(<8)

WIPO/HR/DDK/91/6
Original : English
Date : April 1991

KOREAN INDUSTRIAL PROPERTY OFFICE

WORLD INTELLECTUAL PROPERTY ORGANIZATION

UNITED NATIONS DEVELOPMENT PROGRAMME

INAUGURATION OF THE INTERNATIONAL INTELLECTUAL PROPERTY TRAINING INSTITUTE (IIPTI) and WIPO ASIAN REGIONAL FORUM ON THE DEVELOPMENT OF HUMAN RESOURCES FOR THE EFFECTIVE USE OF THE INTELLECTUAL PROPERTY SYSTEM

organized by

the World Intellectual Property Organization (WIPO)

in cooperation with

the Korean Industrial Property Office (KIPO)

and with the assistance of

the United Nations Development Programme (UNDP)

Daeduk, Republic of Korea, May 8 to 10, 1991

TEACHING OF INTELLECTUAL PROPERTY LAW IN UNIVERSITIES

by

Professor Karl F. Jorda
Franklin Pierce Law Center
Concord, New Hampshire
United States of America

I. INTRODUCTION

Intellectual property (IP) law is an extremely complex legal field that covers not only patents but also trademarks, copyrights, trade secrets, know-how and licensing. In today's highly competitive economic environment which includes national and international competitors, the importance of adequate protection of IP cannot be understated. For example, the rapidly-changing, highly-competitive computer and biotechnology industries have particularly caused a severe strain on IP law.

The demand for IP professionals in general, and patent practitioners, in particular, has far exceeded the supply. And the situation will probably remain that way for some time to come.

In addition to the growth of high tech industries, other factors creating a new demand for IP and patent professionals are the surge of imports and with it the influx of patent and trademark applications from foreign manufacturers, recent IP legislative reforms, not to mention the creation in 1982 of the U.S. Court of Appeals for the Federal Circuit (CAFC) whose jurisprudence has had a very beneficial effect on the patent system and IP law.

While the overall number of U.S. lawyers has more than doubled in the past fifteen years (from over 400,000 to over 800,000 — 1 million by the year 2000), the number of patent lawyers increased only marginally to the present level of over 13,000.

The biggest bottleneck to the entry of new practitioners into the patent field is the need for strong technical credentials. Would-be patent lawyers invariably hold undergraduate degrees (and perhaps second graduate degrees) in one of the sciences or engineering. A prerequisite for taking the patent bar examination that a law student or graduate must pass before admission to practice before the U.S. Patent and Trademark Office (USPTO) is a bachelor's or graduate degree, or the equivalent thereof, in a specified scientific or technical subject from a recognized U.S. college or university. Such subjects are listed in Appendix A.

As in the case for other graduates from law school (typically a three-year proposition), the candidate also has to hurdle a general state bar examination to become a licensed attorney.

As was pointed out in a Business Week article entitled "Patent Lawyer":

> "Ordinarily, the law school curriculum departs little from that followed by general practitioners, although students aiming for the field will choose intellectual property courses as electives. A few schools, such as the Franklin Pierce Law Center in Concord, N.H., offer more intensive course work and actual casework experience... enabling

students to pass the patent bar before graduating.

Interestingly, because technical credentials are key, the pressure to get into a prestigious law school, felt heavily by general practitioners, is less applicable to patent specialists." (Business Week, Sept. 1987, p.80)

Indeed, the basic legal curriculum, fairly standard throughout the U.S., does not include patent or IP related law. Historically, few schools have provided even elective coverage. Thus, most patent attorneys have had to acquire their knowledge and skills on the job. The situation has improved over the past decade or so. A few law schools now offer as many as twenty or more credits (well within the usual range of law school elective hours) in IP law and thirty-five credits in the case of Franklin Pierce Law Center (FPLC). IP courses are merely electives since IP law has not been required for state bar admission purposes and is not a subject covered by state bar examinations.

II. THE GULF BETWEEN LAW SCHOOL AND LAW PRACTICE

Before going into the specifics of IP teaching and IP curricula offered by some law schools, it is appropriate, for background and perspective, to review and illuminate the present state of flux and ferment in law schools with respect to specialization or concentration and the gulf between law school and law practice. Law school teaching has changed very little over the years and decades. Its cornerstone by and large is still the Socratic method and case analysis pioneered at Harvard more than a century ago. Yet, the practice of law has changed significantly, especially in more recent times, following changes in the business and political worlds.

The New York Times, in an article on "Law Schools Put Stress on Specialization" (Feb. 12, 1991, Column on "Careers") quoted Dean Ronald A. Case of Boston University's Law School as saying that law students increasingly need specialities. "Specialization would not be required but would be encouraged... (it) would appeal to some because it would make them more marketable." Fields of specialization under initial consideration at Boston University will be international law, corporate law, public law and environmental law. And Dean Paul Brent of Stanford University Law School was said to be in agreement except that he preferred the term concentration to specialization and that concentration should not be pursued at the cost of a broad liberal education. It seems, however, that what both deans had in mind was not necessarily taking, e.g., additional international law or corporate/commercial law courses but rather courses in accounting, business, economics, statistics, financial theory, etc. to make subsequent studies for MBA (Master of Business Administration) degrees superfluous.

An even greater degree of ferment and more heated debate, although there is an obvious interrelationship, revolves around the perceived gulf between law school and law

practice. Law schools don't teach the skills students will actually need to practice law, that is the charge.

According to U.S. News & World Report "Best Law Schools" article (March 19, 1990, p.59) "[l]egal education is under attack from both academics and practicing lawyers."

U.S. News & World Report continues:

> "Schools are being pulled in conflicting directions: Academics accuse them of promoting rote learning while neglecting analysis and original scholarship. Practicing lawyers complain that they lag far behind rapid changes in the law business. ... Trying to satisfy both sets of critics has given some schools cases of educational schizophrenia. Students are torn between those professors who lead them in pursuit of arcane theories and those who stress techniques of drafting briefs.
>
> ....
>
> Specialities are developing so fast that some schools are in the marketing business, trying to find niches.
>
> ....
>
> Schools are experimenting with 'clinical' education that attempts to show how lawsuits actually evolve. ... Boston's Northeastern University requires students to devote nearly one third of their time to off-campus work programs ranging from local law firms to judicial clerkships." (Id. at 60)

Finally, U.S. News & World Report concludes that "[c]ries from the organized bar that educators must do more to narrow the gap between the classroom and law-office realities will grow louder." (Id. at 61)

This ferment is further dramatically high-lighted by the creation of a "Narrowing the Gap" task force by the American Bar Association (ABA) and the publication of a Special Report entitled "The Making of a Professional — Law School in the Nineties" in the ABA Journal, September 1990 (p.43). This Special Report consists of several noteworthy articles on law schools in the nineties, the most interesting one in this context being "Bridging the Gap — Law Educators and Practitioners Agree on the Role of Law Schools in Shaping Professionals? Yes and No" (Id. at 44) and "Learning by Doing — The Clinical Skills Movement Comes of Age" (Id. at 54). An interesting point in the latter is a warning against going too far and "trivalizing law school's scholarly and theoretical purposes" and leading to a "trade school approach."

In the former, David Linch, Dean, Notre Dame Law School, recalled that "[f]or a long time, the law schools and practitioners argued about whose responsibility it was to teach students practice. Many schools contended their job was only to teach the law." (Id. at 45) Later, some schools came around to "teaching skills through simulations or in clinical settings" but this approach lacked mentoring and feedback so that it is now realized

that both law schools and law firms have a "common interest in mentoring (and) need to meet halfway" (Ibidem).

Elsewhere in this ABA Journal issue, Talbot D'Alemberte, ABA President, deplores the present state of affairs:

> "We are very much a divided profession. Our academic side is over here and the practicing lawyer is over there, and they don't connect very often.
>
> ....
>
> "Our insistence that we are part of the academy and our insistence that we are not a trade school has actually led us to cut ourselves off from the people who have things to say to our students, people from the profession and people from other schools in the university." (Id. at 53)

FPLC, as will be seen below is clearly ahead of this fray or outside of this furor with its practice-oriented approach, including "bridging semester," or "exit semester" courses and other benchmark alternative (BMA) concepts. This is likely also true at other law schools with extensive IP programs since substantial IP programs and extensive IP training are recent law school innovations and IP faculties still consist by and large of IP practitioners.

III. IP TRAINING IN AMERICA AND IN AMERICAN UNIVERSITIES

A. On-the-job Training, CLE Programs, Patent Academy

As was pointed out in the Introduction, historically most of the IP training has been of the on-the-job type and has taken place in a mentor system and this is still generally the case even nowadays in IP law firms hiring new law school graduates and in corporate IP departments doing the same or transferring scientists from R&D departments to patent departments. Such transfers are taking place on a fairly large and increasing scale due to the shortage of patent practitioners, on the one hand, and, on the other hand, due to certain advantages that this harbors, i.e., familiarity with the company and its personnel as well as its R&D and patent operations. Often such transferees have gained experience in patent practice as [co]inventors or liaison personnel and their training needs are not as urgent nor as extensive. They become patent agents as soon as they pass the examination for registration to practice in patent cases before the USPTO. Most of these, especially the younger ones, also enter upon a four-year law school evening program.

This on-the-job training and mentoring is supplemented by periodic internal seminars and attendance at programs held by local and national bar and IP associations as well as the Practicing Law Institute (New York) or Patent Resources Group (Washington, DC), etc. and with increasing frequency by law schools, such as, John Marshall Law School, George Washington National Law Center and FPLC. In states with CLE

(Continuing Legal Education) requirements, compliance with those requirements by attendance at professional meetings and IP courses is an additional motivation.

The USPTO, traditionally a source of skilled patent practitioners for law firms and corporate departments, maintains a Patent Academy which trains its new examiners in an extensive four-phase program. The USPTO admits a few non-government employees to each training course, an opportunity which for the most part foreign practitioners intent on learning U.S. patent law take advantage of.

For completeness sake, mention might be made at this point that some Washington, DC law firms, in particular, hold annual IP training courses also designed to attract foreign practitioners. The Cushman, Darby and Cushman "Advanced Patent Seminar" is typical. Appendix B gives dates, topics and other details of their 1990 Seminar.

As regards IP teaching in universities, it appears that lectures are given in engineering and science colleges. Dr. Thomas J. Harrison, Chairman and Professor, Department of Electrical Engineering, College of Engineering of the Florida State University wrote:

"I give a lecture each semester on patent law, with some discussion of other means of protecting intellectual property, as part of the introduction to our laboratory courses. During this lecture, I usually discuss the career opportunities in patent (and related) law." (Personal Communication, Jan. 17, 1990.)

It is highly questionable that apart from such introductory lectures any systematic in-depth IP law teaching takes place in universities in general in either undergraduate or graduate science and engineering curricula.

As was stated in the introductory chapter, even in law schools, the most that can be expected is that an introductory IP survey course is being taught by a regular faculty member who is not an IP specialist or an adjunct professor who is a local IP practitioner.

B. The IP Program at the Dickinson School of Law

The Dickinson School of Law (Dickinson) of Carlisle, Pennsylvania is one of the schools in a second category of law schools with typical IP survey courses. Dickinson, in fact, has three elective survey courses for two semester hours each. This undoubtedly has something to do with the presence of Professor William J. Keating, a former Patent Counsel at AMP Inc., who in fact teaches these courses. Professor Keating assesses the situation as follows: "... the few schools that have an intellectual property program offer a survey course including patents, trademarks and copyrights. Except for Franklin Pierce, John Marshall and the Washington, DC schools, most schools do not have enough students to justify a program." (Personal Communication, March 18, 1991.) But interestingly Professor Keating's classes are relatively large: they "usually have 40 students in Patents; 70 students in Copyrights and 80 students in Trademarks."

The course descriptions and syllabi of the three courses offered by Dickinson are appended as Appendices C-F.

As can be seen from these syllabi, Professor Keating relies heavily (for every subject if not for every class, especially for the Patent and Trademark courses) on participation by practising IP lawyers from Philadelphia and Washington, DC.

C. The University of Baltimore School of Law

The University of Baltimore School of Law is another illustration of a law school with three IP survey courses, undoubtedly due to the presence of Professor William T. Fryer III, who is well-known and very active in IP circles and associations. In the school's catalog IP is listed with its three courses as a "specialized area" among many others like "Child and Family," "Civil Rights," "Corporate," "Criminal Law," "International Relations," etc. all of which feature seven to nine courses. The IP course descriptions and the syllabus of the seminar course are rendered in Appendices G and H. In the seminar course which has an enrollment of about 20 students, IP alumni/ae are enlisted to help out.

To give two more illustrations: Albany Law School, Albany, New York, where IP Professor Michael Hutter has been in residence for many years, has two-or-three-credit survey courses in Industrial Property and in Copyrights, which are taught by adjunct professors and Unfair Trade Practices which Professor Hutter teaches. And Notre Dame Law School, South Bend, Indiana, has two two-credit IP courses. One covers Copyright, Trademarks and Trade Regulations and is taught by resident Professor Joseph Bauer; the other deals with Patents and is taught by an adjunct professor, a local patent lawyer. These courses are taught in alternate years with about twenty students enrolled in the former and over ten students, in the latter. A few additional law schools across the country, possibly increasing in numbers due to the present-day sex appeal and glamour of IP law and practice, hew to this three-survey-course pattern.

IV. LAW SCHOOLS WITH IP SPECIALIZATION

A. George Mason University School of Law

The George Mason University School of Law (George Mason) in Arlington, Virginia — first on a list of five "up and coming" U.S. law schools, published in U.S. News & World Report (Mar. 19, 1990, p.60) — touts as its "contemporary approach to legal education" several areas or "tracks" of specialization — in addition to its day and evening division standard programs. They are the Banking and Financial Services Law Track, the Corporate and Securities Law Track, and the Patent Law Track which is a four-year evening division program "designed to provide students with a level of expertise usually found only in attorneys with post-J.D. study or several years of experience" (George Mason's Admissions Prospectus 1991, p.4).

The Patent Law Track is only for students with scientific or engineering training

who intend to practice patent law.

For graduation 87 semester hours are required, with 22 in IP Law courses (of which 14 semester hours are patent-specific and 8 are in Unfair Trade Practices, Copyrights, and Trademarks), 40 in required Standard Program courses, and 25 in courses considered valuable for practice in most areas of law, and at the same time clearly of value for a career in IP Law.

During their initial year in law school, Patent Law Track students take the same first-year courses that are required for the Standard Program Evening Division students.

The IP Law courses are evenly distributed over the last three years of this four-year evening program. Three-fourths of the course work is outside IP law ensuring that students "become well-rounded lawyers."

The detailed curriculum of the Patent Law Track is given as Appendix I. The course designations are self-explanatory, except for the fact that "Patent Law" covers the law of patents subsequent to issuance, "Patent Office Practice" deals with the procedure leading to issuance and "Advanced Topics in Patent Law" includes patent infringement law, interference practice and patent litigation damages.

The IP faculty is headed by George Mason University Foundation Professor Irving Kayton (formerly at George Washington in a similar capacity) and includes such part-time lecturers in law as David Kera and Richard Schwab who practice in the Washington area.

Established by authority of the Virginia General Assembly in 1979, George Mason has about 700 students today.

B. The John Marshall Law School

The John Marshall Law School (John Marshall) of Chicago, Illinois is one of the largest independent law schools in the nation, with an enrollment of over 1,200 students.

John Marshall has a day and evening division as well as an eight-week summer session. In the evening division at least four years and one summer session are required for completion. The day division is standard. The requirements for the J.D. degree program are at least 90 semester hours. John Marshall also has two graduate programs: Taxation and IP requiring 24 semester hours or 21 semester hours and an independent study project to obtain an LL.M.

The faculty of the IP Division consists of Associate Professor Albert G. Tramposch as its Director and adjunct professors from the Chicago IP bar, e.g. Messrs. Louis Altman, John Crystal, Raymond Geraldson, Thomas Hoffmann, Donald Peterson, Leonard Rubin, etc.

According to its most recent brochure on its "Center for Intellectual Property Law", John Marshall offers one of only a few programs in the country dedicated solely to training lawyers and law students in U.S. IP law. "... [T]he Intellectual Property Division... offers J.D. candidates, LL.M. candidates, practicing attorneys and paralegals specialized training

in all aspects of patent, trademark and copyright law, trade secrets, unfair competition and international intellectual property law."

Its J.D. and LL.M. Programs are described therein as follows:

"After completion of their first year of required core courses, J.D. students may take classes in Patent and Trade Secret Law, Trademark and Copyright Law, IP Law and Practice, Unfair Competition and Trade Regulation, and Entertainment Law. Internships allow students to work with an IP law firm while studying in the program. LL.M. courses are also available to advanced J.D. students.

....

John Marshall offers an advanced degree, Master of Laws in IP, for law school graduates who want to obtain specialized and advanced training in all aspects of intellectual property law.

A comprehensive patent program is offered for students with a science or engineering background, including advanced courses in Substantive Patent Law, Patent Office Practice, Interference Practice, Patent Litigation, Technology Licensing and International Patent Law. Trial Advocacy for Intellectual Property Attorneys trains students in trial techniques unique to patent cases.

Copyright law, trademark law, and other aspects of intellectual property law for the non-technically trained are offered in the LL.M. programs. Classes cover such topics as Trademark Law, Copyright Law, Trademark Litigation, Antitrust, Taxation of Intellectual Property, International Trademark Law, International Antitrust, Advertising Law, Business Franchise Law, Entertainment Law, Art Law, Sports Law, Computer Law, and Contemporary Technology."

The IP course offerings in the 1991 Spring Semester are attached as Appendix J and a complete list of IP graduate courses including course descriptions is likewise attached as Appendix K.

C. The George Washington University

The National Law Center of the George Washington University (George Washington) has a J.D. degree program with day and evening divisions and a summer session as well as graduate (LL.M. and D.J.S.) programs. It has several specialized LL.M. programs: Environmental Law, Government Contracts, Land Use Management and Control Law, International Law and IP Law. Total student enrollment numbers over 1600.

According to the George Washington's 1990-91 Bulletin, the IP Law Program, under the direction of Professor Donald W. Banner of the Washington firm of Banner, Birch, McKie & Beckett,

"has been developed to offer as complete and as integrated a collection of courses in this field of law as possible. The program is one of the most extensive in the U.S. The object of the IP Law Program is to provide the student with a concentration in this field of law at a level of specialization and maturity that can enable advancement far more rapidly than usual in this field." (Bulletin, p.69)

The curriculum of the IP Law Program is the following:

Licensing of IP Rights [2]
Chemical and Biotech Patent Practice [2]
Advanced Topics in Patent Law [2]
Interference Law and Practice [2]
Enforcement of Patent Rights [2]
Electronics and Computers: Patent Practice [2]
Foreign and Comparative Patent Law [2]
Copyright Law [3]
Trademark Law [2]

LL.M. candidates in the area of IP Law "who have not taken the following courses or their equivalent as part of a (J.D.) program" are to include them in their LL.M. program:

Federal Antitrust Laws [3]
Trade Secret and Patent Law [3]
PTO Practice in Patent Matters [2]
Unfair Trade Practices [3]

Othe. related courses being taught are:

Seminar: Trade Regulation [2]
Computers and the Law [3]
Seminar: Law of Privacy [2]
Government Procurement Law [4]

In addition to the Director, Professor Banner, the IP law faculty includes as adjunct faculty, such members of the D.C. area IP bar as Messrs. Brian Brunsvold, Lawrence Hefter, Maurice Klitzman, Rene Tegtmeyer, Harold Wegner, etc.

George Washington also has a Joint Juris Doctor-Master's Degree Program so that students can work concurrently toward both the J.D. degree in the National Law Center and a master's degree in the University's Graduate School, in such related fields as business administration, economics, international affairs, political science, and public administration.

V. PROFESSOR WESTON ON GEORGE WASHINGTON

Speaking of George Washington it is worthwhile recalling that Professor Glen E. Weston made an excellent presentation at the WIPO/ATRIP (International Association for the Advancement of Teaching and Research in IP) Symposium in San Jose, September 17-21, 1990. The title of his paper was "Experience of the Teaching of Intellectual Property ... at an English-speaking University." After "40 years of teaching primarily at George Washington," Professor Weston recounted, in the first part of his paper, the travails encountered in shaping an IP program as is now in existence at George Washington and, more particularly, the problems of

— persuading university administrations and faculty to approve new IP courses,
— obtaining adequate teaching materials,
— finding well-qualified teachers for IP courses,
— demonstrating sufficient student interest in new courses, and
— continuing close supervision to assure quality.

The second part of Professor Weston's paper consists of detailed discourses on "Teaching Methods and Objectives" as employed by and perceived at George Washington. Professor Weston's six objectives of teaching IP law are reproduced in Appendix L in titular fashion as fairly self-explanatory; his treatment of the subject of teaching methods deserves further comment which will be found hereinafter in Chapter VI.

VI. FRANKLIN PIERCE LAW CENTER

A. An Innovator in Legal Education

Franklin Pierce Law Center (FPLC) began in 1973 as a small, pioneering law school and as New Hampshire's only law school.

Now FPLC has a faculty of twenty full-time professors and twenty adjunct lecturers, a student body of about 375 students (about 25% of whom specialize in IP or related law), and a record of innovations in training students to meet the challenges of practice.

As one of the leading institutions of IP training in the U.S. today, FPLC differs from such other leaders as George Mason, John Marshall or George Washington. Instead of emphasizing advanced-degree or evening-school programs, it provides a well-rounded, full-time curriculum leading to the basic legal degree, the Juris Doctor (J.D.). FPLC is the only law school having more than one full-time professor who is a qualified patent attorney. FPLC, in fact, has five. In addition, the President and Founder of FPLC, Robert H. Rines is a practising patent attorney and an inventor with over 60 patents to his name.

As an innovator in legal education, FPLC emphasizes learning the essential skills

for professional practice. As an example, for IP law practice, the skills include preparing patent specifications and claims, negotiating and drafting licenses, and litigating IP disputes. As a result, FPLC graduates "hit the deck running" as IP lawyers.

The number of course credits at FPLC pertaining to patent and other IP law is higher than any other U.S. law school's offerings designed for J.D. degree students. The current list of courses, is as follows:

Copyright Law [2]
International Patent Law [2]
International Trade Regulation [2]
Legal Skills II — IP Sections [2]
Licensing IP [3]
Patent Practice & Procedure I [2]
Patent Practice & Procedure II [2]
Proactive IP Management [2]
Selected Topics in IP I [2]
Selected Topics in IP II [2]
Survey of IP [3]
Trademarks & Deceptive Practices [3]
Trial Advocacy — Patent Section [3]
Patent Enforcement [2] (will be added for 1991-92)
Description for the above courses are reproduced in Appendix M.

This curriculum is enlarged through independent studies, externships (internships) and special seminars and lectures on IP subjects. One externship opportunity places students in Washington, DC for a full semester in the chambers of a judge of the CAFC, which has exclusive jurisdiction over appeals in patent litigation.

B. Master of Intellectual Property Degree

The Kenneth J. Germeshausen Center for the Law of Innovation and Entrepreneurship (Germeshausen Center), launched by FPLC in 1985, is the umbrella organization for FPLC's specialization and policy studies in the legal protection, management and transfer of IP, especially as they relate to the commercialization of technology. It designs and supports IP programs ranging from brief orientation sessions for foreign visitors to a six-week summer school, to a half-year-long or a year-long, full-time course of study leading to a Diploma or a Master of Intellectual Property (MIP) degree. These programs have been attended by administrators, practitioners and law students not only from virtually every state in the U.S., but also from every continent of the world.

The MIP has been created as a master level degree but not a graduate LL.M.-type law degree inasmuch as some students have technical backgrounds but do not have law

degrees. For both foreign and U.S. nationals who do not need law degrees to become licensing experts, the Diploma and MIP Programs are very appropriate.

These programs are also appropriate domestically to help alleviate the serious shortage of patent professionals through "training individuals as patent agents for six months or one year," as suggested by the Long Term Planning Committee of the American Intellectual Property Law Association (AIPLA) in 1990. In fact, the 1990-91 MIP Class includes a domestic student from Massachusetts for the first time.

MIP Program participants spend two semesters at FPLC taking a thorough curriculum of academic courses, practical skills training and comparative law exposure. Subjects intensively treated are contract law, patents, technology licensing, trademarks, copyrights, trade secrets, the law of international trading and business relationships and comparative IP law. Skills instruction covers drafting patent claims, preparing patent applications, designing and drafting technology licenses, managing IP assets, and making legal arguments in mock litigation. In addition, students unfamiliar with the U.S. legal structure are introduced to it through special lectures as well as research and writing exercises.

The third MIP semester places foreign students for one month each at the USPTO in Washington, DC, in an IP law firm and in the IP department of an American corporation.

In July 1990 the New Hampshire Postsecondary Education Commission extended indefinitely into the future the authority of FPLC to confer the MIP degree, after an initial three-year approval subject to annual reporting requirements. The extension was based on the report of an evaluation team appointed by the Commission. The report cited the "extremely impressive" MIP Program as occupying a "unique niche in legal education worldwide."

In a WIPO/ATRIP Symposium in San Jose, Costa Rica, September 1990, Professor Stanislaw Soltysinski, Mickiewicz University, Poznan, Poland, gave a description of FPLC's MIP Program, recognized it as "unique" and recommended its "transplantation" elsewhere in his lecture entitled "Planning of Special Studies on the Protection of Industrial Creations."

The MIP Program began in August 1986 when FPLC enrolled five persons from the People's Republic of China as well as one student from each of five other countries: Taiwan, South Africa , Korea , the Philippines and Singapore.

In the following years students completing the MIP Programs came from Argentina, Belgium, Guatemala, Italy, Japan, Korea, Mexico, New Zealand, Pakistan, the PRC, Peru, Saudi Arabia, Tanzania, Taiwan, Venezuela, and Zimbabwe.

Over the past five years, FPLC has trained, among others, twenty patent and trademark office and other governmental officials including the Assistant Registrar of Patents from Tanzania, the Deputy Director of the Patent and Trade Mark Office in Zambia, a Special Assistant to the President of Brazil for GATT Affairs, the Controller of Patents,

Trademarks and Industrial Designs for Zimbabwe, the Director of Technological Development in Mexico, the Policy Planning Director of Taiwan's Patent and Trademark Office, and a Foreign Trade Legal Adviser in Peru.

When these students return to their home countries they have a heightened awareness of how much IP protection promotes invention, innovation and economic progress.

FPLC also offers a shortened, one-semester Diploma Program for applicants who cannot spend an entire year in residence. The six-month Diploma Program includes the same courses as required in the first semester of the MIP Program; upon completion of the semester, participants take part in a one-month internship at a single U.S. institution.

C. Intellectual Property Summer Institute (IPSI)

The Germeshausen Center also offers short courses each summer in IP subjects for law students, lawyers, engineers, scientists and managers. The IPSI offers a six-week program in June and July comprising two-credit courses on Patent and Trade Secret Law, Patent Practice and Procedure, Licensing and Trademarks, and Copyrights. In addition, a weekly luncheon seminar on Current Issues in IP brings together IPSI students on an informal basis.

With the permission of their home schools, law students can apply credits earned in the IPSI toward the J.D. degree. In addition to students from law schools not having extensive offerings in IP subjects, participants in the IPSI have come from major U.S. corporations and research institutes as well as such foreign countries as Brazil, Canada, Columbia, Jamaica, Japan, the Netherlands, Paraguay, Peru, Spain, Switzerland, Taiwan, Venezuela and Yugoslavia.

D. Joint JD/MIP Degree Program

In late October 1990 the Law Center faculty approved a program allowing Juris Doctor degree students to earn both the JD and MIP degrees in a total of three and one-half years or even in three years of full-time study. Twenty second- and third-year students have already enrolled.

The joint degree program will permit FPLC students to obtain both degrees by satisfactorily completing 96 course credits (including 24 in IP courses, in which a B average must be maintained) and a substantial paper. The paper, to be designed and prepared under close faculty supervision, is the equivalent in the MIP program as a professional degree curriculum of a master degree thesis in an academic degree curriculum. Each paper is to respond to a demonstrated need arising in the administration or practice of IP law for legal or empirical research, policy development, critical analysis, or insightful synthesis.

The rationale behind the JD/MIP degree program is threefold. First, a student who

comes to FPLC to specialize in IP within the parameters of the JD degree finds herself or himself in a squeeze. Enrolling in all or most of the IP courses the school offers leaves the student insufficient time to take the general law courses (including all the ones important in IP practice) that they should take or would like to take. Conversely, students who take the general law courses other JD students take may shortchange themselves by electing less than the full complement of IP courses.

Second, the IP curriculum — over 30 credits — is so extensive as in reality to amount to a separate degree program, especially when joined with the requirement of completing a substantial, professionally-valuable paper. Many of the FPLC IP courses could be offered at the LL.M. level, as is done in other law schools. Third, earning the MIP as well as the JD degree provides students with accurate credentials. Earning both degrees permits them to demonstrate readily, to potential employers and the rest of the world, that specialization in IP at FPLC means much more than, on the one hand, a few courses in the subject or, on the other, a sketchy general legal education.

Graduates from other law schools will also be able to take advantage of the combined degree program. They can apply toward the 24 credits required for the MIP degree up to 12 IP and IP-related credits earned earlier in their JD degree education.

E. Benchmark Alternatives

The gulf between legal education and legal practice, discussed above in Chapter II, is in fact getting wider, notwithstanding clinical-skills programs, as more and more elite law schools emulate graduate schools in emphasizing academic research and writing.

In contract to this trend, the FPLC faculty is asking questions such as the following: Does the proposed program or course address a real-world issue or concern that legal education isn't adequately addressing? Does it relate to what is going on out in the practical world instead of relating primarily to academic exchanges? Will it improve the education of our students in helping them become more thoughtful, aware, skillful, and humane lawyers? Should the primary responsibility of the full-time faculty be individual growth of our students as legally-trained persons? These questions aim at the greatest weakness in the structure of American legal education — the failure of anyone to be charged with responsibility for training a person who shortly will be licensed to make a major impact on individuals and society under the cloak of professional responsibility.

A practice-oriented individualized learning [IL] program as a benchmark alternative (BMA) to academic research and writing can encompass a variety of steps and things, such as, in particular, "intensive semesters" and "bridging semester" for starters. One illustration of the former is a "legal reasoning" BMA for the first year to strengthen students' basic thinking and reasoning and hence writing skills. Other possibilities for "mastery courses" in other semesters: ADR (Alternative Dispute Resolution) concentration, "master advocacy semester," etc.

An example of the latter is the "Proactive IP Management" course which I teach in

the sixth semester and which is designed as a "capstone" course building on all of the IP courses taken in the second and third years, and a "bridging" (or "exit" or "transition") course spanning academia and real-life private or corporate practice. As such, it is a very practical course on how to get a headstart in intellectual property/licensing practice.

VI. TEACHING METHODS, SYLLABI AND AIDS

The Socratic method with its use of casebooks, which reigned supreme for many decades, has come under attack but has survived albeit in modified form. Some type of discussion method with students actively involved is now widely employed in preference to a pure lecture system of teaching. After all, "participants of advanced programs are eager to participate actively in classes and seminars," as was stated by Professor Soltysinski (supra, p.7).

According to Professor Weston's presentation in San Jose in September 1990 (supra), a "problem method" of teaching has taken hold.

> "Some Professors use the method entirely by giving students a series of hypothetical problems to which the students are required to supply either written solutions or to give their solutions orally in a classroom discussion of the problems. This type of teaching is also used as an adjunct to the Casebook system. It works best with small classes of less than 100 and, preferably, not more than 75.
>
> ....
>
> The principal drawbacks of use of the problem method of teaching are that problems require a great deal of the professor's time to prepare, supervise and evaluate. They also require a great deal of class time, making it difficult to cover all of the subject matter of the course. But a selective use of the problem method is a very effective teaching technique."

The problem method was also strongly endorsed by Professor Charles R. McManis, School of Law, Washington University, St. Louis, Missouri. "Beyond the first year of law school .... the case method is simply not a particularly efficient and effective method for analyzing the complex statutory schemes (e.g. IP legislation) that predominate in the second and third year of law study." (McManis, WIPO/ATRIP Presentation, Geneva, July 1989, p.5).

Indeed, in teaching IP courses with manageable student enrollment the problem method is a very good one. Instead of hypothetical problems, I am able to use actual real-life problems culled from experience. In fact, sometimes my "hypothetical" problems are camouflaged actual problems. The drawbacks of the problem method as perceived by Professor Weston are outweighed in my view by the effectiveness of this technique,

especially in a practice-oriented approach aimed at "bridging" academia and post-graduation practice and at enabling students to "hit the deck running."

With respect to teaching materials and aids in IP programs, a serious problem has persisted over the years. Due to the relatively small market, anything but a plethora of textbooks for use in IP courses has been published. There are some and they are useful for IP survey courses. Professor Charles McManis used the following text/casebooks in his Unfair Trade Practices course: Oppenhein, Weston, Maggs and Schecter's Unfair Trade Practices and Consumer Protection or Kitch and Perlman's Legal Regulation of the Competitive Process and Paul Goldstein's Copyright, Patent, Trademark and Related State Doctrines: Cases and Materials in the Law of Intellectual Property.

Professor McManis also compiled a list of IP Casebooks available for teaching IP courses. This list, attached as Appendix N, is not very extensive. The selection, however, may be satisfactory for teaching survey courses but is not adequate for other specific IP courses. In fact, Professor Keating of Dickinson who teaches three survey courses, uses Nimmer's Casebook for his Copyright course and course materials of his own for his Patent and Trademark courses.

Indications are that most IP professors indeed compile, or have to compile, sets of mimeographed course materials especially designed for their class needs. In my Licensing/Technology Transfer course I use two publications, namely, "Drafting Patent License Agreements," (Third Edition, BNA Books, 1991) by Harry R. Mayers and Brian G. Brunsvold and "Licensing — A Strategy for Profits" by Edward P. White (LES, 1990). More important, however, are the courses materials consisting of about 1000 pages which had been compiled over time by my predecessor, Professor Homer Blair, and myself. See Appendix O for a list of contents.

Teaching syllabi for IP courses, likewise, are largely tailor-made. Particularly interesting syllabi — very comprehensive, yet concise — have been developed and are in use by FPLC's Professor Field and are attached as Appendices P and Q.

On the subject of teaching aids, I would be remiss in this day and age not to mention computers and their use in computer-aided systems for instructional and other purposes, such as literature searches and legal research. One very interesting example of an instructional use of computers or "computer assisted instruction (CAI)," was written up by Professor Field for the 1988 ATRIP Meeting. Today this CAI has the same currency and validity as it had in 1988 and is still extensively used.

Professor Field's short paper and supporting statements by FPLC faculty members are attached as Appendices R, S, and T.

VII. CONCLUSION

The advent of the Golden Age for patents and intellectual property and the severe shortage of patent and IP professionals, have brought about great changes in the world of

IP teaching and training. The subject of IP is now perceived as glamorous and enrollment in IP courses of study and programs has increased accordingly. While in the not-too-distant past, most IP practitioners had to acquire their skills on the job, any law schools now offer one or more IP survey courses and have one full-time IP professor among the faculty. A very small number of law schools — too few — have started or expanded their IP curricula and now offer over 20, or, as in the case of FPLC over 30, IP courses. Outside of law schools no systematic IP teaching to speak of (apart from introductory lectures) takes place in colleges and universities.

In law schools, the first year is composed of certain basic required courses devoted to the study of judicial cases concerned with general public and private law subjects, such as constitutional law, criminal law and procedure, and the various civil law and procedure subjects concerned with enforcing private contractual, personal and property rights and providing compensation for civil wrongs, and more complex statutory or administrative law subjects (including intellectual property law) that build on these basic courses, are offered as elective subjects in the second or third year of law school.

Law schools noted for their IP specialization or concentration, apart from FPLC, are George Mason University School of Law, John Marshall Law School, George Washington University National Law Center. Most IP teaching is still largely a matter of evening classes taught by adjunct faculty. But changes are afoot in this respect, too. These law schools also tend to have graduate master-level programs as, for example, an LL.M. degree program.

FPLC has a particularly extensive IP specialization with a full-time IP faculty of five and over 35 IP course credits. The IP program is practice-oriented and involves the actual preparation of patent specifications and claims, of responses and appeal briefs and of license agreements which enables students to take and pass the USPTO admission examination and enables graduates to "hit the deck running" upon entering IP practice.

The graduate program at FPLC, the MIP Program, is also different — in fact its been acclaimed as "unique" — because non-lawyers from the U.S. and from many foreign countries are admitted to it. Most recently, FPLC has started a joint JD/MIP degree program which will permit students to obtain both degrees simultaneously or almost simultaneously provided the requirements regarding more course credits, higher grade average and preparation of a paper are fulfilled.

In the area of teaching methods, syllabi and aids, the traditional casebook method has given way to the problem method of teaching which is particularly suitable for teaching IP courses. In addition, FPLC has enhanced its practice-oriented approach by such additional innovative features as "bridging semester" courses to span academia and post-graduation practice.

An inadequate number of text/casebooks are available and consequently IP professors are largely on their own; they have to compile their own course materials and prepare their own syllabi tailored to the needs of the students.

[Annexes follow]