



MASTER CLASS

WIPO/IP/BEI/18/1
ORIGINAL: ENGLISH
DATE: AUGUST 15, 2018

Master Class on Intellectual Property Adjudication**– Approaches to Remedies**

organized by

the World Intellectual Property Organization (WIPO)

in cooperation with

the Supreme People's Court of China

Beijing, August 21 to 23, 2018

PROGRAM

prepared by the International Bureau of WIPO

Monday, August 20, 2018

Venue: WIPO Office in China
No.2, Dongkoudai Hutong, Xicheng District, Beijing

19.00 – 20.30 Reception hosted by WIPO

Tuesday, August 21, 2018

Venue: National Judges College (NJC)
No.111, West South 4th Road, Fengtai District, Beijing

9.00 – 9.15 Registration and Group Photo

9.15 – 9.35 Welcome and Opening

Moderator: Mr. LU Xiaolong, Deputy Director General, International Cooperation Department, Supreme People's Court (SPC), China

Judge TAO Kaiyuan, Vice President, SPC

Ms. WANG Binying, Deputy Director General, Brands and Designs Sector, WIPO

9.35 – 9.50 Introduction of the Faculty and Participants

9.50 – 10.45 **Session 1: Judicial Dialogue across National Systems**

Panel Discussion:

Judge Annabelle BENNETT, Former Judge, Federal Court of Australia, Sydney, Australia

Judge Klaus GRABINSKI, Federal Court of Justice, Karlsruhe, Germany

Judge Maria Rowena MODESTO-SAN PEDRO, Presiding Judge, Regional Trial Court, Manila, Philippines

Judge WANG Chuang, Deputy Chief Judge, IPR Division, SPC

10.45 – 11.00 Coffee Break

11.00 – 12.45 **Session 2: Assessing the Scope of Patent Rights**

Overview (by Faculty member: 30 minutes)

Judge Klaus GRABINSKI

Break-out Discussion in Groups and Reporting (60 minutes)

- Claim construction
- Doctrine of equivalents

Summarizing Analysis (by Faculty member: 15 minutes)

Judge Andrew J. GUILFORD, District Court for the Central District of California, Santa Ana, United States of America

12.45 – 14.15 Lunch

14.15 – 15.30 **Session 3: Assessing the Scope of Trademark Rights in the Digital Environment**

Overview (by Faculty member: 20 minutes)

Judge WANG Yanfang, Presiding Judge, IPR Division, SPC

Break-out Discussion in Groups and Reporting (45 minutes)

- When does the use of third-party marks in online advertising or social media constitute an infringement?
- How to assess color per se or three-dimensional marks?

Summarizing Analysis (by Faculty member: 10 minutes)

Judge Annabelle BENNETT

15.30 – 15.45 Coffee Break

15.45 – 17.00 **Session 4: Assessing the Scope of Copyright in the Digital Environment**

Overview (by Faculty members: 20 minutes)

Judge KI Woojong, Judge, Daejeon High Court, Daejeon, Republic of Korea

Judge WANG Yanfang

Break-out Discussion in Groups and Reporting (45 minutes)

- Is linking a communication to the public?
- Music sampling: legal or illegal?
- How to address jurisdictional questions specific to online copyright infringements?
- What is the intermediary's responsibility in relation to online copyright infringement? Who should pay the costs of implementing injunctions by the intermediary?
- How do exceptions apply to user-generated content?

Summarizing Analysis (by Faculty member: 10 minutes)

Judge Annabelle BENNETT

17.00 – 18.00 Visit of the National Judges College

18.00 – 20.00 Reception hosted by the National Judges College

Wednesday, August 22, 2018

Venue: WIPO Office in China
No.2, Dongkoudai Hutong, Xicheng District, Beijing

- 9.30 – 9.45 **Introduction to the WIPO Office in China**
- Mr. CHEN Hongbing, Director, WIPO Office in China
- 9.45 – 10.00 **WIPO's Work in the Judicial Administration of IP and in Building Respect for IP**
- Ms. MIN Eun-Joo, Acting Head, Division for the Judicial Administration of IP, WIPO
- 10.00 – 12.00 **Session 5: Injunctions and Other Remedies**
- Overview (by Faculty members: 40 minutes)*
- Judge Andrew J. GUILFORD
- Judge Maria Rowena MODESTO-SAN PEDRO
- Judge KI Woojong
- Break-out Discussion in Groups and Reporting (60 minutes)*
- What type of preventive and corrective measures can be ordered by the court? What are the respective procedural requirements?
 - What substantive considerations must the judge balance when deciding on an injunction?
 - Does it make a difference when the patent owner is using the patent only by giving licenses to other companies?
 - How to address (extra-)territorial reach of remedies?
 - What are the effective remedies to address internet infringement?
 - Can the court issue a provisional measure without hearing the affected party (*ex parte* or *in audita altera parte*)? Under what conditions?
 - Do you grant an injunction when the infringing element forms part of a larger product (e.g. mobile phone)?
 - Which IP infringements are subject to criminal action?
 - When/how may judicial discretion be exercised?
- Summarizing Analysis (by Faculty member: 20 minutes)*
- Judge Klaus GRABINSKI
- 12.00 –13.00 Lunch Break

13.00 – 14.00 **Session 6: Assessment of Damages**

Panel Discussion:

Judge Klaus GRABINSKI

Judge Andrew J. GUILFORD

- Can the court award exemplary or punitive damages? Under what circumstances?
- How does a judge quantify damages? What is the role of experts and alternative dispute resolution?

14.20 – 14.50 Transfer to the China Court Museum

Venue: Supreme People's Court
No.27, Dongjiaomnxiang, Doncheng District, Beijing

14.50 – 17.50 Visit of the China Court Museum and the Supreme People's Court

18.00 – 20.00 Banquet hosted by the Supreme People's Court of China

Thursday, August 23, 2018

Venue: National Judges College

9.30 – 10.30 **Session 7: Trends in IP Case Management**

Panel Discussion:

Judge Annabelle BENNETT

Judge Andrew J. GUILFORD

Judge Klaus GRABINSKI

Judge Maria Rowena MODESTO-SAN PEDRO

- What are the differences and similarities among the various courts (e.g. civil v. common law)?
- What is the role of technically qualified judges and expert opinion in civil law countries?
- Is IP case management different from management of other complex cases?
- What are the tools available to support the efficient judicial administration of IP?
- What is the role of expert evidence both pre- and during trial?
- What are the means to identify and protect confidential information?

10.30 – 10.45 Coffee Break

10.45 – 13.00 **Session 8: IP and Competition**

Overview (by Faculty members: 45 minutes)

Judge Annabelle BENNETT

Judge Klaus GRABINSKI

Judge WANG Yanfang

Break-out Discussion in Groups and Reporting (70 minutes)

- When may the rules of competition law apply to the exercise of IP rights? E.g., can a competition law defence be raised in an enforcement action by SEP holders; or can a competition law defence be raised in an enforcement action by IP holders in the spare parts aftermarket?
- What are examples of license terms that may be found to be anti-competitive?
- What are the competition considerations in patent litigation settlement agreements?
- What are the competition considerations in the field of internet technology (ref. SPC's judgment in *Qihu v. Tencent*)?
- What approach should apply: national or international exhaustion?

Summarizing Analysis (by Faculty member: 20 minutes)

Judge Annabelle BENNETT

13.00 – 14.30 Lunch Break

14.30 – 16.00 **Mini Mock Trials**

A. Remedies in Online Copyright and Trademark Infringement

Claimants' counsel: Judge CHENG Pei Feng
Defendants' counsel: Judge WONG Baochen
Tribunal: Judge Annabelle BENNETT

B. Patents (Claim construction in patent infringement litigation)

Appellant's counsel: Judge DU Weike
Respondent's counsel: Judge WANG Jing
Tribunal: Judge Klaus GRABINSKI

16.00 – 16.30 Evaluation and Closing

Moderator: Judge WANG Chuang, Deputy Chief Judge, IPR Division, SPC
Mr. Frits BONTEKOE, Legal Counsel, WIPO
Judge SONG Xiaoming, Chief Judge, IPR Division, SPC