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Fordham Conference 2015 – Opening and IP in China

Daniel Byrne (Bristows) · Wednesday, April 8th, 2015

The 23rd Annual Fordham Intellectual Property Law and Policy Conference 2015 has kicked off with opening remarks from **Hugh Hansen** from Fordham University School of Law, New York, reminding everyone to learn, debate and have fun!

David J Kappos has started the panel debate on the state of IP in China with a story about the reality of the concerted theft of intellectual property by companies in China. He contrasted this with concerted efforts by big business in China to improve the protection of their IP and that this bodes well for an improving situation in China, which he characterised as complex.

He noted that patent applications in China now exceed all other jurisdictions. One reason given for this was that the Chinese government at all levels pay people to file patent applications. He suggested that it was even possible to get a criminal sentence commuted by filing a patent application. China is reportedly having conversations about the model to be used for rewarding employee inventors.

The Article 26.3 (CIPO) utility test has become stronger in its implementation, but seemingly only in relation to (rejecting) important international pharmaceutical patents, which would otherwise be anticipated by the required clinical trials. This appears to be a deliberate policy intended to foster a generics industry, except when a Chinese manufacturer applies for a pharmaceutical patent. He summarised that this was a rule of law issue for China and more work remained to be done on this fundamental issue.

Dr Thomas Pattloch from Taylor Wessing gave his perspective on the use of competition law, in particular by the Chinese government, to exert pressure on multinational companies and suggested that the focus for companies should be licensing terms (including FRAND).

He Jing from AnJie Law Firm in Beijing talked about the ‘new normal’ a buzzword currently in vogue in China. Apparently, there is a belief amongst Chinese leaders that growth must not fall below 8%. When it appeared that this might happen the officials started a programme of change to deal with corruption and the ‘new normal’ is intended to reassure the people in light of the number of politburo members jailed. There is a new fear in China of being blamed for wrongdoing. For IP, there is a new initiative to promote innovation and the ‘new normal’, but the result is a safe, no-blame position. The new IP courts in China seem to be a good innovation, but there is an issue with workability. He sees the rule of law as a door to workability for China and encourages other countries and companies to continue to discuss this with China. The ‘new normal’ might otherwise be bad for business.

Professor Mark Cohen (Fordham) contrasted the situation in China now with 10 years ago. He characterised the changes as a sideways move, but noted that foreigners have even less ability to effect change in China. The good news is that China is interested in IP. The bad news is that China is interested in IP. The difficulty is that when China takes an interest in IP it becomes a matter of state planning and foreigners lose influence.

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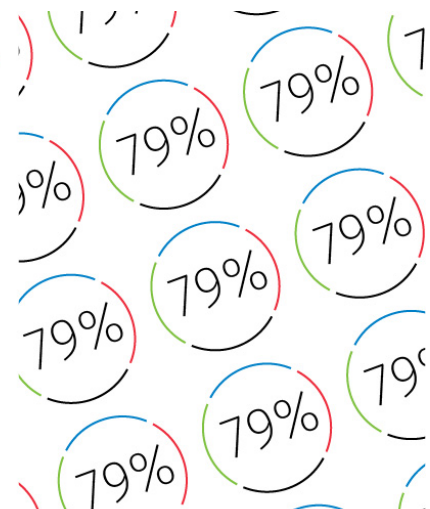
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