's "Sister State" in China, and our partner, the state's Department of Business and Economic Development, maintains a close relationship with institutions there. The American Embassy in Beijing introduced me to Dean Zhang Naigen of Fudan University's International and Economic Law Department, who sent his deputy to participate in the program.

Chinese scholars Dr. Zhou Guangyuan and Li Lisha at the University of Baltimore led us to participants from Shandong University and East China University of Science & Technology in Shanghai. Private attorneys in Beijing learned of the program through a variety of different sources, including the Internet, which also led me to two scholars from Peking University by way of a visitor at the University of Missouri-Kansas City Law School. One of them, Professor Zheng Shengli, became the delegation's administrative leader.

The following is an alphabetical list of the Chinese participants:

- CHU Yuming, 32, is Associate Professor in the Law Department of Anhui University, where he teaches undergraduate courses in business and company law and graduate courses in company law and securities regulation. He has written more than ten articles on trademark law, and is now broadening his academic interest to include copyright and patent law.
- DONG Tianping, 32, is Associate Judge, the Supreme People's Court of China, and also tries intellectual property cases. He has published explanations of Chinese technology contract and trademark law and is currently participating in the writing of an IPR litigation course. Mr. Dong is a member of the China Judges Association and is vice general secretary of the China Intellectual Property Society.

- HAO Xiaofeng, 34, is Lecturer at the School of Intellectual Property Law, Beijing University, where he received his Doctor of Laws in 1995. He is also a part-time judge at the Intellectual Property Trial Chamber of Beijing Second Intermediate People's Court, dealing with patent, trademark, and copyright disputes. Mr. Hao, a former zoology teacher and patent agent, specializes in patent issues concerning biotechnology. He has published extensively in that area and has been honored as well for his development of computerized research systems.
- HUANG Danhan, 47, is Partner and Director of Beijing Bridge Law Firm, where her responsibilities include intellectual property law, as well as international trade, joint ventures, technology transfer, etc. She is also a councilor of the Chinese International Law and Private Law Societies. Ms. Huang was a member of the Chinese governmental negotiating team in bilateral negotiations between the U.S. and China in 1992. She received her Doctor of Laws from the University of Strasbourg, France, in 1987.
- JIN Yulin, 41, is Lecturer in the Law School of the University of International Business and Economics, Beijing, where he teaches intellectual property and technology transfer law. He is councilor of the Copyright Society of China and a member of the China Association for Intellectual Property Research. Mr. Jin has published in both copyright and trademark areas, and in 1992, traveled to Japan as a member of a Chinese Trade Delegation.
- LI Kungang, 32, is Lecturer in the Law Department of Anhui University, where he received his Master of Law degree, and part-time lawyer in Anhui Anda Law Office. Mr. Li teaches securities regulation, company law, and intellectual property law at the undergraduate level. He also teaches English and has served as a part-time editor in the Anhui University Publishing House.
- LIU Chuntian, 48, is Professor of Law at the People's University of China, Beijing, where he directs the Teaching and Research Center for Intellectual Property Law. He is also a lawyer with the Beijing 10th Law Firm. Mr. Liu is also Deputy Secretary General of the Intellectual Property and Copyright Societies of China. He visited the U.S. last year as a member of a delegation investigating trade secret law, and previously spent a year as a visiting professor at

Japan's AICHI University. In 1988, Mr. Liu attended a meeting of the International Copyright Society in Switzerland.

- LU Zhian, 31, is Deputy Dean of the International Law Department of Shanghai's Fudan University and a senior research member of its Center for Intellectual Property Study. He is also a councilor of the Chinese International Economic and Private Law Societies and part-time lawyer in the Shanghai Fudan Law Office. Dean Lu is currently working toward his Ph.D. in international relations in the International Politics Department at Fudan.
- LUO Wenming, 33, is an Attorney in the Beijing Times Law Firm, where he deals with intellectual property and contract issues. He was previously manager of legal affairs in the contract department of the China National Offshore Oil Corp. Mr. Luo holds a Master of Law degree in economic law from Beijing University and a Masters in energy and environmental management and economics from the Scuola Superiore di Mattei in Milan. He is also a member of the China Law Society.
- MAO Xinzhuang, 47, is Associate Professor of Law at the College of Economics & Business, East China University of Science & Technology, Shanghai. He also works as a lawyer at the affiliated Shanghai Investment & Finance Law Firm. Mr. Mao has been teaching and researching law for 14 years and considers intellectual property law one of his fields. He also notes that intellectual property cases are increasingly important in his law practice.
- QU Desen, 47, is Professor of Law and Vice President, University of Shoudu Business & Economics, Beijing. Mr. Qu teaches and writes in the area of trademark and other intellectual property law. He is Executive Director of the Beijing Economic Law Research Society; Director, China Industrial and Commercial Administrative Academy; and Vice President, Beijing Industrial and Commercial Administrative Academy.
- SUN Xinqiang, 38, is Associate Professor in the Law School of Shandong University at Jinan, where he is responsible for preparing the establishment of a Training Center for Intellectual Property Law at Weihai, where the Law School may soon relocate. Mr. Sun earned a masters degree in political science from Bowling Green University and is a member of the Shandong Society for the Science

of Law, the Chinese Association of International Law, and the Chinese Research Institute of American History.

- TSOU Weining, 29, is an Associate Attorney in the Jun He Law Office, Beijing, where he has represented both foreign and domestic clients in litigation and arbitration proceedings. He received his LL.M. from China University of Political Science & Law, Beijing, and taught intellectual property courses there until 1994. Mr. Tsou interned with the China International Economic & Trade Arbitration Commission in Beijing.
- WANG Rongfang, 27, is Lecturer in international economic law at the College of Economics & Business at East China University of Science & Technology, Shanghai. She also works as a lawyer at the Shanghai Investment and Finance Law Firm, where she has handled numerous intellectual property law cases. Ms. Wang holds a Master of Law degree from East China University of Politics & Law.
- WANG Xianlin, 31, is Associate Professor in the Law Department of Anhui University and part-time lawyer with the affiliated Anda Law Firm. Mr. Wang is director of teaching and research for the Department's Section on Economic Law and holds a Master of Law degree from China University of Political Science & Law, Beijing. He has written two books and more than 30 articles and has been asked to write a book on Hong Kong's intellectual property law. Mr. Wang's special interest is the interface of intellectual property law and competition law.
- YU Xiaobai, 41, is Associate Judge, the Supreme People's Court of China, Section of Intellectual Property Rights, where she is primarily involved in trial-level work. Ms. Yu is the author of a 1992 collection of Chinese IPR law and a 1995 explanation of that law. Forthcoming publications include an explanation of Chinese copyright law and a handbook for judges. Ms. Yu is a member of the China Judges Association, China Women Judges Association and China Law Society.
- YUE Feitao, 32, is Partner and Director of the Intellectual Property Department of the Zhonglian Law Firm, Beijing, where she specializes in copyright matters. Ms. Yue holds a Master of Law degree from People's University Law School and is a member of the Chinese Societies of International and Economic Law, the Beijing

Lawyer's Association and its Intellectual Property Committee, and the Chinese Copyright Society. She had previously been a lecturer in international economic law at Beijing Polytechnic University, and spent several months as assistant judge at the Shenzhen Intermediate Court.

- ZHANG Lei, 41, is Assistant Professor and Assistant Dean of the Economic Law Department of Beijing Polytechnic University, where she has taught Chinese economic law for more than ten years. She is also a lawyer with the Hua Yan Law Firm, Beijing. Ms. Zhang is widely published in Chinese economic law and has recently begun to focus on intellectual property law.
- ZHENG Shengli, 53, is Professor of Law and Secretary-General of Beijing University's School of Intellectual Property Law. A well-published computer science expert, Professor Zheng is also Secretary-General of the Intellectual Property Society of Chinese Universities, an intellectual property consultant to the courts in Beijing, a Patent Agent of China, a member of the Patent Committee of the China Intellectual Property Society, and a mediator/arbitrator of the WIPO Arbitration Center.

The American participants in the program were primarily scholars and practitioners in the Baltimore-Washington area. They are best introduced through their many and varied roles in the program. Those few whose symposium presentations are published are more thoroughly profiled below.

III. THE PROGRAM

The participants arrived at Baltimore-Washington International Airport on Sunday, Sept. 29, and were taken to their apartment building where they could eat and rest. The following day, they were given an orientation to the University and the City of Baltimore, then formally welcomed at an opening dinner.

Work began in earnest on Tuesday, Oct. 1, with a day-long presentation on American copyright law by Robert Kasunic, a copyright practitioner and adjunct professor of law at the University of Baltimore School of Law. Wednesday featured a tour of the U.S. Copyright Office and briefing from policy analyst Maria Pallante. On Thursday, it was back in the classroom for copyright case studies presented by area practitioners: Frank Gorman, Gorman & Williams, Baltimore; James Astrachan, Weiner

Astrachan Gunst Hillman & Allen, Baltimore; and Eric Schwartz, Proskauer, Rose, Goetz & Mendelsohn, Washington. Trademark law was a particular interest of many of the participants, and Friday's program was a combination of theory and case studies by Eric Cowan of the Baltimore firm of Whiteford, Taylor & Preston.

On Monday, Oct. 7, Royal Craig, a patent lawyer in Baltimore and adjunct professor at University of Baltimore School of Law, gave a day-long introduction to American patent law. The group visited the U.S. Patent & Trademark Office on Tuesday morning, then received a briefing on international trade at George Washington University. The latter was organized by Professor Andy Sun of GWU's Dean Dinwoodey Center for Intellectual Property Studies. Patent case studies were presented on Wednesday by Royal Craig; Bill Ramsey, Borinsky, Ramsey & Cook, Columbia, Md., and adjunct professor, University of Baltimore; Phil Wrist, Fitzpatrick, Cella, Harper & Scinto, Washington; and Mark Traphagen, Software Publishers Association, Washington.

On Thursday, Oct. 10, the group was introduced to U.S. Court of Federal Claims by Judge Roger Andewelt, and the U.S. Court of Appeals for the Federal Circuit by Judge Randall Rader. They heard oral arguments in a patent infringement case in the Court of Appeals before traveling to the offices of attorney Robert Vanderhye, Vanderhye & Nixon, Arlington, Va., for a briefing on the streamlined procedures of the U.S. District Court, which the participants would see the following day. Friday morning, they received a briefing from Judge T.S. Ellis and watched both criminal and civil proceedings on the docket that day. In the afternoon, they were briefed on current intellectual property legislation by Mitch Glazier and Dan Freeman of the House Judiciary Committee staff.

As noted above, the second phase of the program, which began on Monday, Oct. 14, saw each participant placed with an American law firm or related organization for a three-week, hands-on clinical experience. Hosts for this phase of the program included Beveridge, DeGrandi, Weilacher & Young, Washington; CSC Intelicom, Inc., Bethesda; Cushman Darby & Cushman, IP Group of Pillsbury, Madison & Sutro, Washington; Fitzpatrick, Cella, Harper & Scinto, Washington; Gorman & Williams, Baltimore; International Law Institute, Washington; Lowe, Price, LeBlanc & Becker, Alexandria; Proskauer, Rose, Goetz & Mendelsohn, Washington; Shulman, Rogers, Gandal, Porby & Ecker, Rockville; Software Publishers Association, Washington; Sughrue Mion Zinn Macpeak & Seas, Washington; Watson Cole Stevens Davis, Washington; Waverly International, Baltimore; and Weiner Astrachan Gunst Hillman & Allen, Baltimore.

All of the participants made solid connections in the American legal and intellectual property communities, while improving their understanding

of the American legal system. In many cases, they were able to experience the litigation process first hand, with actual clients. And some were able to travel at their own or their host's expense to branch offices around the country.

Also during this phase, the participants attended a National Conference on Industrial Design Protection, sponsored by the American Intellectual Property Lawyers Association, on Oct. 23. University of Baltimore Professor William Fryer, the program's senior faculty adviser, was the conference leader and arranged for all of our guests to attend.

The final phase of the program was a week-long symposium, featuring formal and informal presentations by Chinese and American participants. Dean John A. Sebert of the University of Baltimore School of Law and Professor Zheng Shengli of Peking University offered welcoming messages, which appear below on pages 15 and 17. Professor Liu Chuntian of People's University offered an overview of intellectual property rights in China, which is transcribed and translated at page 19.

It is from Professor Liu's presentation that one senses the importance of legal reform in China today. Law is so important in China today, he says, "that we can say a new law is a new textbook for the Chinese people." Professor Liu also describes the great obstacles to reform and counsels patience:

For China, the concept of intellectual property rights is in its adolescence. In my opinion, we should not blame a new and young law for its immaturity. Understanding, tolerance, and friendly assistance are more rational responses.

And we would be remiss to overlook the warning in his admonition that China will find its own way to the protection of intellectual property rights. "Contrary to the thinking of some American politicians, it is useless to try to force China to do anything."

The symposium's first day also featured presentations on Intellectual Property Considerations in Bringing New Products to Market. Leonard Bloom, Bloom & Kreten, Towson, offered his views on Intellectual Property Considerations in Product Development, while Perry Saidman, Saidman Design Law Group, Silver Spring, discussed Design Patents. Carolyn Donohue, president of Waverly International, Baltimore, offered a case study on Introducing a new Chinese Language Publication in China; Professor Wang Xianlin of Anhui University, presented a Summary of Hong Kong Intellectual Property Law; and H. Ward Classen, General Counsel, CSC Communications Industry Services, Bethesda, concluded the day with a presentation on International Software Licensing.

On Tuesday, Nov. 5, the focus turned to Practicing Intellectual Property Law in China. An American perspective was offered by Arthur Wineburg, Cushman, Darby & Cushman, IP Group of Pillsbury, Madison & Sutro, Washington. Unfortunately, Mr. Wineburg was recovering from an injury and was unable to participate in the program. I read portions of the paper, in which Mr. Wineburg emphasized the absence of an independent judiciary in Asian legal tradition and extrajudicial measures that foreign intellectual property owners might take to protect their rights.

Judge Dong Tianping took issue with Mr. Wineburg's premise, defending the independence of the judiciary in China and dismissing Mr. Wineburg's paper as inapplicable to China. In his own presentation, which is transcribed and translated at page 33, Judge Dong insisted that the courts are not influenced by any administrative agency or social organization in conducting trials. Only the law and the facts are considered, he said, and all parties--including foreigners--have equal rights and obligations. Because most intellectual property cases occur in regions of China where the economy and the judicial system are well developed, he said, litigants can expect them to be handled fairly by Chinese courts.

In the afternoon, Charles Pagle, a student at the University of Maryland School of Law who had previously studied law at People's University in Beijing, delivered his paper on Chinese Trademark Law, which appears at page 37. Professor Qu Desen, University of Shoudu Business & Economics, offered commentary on Mr. Pagle's paper, which follows at page 83.

Wednesday, Nov. 6, was devoted to Teaching Intellectual Property Law in the United States and China. After Dean John Sebert introduced the University of Baltimore's Center for International and Comparative Law, a number of Chinese participants were invited to give brief presentations about their own schools and programs: Professor Zheng Shengli on Peking University's School of Intellectual Property; Professor Liu Chuntian on People's University's Intellectual Property Teaching & Research Center; and Professor Lu Zhian on Fudan University's Center for Intellectual Property Study.

Of particular interest was a free-wheeling discussion on whether law professors in China should be spending their time practicing law or rather dedicating themselves to research and teaching. Many of the same issues were raised in the Chinese context as are raised when the issue comes up in the United States, i.e., are the students being shortchanged or does law practice keep the professors in touch with the real world?

Following an informal luncheon sponsored by the Center for International and Comparative Law, three American instructional programs were highlighted: the University of Baltimore's Lab-to-Market Program,

presented by Professor Lanny Herron, Merrick School of Business; The George Washington University's LL.M. Program in Intellectual Property, presented by Professor Andy Sun; and the University of Maryland's Intellectual Property Clinical Program, presented by Professor Max Oppenheimer. Professor Mao Xinzhuang, East China University of Science & Technology, concluded the day with an overview from the Chinese perspective.

On Thursday, Nov. 7, the focus was New Technology and Intellectual Property Issues. University of Baltimore Professor Neil Kleinman, Yale Gordon College of Liberal Arts, offered a radical theory on Copyright in the Digital Age, and defended it against more traditional views expressed by Len Lazarick, Managing Editor, Patuxent Publishing Co. That discussion was followed by a detailed primer on Protecting Computer Hardware and Software by Peking University's Professor Zheng Shengli.

After lunch, James Powers, Shulman, Rogers, Gandal, Pordy & Ecker, Rockville, gave a paper on the Internet and Intellectual Property Issues, and Professor Hao Xiaofeng of Peking University discussed selected intellectual property cases.

The last day of the program featured two papers on Intellectual Property Protection and International Trade: Intellectual Property and the International Trade Commission by William P. Atkins, Cushman Darby & Cushman, Intellectual Property Group of Pillsbury, Madison & Sutro; and Intellectual Property and International Trade Relations by Professor Lu Zhian, Fudan University. Professor Lu expressed serious concern that current international agreements appropriately bridge the economic and technological gap between developed and developing countries. Both papers are reprinted at page 105 and 133, respectively. Professor Sun Xinqiang of Shandong University also offered informal observations on the subject of intellectual property and international trade.

IV. OBSERVATIONS

This program was initially conceived with the understanding that China was rapidly becoming a major player in international trade and will someday achieve the great power stature it has not enjoyed for more than a century. We set out to achieve and, I think, have succeeded in achieving, a number of very important goals:

1. To convey to those Chinese professionals who will be developing their legal system over the next generation the importance of intellectual property rights to Chinese domestic development, no less

than international trade, and the value of a civil litigation system to protect those rights.

2. To educate young Chinese legal professionals, including practicing lawyers, government officials, and academics in the theory and practice of intellectual property law, including copyright, patent, and trademark law, as practiced in the United States and internationally.
3. To demonstrate, through the study of actual intellectual property cases, how the availability of civil litigation protects authors, inventors, and entrepreneurs from infringement of intellectual property rights without imposing a burden on state enforcement mechanisms.
4. To introduce Chinese legal professionals to the governmental infrastructure that allows their American counterparts to prosecute infringement lawsuits through extended visits to the Copyright Office of the Library of Congress, the Patent and Trademark Office of the United States Department of Commerce, and selected federal courts.
5. To provide Chinese legal professionals with practical experience in intellectual property litigation by arranging brief internships with private law firms with substantial intellectual property practices or with the legal departments of manufacturing, software, and media companies or organizations.

We also believe that the symposium, with the support of this journal, will serve to open a channel for sharing views on intellectual property issues among the Chinese and American scholars and practitioners. And we hope that you, our readers, will benefit from this dialog and take every opportunity to participate in it.

Finally, I would like to acknowledge the generous assistance of all the participants in all three phases of this program. One and all, they gave their time, their energy and, above all, their wisdom to make this project a success. I must also thank the many other people who assisted in this project. From the University of Baltimore: President Mebane Turner, Dean John Sebert, Professor William Fryer, Professor Mortimer Sellers, Professor Guangyuan Zhou, Emily Greenberg, Will Tress, Clement Lau, Michael Maher, Mary Lou Mogenhan, Donna Pennepacker, Barbara Augenbaugh, Krishna Pisipati, Li Lisha, Ashley Hou, Katherine Du, and the editors and staff of the Intellectual Property Law Journal.

From China: Jia Mingru of the State Council, Jiang Zhipei of the Supreme People's Court, Zhang Naigen of Fudan University, Sheridan Bell of the United States Information Agency in Beijing, and administrators of all of the organizations represented by our participants. My gratitude also goes out to Jeanne Van Buskirk and Shao Ning of the Maryland "Sister State" program, Haibin Hu of the College of William and Mary, my new friend, Zhang Ningzhou, and my wife, Susan.