



Volume 52 ♦ January 30, 2015 (Conference Report)

The World Jurist

eBULLETIN OF THE WORLD JURIST ASSOCIATION

International Perspectives on Intellectual Property Protection

China 2014 Conference Report

The World Jurist Association's (WJA's) Conference on ***International Perspectives on Intellectual Property Protection*** was held from November 2-4, 2014 in Shanghai, China, and brought together over 100 delegates representing several countries. The China 2014 Conference was held in collaboration with the Supreme People's Court (SPC) of the People's Republic of China, with the participation of top Chinese judicial officials, City of Shanghai officials, and representatives of Chinese and international media. The conference took place at the Hong Qiao State Guest Hotel in central Shanghai. Conference proceedings were conducted in both English and Chinese.



Conference opening (right) Hon. Justice TAO Kaiyuan, Vice-President of the Supreme People's Court of China
(center) Prof. Dr. iur. Alexander J. Bělohávek, WJA President

Sunday, November 2 – Welcome Reception

Delegates and guests were hosted by the Chinese Courts International Exchanges Base in Shanghai. The evening reception was chaired by **Judge WU Xielin (China)**, Vice President of Shanghai People's Court of the People's Republic of China, with an address given by **Hon. CUI Yadong (China)**, President of Shanghai High People's Court of the People's Republic of China.

Monday, November 3 – Conference Opening

The conference was commenced by the **Hon. Justice TAO Kaiyuan (China)**, Vice-President of the Supreme People's Court of China. Hon. Justice TAO Kaiyuan emphasized that structural changes in the Chinese court system in relation to Intellectual Property (IP) were among the many steps that the People's Republic of China was implementing for maximum support of IP protection. This conference was also the first opportunity for Chinese judicial officials to present the first results of structural reforms during deciding of IP disputes, and it confronted them with international experience. **Her Excellency, Ms ZHAO Wen (China), Vice Mayor of Shanghai**, stressed during the opening ceremony that Shanghai greatly appreciated the opportunity to host the conference. She added that everyone must learn flexibility, which she said especially applied for such an important need as IP protection is. Therefore, the conference represents a major opportunity for legal practice as well as for the general professional public, which includes students and entrepreneurs. After all, only the mutual exchange of opinions in this area can contribute to increasing regions' competitiveness. The City of Shanghai provided an exceptional and ideal environment for holding the conference and extended a warm welcome to all delegates and guests.

Prof. Dr. iur. Alexander J. Bělohávek (Czech Republic), President of the World Jurist Association, and Attorney at Law (Managing Partner) of the Law Office of Bělohávek in Prague, in his opening remarks recognized his Chinese colleagues for their active steps during the implementation of effective IP rights protection mechanisms, emphasizing that the WJA considered it an honor to have the opportunity to hold this conference, which is now the third event of its kind in WJA's history, held in the People's Republic of China in the WJA's history. In 2005, the WJA held its 22nd Biennial Congress on the Law of the World on *Rule of Law and Harmony of International Society*, in Beijing and Shanghai, China; and in 1990 the WJA held a Congress on *Law for World Peace and Development* in Beijing, China.

Membership Renewal Reminder

We appreciate your continued support and participation as a member of the World Jurist Association. Please remember to renew your membership for 2015 in one of the following ways: by contacting our offices to make payment; fill out the attached form and send to our offices, or renew online at www.worldjurist.org. Renewal reminders have been sent to members, if you have not received yours please contact the WJA offices.

Non-WJA member? We hope you will consider joining today. Membership entitles you to discounted rates to all our events, reduced rates to WJA publications, and provides unique networking opportunities where you can meet colleagues from all over the world, and form business friendships that last a lifetime. Email: wja@worldjurist.org.

Share your Successes with us!!

We encourage you to share current achievements with your colleagues all around the world. Send an email to Folake at falesander@worldjurist.org and we'll share this through *The World Jurist Bulletin*.



Panel sessions



Delegates confer during break

Hon. Justice TAO Kaiyuan also recalled the WJA Congresses held in 1990 and 2005 respectively, remembering them as one of the most successful WJA events and the first such large conference focused on law that was held in China. This year's conference focused on IP Protection is another milestone in the successful and long-time cooperation between the WJA and China, particularly involving the SPC. **Prof. Bělohávek** also emphasized that the international community was experiencing a number of dangerous crises. However, he also stated that conflicts in the modern world were being waged in an entirely different manner than we know from history. He pointed out that there is a global war on financial markets, a global battle for control over energy resources and a global war regarding IP rights. He also said that lawyers were the soldiers in that war and that their main role should be to find conciliatory and just resolutions and to find, define and apply legal rules and standards, which are generally acceptable worldwide. However, definition and application of such standards is not possible without international cooperation and international communication. Today's China is a typical example of a country that is trying to find ways of achieving such cooperation through joint efforts and justice. It is an entirely different China than the one presented only recently in the area of international cooperation on protection of IP rights. Professor Bělohávek also stated that just under 25 years ago the world had woken up to a new reality shattering myths and boundaries. He stated critically in particular that politicians were trying to convince the international public that the situation in certain regions was "black or white". However, life and reality are not "black or white". The reality is greatly varied and colorful. The People's Republic of China and its efforts at reform of its approach to IP rights protection is an example of how to define individual colors of this spectrum. China has undoubtedly embarked on the right course, and it is up to the international community to provide its reaction.

Panel Session 1: IP Protection – Recent Trends and Future Development

Moderator: Hon. Justice WU Xielin (China)
Vice President of Shanghai High People's Court

Hon. Justice SONG Xiaoming (China), Chief Judge of IP Division of the Supreme People's Court of the People's Republic of China informed in detail in his contribution *IP Court: China's*

Exploration in which he discussed the basis of Chinese judicial reform in the area of IP protection. Hon. Justice Song stated that until 2013, the agenda at Chinese courts was divided into three divisions: civil, administrative and criminal. The IP Protection division was added as of 2013. That division now includes all agendas related to IP rights, both in civil disputes (mainly between users and any disputes between private legal entities regarding IP rights), administrative disputes (such as disputes waged against registering parties) and criminal disputes regarding abuse of IP rights. So far at the level of high courts, three supra-regional high courts have been established with these specialized divisions, in Beijing, Shanghai and Guangdong, locations where according to available data the largest amount of IP agenda has been concentrated so far. He also described the individual principles based on which the respective reforms are being carried out. In a very interesting way, he also described the education of judges in these courts, which is noteworthy. **Prof. Dr. iur. Alexander J. Bělohlávek (Czech Republic)**, President of WJA & Attorney at Law (Managing Partner) of the Law Office of Bělohlávek, Prague, provided the following information in his contribution *New European Patent System: A Long Way to the Unitary Patent* about new development related to patent protection in Europe.



Hon. Justice SONG Xiaoming, Chief Judge of IP Division of the Supreme People's Court of China



Liu Hehua, Director General of the International Department of the People's Court of the Republic of China

Panel Session II – IP Protection and Market Competitiveness

Moderator: **Prof. Dr. iur. Alexander J. Bělohlávek (Czech Republic)**, WJA President and Attorney at Law (Managing Partner) of the Law Office of Bělohlávek in Prague.

Prof. Dr. iur. Karel Klíma (Czech Republic), WJA President for the World Association of Law Professors (WALP), & Professor and Head of Department of Legal Specialization and Public Administration at the Metropolitan University in Prague, presented on *Intellectual Property as a Traditional Constitutional Value* where he defined IP rights as part of a whole series of basic rights and also focused in detail on the duties of public administration in relation to IP protection. **Judge XU Chunjian (China)**, Vice President of the Guangdong High People's Court of the People's Republic of China, discussed in detail about how interaction of court protection

of IP rights is guaranteed in relation to the market. In his contribution, *Playing the Judiciary's Dominant Role in IP Protection to Promote Fair Market Competition*, he referred to the main points on the agenda. Judge Xu added that an IP Division has been established in Guangdong, one of the three high courts.

Panel Session III - IP Protection and the Internet

Moderator: Hon. Justice ZHOU Xiang (China)

Presiding Judge of the IP Division of the Supreme People's Court of the People's Republic of China

Prof. WU Handong (China), Professor at the Law School of Zhongnan University of Economics and Law and Special Adviser of the Supreme People's Court of the People's Republic of China and also an expert for the Supreme People's Court, the Ministry of Education and many other authorities, is regarded as one of the leading figures involved in the Chinese legal regulation of electronic communications, particularly regulation of the internet. According to Professor WU, the internet is the most revolutionary breakthrough in human history. Not only is it a means of spreading culture and education, it also helps public administrative bodies perform their duties and enables decentralization. However, it is also a mechanism for detecting potential abuse of copyrights and other rights to intangible assets. Copyrights involving an author's physical expression are also being gradually replaced with electronic and virtual rights. Prof. WU regards determination of the author of a work presented via the internet as one of the most problematic areas. Of course, traditional copyrights are based on somewhat different foundations. The internet user himself often becomes the creator or co-creator of a work presented via the internet. **Prof. WANG Qian (China)**, Professor of the East China University of Political Science and Law, and the Executive Director of the China IP Researcher's Association, presented on *Copyright Protection and the Internet: Achievements and Challenges*. He focused mainly on providing court protection for IP. Prof. WANG mentioned that Chinese courts first began deciding disputes in the country regarding breaches of copyrights on the internet in 1999. Since then there has been a sharp increase in these cases, and today Chinese courts decide tens of thousands of disputes annually. He emphasized that interaction between monitors and spreaders of the internet on one side and users on the other were creating standards, which need to be respected in courts' decision practices. This is an area, where more with than different types of disputes it is essential to take into consideration to a great extent the habits created by experience and by the market.

Panel Session IV - IP Protection and Cultural Prosperity

Moderator: Professor Karel Klíma (Czech Republic)

President of the WJA's World Association of Law Professors (WALP), and Head of the Department of Legal Studies and Public Administration at the Metropolitan University of Prague

Prof. Klíma began by defining the position of IP rights and IP protection in the legal system and in relation to constitutional law and individual legal phenomena. He emphasized the important

social and cultural function of IP protection. **Prof. Joanna Sienczyło Chlabicz (Poland)**, Judge at the Supreme Administrative Court of Poland and Professor at the Faculty of Law at the University in Białystok and at Leon Kozminski Academy in Warsaw, presented on *Orphan Works on the Ground of Directive 2012/28/EU: Proposals Concerning Amendment of Copyright Law*. Prof. Sienczyło-Chlabicz discussed the concept of harmonization of EU law in relation to copyrights and about the problems with implementation of these EU standards in member states' domestic legal systems. **Prof. WAN Qian (China)**, Professor of the East China University of Political Science and Law in his contribution on *Copyright Protection and the Internet: Achievements and Challenge* focused on the Chinese concept of protecting electronic games from the point of view of IP protection and mainly examined in detail the technological problems related to game creation and the ways they are misused (copied and distributed). In his contribution, Prof. WAN Qian also mentioned the responsibilities of libraries and archives in relation to protection of IP rights.



Delegates from Nigeria



Prof. Karel Klima (Czech Republic), President of the WJA's World Association of Law Professors (WALP)

Panel Session V – IP Protection and Technical Innovation

Moderator: Prof. Walter Rechberger (Austria)
President of the University of Vienna

Prof. Rechberger, a leading world specialist in Private International Law, introduced the panel and discussed the need for flexibility in IP protection, in view of the revolutionary development of new technologies. **Prof. ZHENG Shengli (China)**, Professor of the IP Law School at Beijing University, gave a presentation regarding the interaction of science and research on one side and legal protection of IP rights on the other. In his contribution on *Economic Development Driven by Science and Innovation*, Prof. Zheng discussed the importance of IP protection in the study of law in China. **Mr. LI Decheng (China)**, Associate Director and Secretary General of the Professional Committee of ALL China Lawyers Association and Senior Partner and Lawyer at the JT&N Law Firm, presented on *Impacts of Trade Secret Protection on Technical Innovation and Proposed Solutions*. His presentation focused mainly on binding legal

aspects of protection of industrial rights. Mr. Li gave a very interesting discussion which included several pieces of critical feedback mentioning changes on which he stressed the need to focus on international cooperation in the area of IP protection.

Panel Session VI - IP Protection and Dispute Resolution

Moderator: Hon. Justice ZHOU Gencai (China)

Judge of the IP Division of the Zhejiang High People's Court

Several thoughts formulated during the entire conference and several reactions from presenters and participants often overlapped, which is evidence of the very careful selection of topics for the panel sessions and for the entire conference. For example during Panel Session VI Prof. Bělohávek stated in response to a question from the plenum about whether the creation of a "global patent" was a realistic idea that this idea was very interesting and could come to fruition in the future, thanks to economic globalization, but only under the condition that a globally recognized platform is created for resolving disputes related to IP rights. In this respect, the use of Alternative Dispute Resolution Mechanisms is mainly used; especially arbitration proceedings, which during the period since the end of World War II have obviously become the most effective means of supporting international trade and international investments, and arbitration proceedings are continuing to grow in popularity and attractiveness.

During this session **Justice Sardar Abdul Hameed Khan (Pakistan)**, Judge of the High Court of Azad Jammu & Kashmir from Pakistan, emphasized that the concept of protection of intangible assets or intellectual property is not new. The history of IP is as old and ancient as human civilization itself, quoting also the Koran, the Holy Book of Islam, which ordains protection of property, tangible or intangible, from misappropriation and theft through a verse reading "Thou shall not steal". Justice Khan added that at present, the field of IP rights legislation is in a state of constant turmoil. Not only in Pakistan, but all over the world, the legislators are trying to grapple with the more and more complex fields of IP rights like biotechnology, IT, Plant Varieties, Geographical Indications etc. Justice Khan concluded that protection of IP rights and early dispute resolution in relation thereto are the key to encourage the contributors to world peace and prosperity and a threat to law breakers.

Hon. Justice SONG Jian (China), Chief Justice of the IP Division of the Jiangsu High People's Court of China, emphasized the importance of greater coordination among administrative, civil and criminal divisions of the justice system, since IP protection is related to three areas. The specifics of IP protection overlapping with the specified areas was one of the other reasons for reforms of the Chinese justice system and establishment of specialized divisions for IP protection. These specialized divisions represent the "3 in 1" principle, based on which the IP divisions have jurisdiction for deciding private legal disputes as well as disputes regarding registration of IP rights, and even cases of criminal infractions in this sector. The positive results in Chinese judicial practice became apparent already after a short period. Hon. Justice SONG highlighted the importance of a comparative approach, due to the often fundamentally different approaches to evaluating certain aspects in individual countries, for example

definition of requirements for originality (newness). She also mentioned diametrically different standards in Germany on one hand and in China on the other. Besides this, the development of technology is currently advancing so fast that it is essential for a high level of flexibility to be applied when evaluating originality (newness). Hon. Justice SONG also analyzed in detail the principles of "reasonable doubts" in relation to breaches of IP rights, the subjective side of infractions related to IP rights, particularly awareness and knowledge on the side of the *perpetrator* (*infringer* of IP rights). Hon. Justice SONG also did not fail to mention IP protection in relation to "public goods", for which she said it would be necessary to set different value limits than for rights protected exclusively for the benefit of private individuals and without apparent public significance. The new concept of Chinese justice in the area of IP protection in the sense of the "3 in 1 system" also brings intensification of protection of patent rights, since the judicial system is able to identify and punish all types of IP protection, thanks to this specialization.

Dr. Vít Horáček, Ph.D. (Czech Republic), Partner at Glatzova & Co., focused his discussion on *Online Dispute Resolution*, particularly in relation to decisions regarding domain disputes. In this respect, the link between the individual panel sessions became apparent, when Dr. Horáček's contribution directly corresponded to the issue discussed during Panel Session III ("Protection and the Internet"). Several factors are important for international investors and are often decisive for their investments. These investors monitor the country of the potential investments the system for dispute resolution, which must be quick, effective and inexpensive. Dr. Horáček positively evaluated the newly implemented Chinese "3 in 1" system. However, according to Dr. Horáček, it is clear that the judicial system (in any country) often is not flexible and effective enough to satisfy the demanding environment of international investments. A typical example is the situation with domain names. In the case of domain names as well as with several other types of IP rights, arbitration proceedings appear to be very effective and popular, or arbitration proceedings in combination with other Alternative Dispute Resolution methods, such as mediation, etc.

At the conclusion of the first meeting day (Monday, November 3, 2014), the Host Committee also arranged for all of the participants a visit to the Shanghai No. 11 Intermediate People's Court, which is one of the 17th higher courts in Shanghai. During that occasion, the delegates had the opportunity to become familiar both with the interesting court environment and to discuss current issues related to legal and judicial practice with the hosts.

Tuesday, November 4 – Conference Closing

Panel Session VII - IP Protection & International Communication & Cooperation

Moderator: **Hon. Justice XIA Junli (China)**
Presiding Justice of IP division of the SPC

While introducing the panel session, Hon. Justice Xia stressed the need and importance of IP protection.

Mr. LIU Hehua (China), Director General of the International Department of the SPC, participated in the past in several WJA events and is currently assigned the role of coordinating cooperation between the WJA and the SPC. According to Mr. LIU, an international cooperation in protection of IP rights is essential. China has presented a new active form of international cooperation as an integral part of IP protection reform. In relation to this, the SPC has established cooperation with 15 international organizations, has entered into Memoranda of Understanding with 22 countries regarding cooperation in IP protection, and has established cooperation with more than 120 countries. During this year alone, more than 4,000 Chinese attorneys, particularly judges, traveled to attend various international events, and more than 2,000 judges were sent to partnering courts abroad for the purpose of internships and establishing direct contacts. China also offers foreign judges study stays at Chinese courts and organizes courses about Chinese law, etc. This active international cooperation is already beginning to yield positive results.

Mr. LIU also highlighted two successful WJA congresses on the Law of the World, which were among the largest events of this kind organized in China and to which the conference on International Perspectives on Intellectual Property Protection corresponds. However, the SPC also closely cooperates with many other international organizations and has mentioned two additional international events that took place this year in China. China is currently actively involved in international judicial cooperation in the Asia-Pacific region and is actively cooperating with other countries in the region on judicial reforms in those countries. Of course, the new policy of international cooperation does not apply only to IP protection. China has established active cooperation with a number of different countries regarding deliveries of court correspondence, has entered into many agreements on mutual extradition of persons wanted for criminal prosecution and has mentioned other active international court assistance. China considers IP protection an essential and integral part of economic development. China is currently believed to be the country where more disputes regarding IP protection are being resolved than anywhere else in the world. In view of the highly professional and internationalized character of IP protection, China is fully aware that it is essential to improve the quality of its judges. Therefore, it has developed a system for active training of judges. Mr. LIU also mentioned two active programmes focused on the protection of IP rights and boosting of trade relations with the EU as well as intensive cooperation with George Washington University, Stanford University and other institutions.

The contribution from the **Hon. Justice WU Xielin**, Vice President of the Shanghai High People's Court and Professor at the Shanghai University of Political Science, also directly corresponded to Mr. LIU Hehua's contribution, and highlighted the international activities of Chinese judicial officials in the area of IP protection and examples from the experience of the Shanghai High People's Court. Shanghai was the first court in the People's Republic of China entrusted to decide disputes regarding IP protection. The Hon. Justice Professor WU Xielin emphasized, for example, the intensive cooperation with the WIPO/OMPI, publication of professional literature and translations of foreign professional literature regarding IP protection. This conference held in cooperation with the WJA represents a major milestone in the active practice of the High People's Court of Shanghai.

Closing Remarks

The closing ceremony was presided over by the **Hon. Justice JIN Kesheng (China)**, Vice Chief Judge of the IP Division of the Supreme People's Court of the People's Republic of China. In his closing presentation, **Prof. Dr. iur. Alexander J. Bělohlávek (Czech Republic)**, President of the World Jurist Association, thanked the hosts and expressed his appreciation for the significance of the conference. He also mentioned several topics that overlapped among all panel sessions, such as the alternative ways of resolving IP disputes, recognition of foreign decisions, the significance of the internet and IT for IP protection, etc. **Justice WU Xielin (China)**, Vice President of the Shanghai High People's Court, evaluated the joint conference held together with the World Jurist Association as one of the most important such events held so far in the People's Republic of China.

The World Jurist Association would like to thank our Chinese hosts, the Supreme People's Court of China, and reiterates our support for activities that will focus and further efforts on Intellectual Property (IP), which has been one of the most important focuses in the Association's activities in its 51 years of existence. Special gratitude also goes to **Mr. WAN Exiang (China)**, WJA's immediate past Third Vice President, and also to the conference programming committee including **Prof. Dr. iur. Alexander J. Bělohlávek (Czech Republic)**, WJA President, and with whose help this conference report has been made possible; **Ms. Kim, G. Quarles (USA)**, WJA's Second Vice President; **Dr. Franklin Hoet Linares (Venezuela)**, Past President of the WJA and Senior Partner at Hoet Peláez Castillo & Duque; **Prof. Ved P. Nanda (USA)**, WJA Board Advisor, **Ms. Sona N. Pancholy (USA)**, WJA's Executive Vice President; **Ms. Lenka Nemeckova (Czech Republic)**, Assistant to Prof. Dr. iur. Alexander J. Bělohlávek; and **Ms. B. Folake Alexander (USA)**, WJA's Programs and Operations Manager.





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