

# 15 Intellectual Property Legal Education in Japan in the New Millennium: Observations and Lessons from the U.S.

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*Professor Ilhyung Lee's research project examines intellectual property legal education in Japan, from the view of a U.S. law school faculty member. The discussion is timely given the Japanese government's recognition of the important role of intellectual property in the national agenda, and the beginnings of the new law school in Japan. Professor Lee's article begins with a brief background of intellectual property in Japan and the teaching of intellectual property law in Japanese higher education on the eve of the new law school. It also offers outsider observations on various aspects of intellectual property education in Japan. This is followed by a brief description of intellectual property curriculum in the U.S. law school, including specific items of discussion by intellectual property faculty stateside that may be of interest to law teachers and administrators in Japan. One question for consideration is to what extent intellectual property law education in Japan and the U.S. reflect the respective societal culture. The article encourages discussion on how faculty in Japan could benefit from the experience of a more developed intellectual property curriculum in the U.S., while developing a system tailored for Japanese objectives.*

In January of this year, I completed a three-week visiting research opportunity at the Institute of Intellectual Property (IIP), focusing on the subject of intellectual property (IP) law education in Japan. The results of the research will be available in an article from the IIP to be published shortly. This essay explains how I became interested in the project, and provides a summary of my findings contained in the article.

## Background

Currently, I am a member of the faculty at the University of Missouri School of Law in Columbia, Missouri. I have teaching and research interests in

intellectual property and alternative dispute resolution (ADR).<sup>(\*)</sup> In recent years, I have taught Copyright and Trademarks on a regular basis. I began to teach these subjects at a time when the law school took steps to enhance the intellectual property curriculum.

For many years, the IP curriculum at Missouri consisted of a survey intellectual property course (which included in one course coverage of patents, copyright, and trademarks). Eventually, separate courses in patents, copyright, and trademarks were added, which were taught on a rotating but infrequent basis. There was essentially one member of the faculty who taught all of the intellectual property law courses.<sup>(\*\*)</sup> This in large

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(\*1) Generally, ADR is the study of the resolution of disputes by means alternative to traditional court adjudication (for example, negotiation, mediation, and arbitration). See LEONARD L. RISKIN & JAMES E. WESTBROOK, DISPUTE RESOLUTION AND LAWYERS 1-11 (2d ed. 1997). The University of Missouri School of Law is home to the internationally renowned Center for the Study of Dispute Resolution, with several faculty members who specialize in ADR. <<http://www.law.missouri.edu/csdr/>>. Missouri has a graduate Masters of Law (LL.M.) program in ADR (and is hopeful of applicants from Japan). Both intellectual property and alternative dispute resolution have received increasing attention from the legal academy, the practicing bar, and the legal academy. With respect to intellectual property, Professor William Alford has written:

In our public life, intellectual property went from being a back to front burner issue in part because of a growing realization of our dependence upon it. This dependence has emanated not only from the fact that ours is increasingly a service oriented economy, but also as a result of our growing understanding of the importance of new technologies.

William P. Alford, *How Theory Does--and Does Not-- Matter: American Approaches to Intellectual Property Law in East Asia*, 13 UCLA PAC. BASIN L.J. 8, 12 (1994). Regarding ADR, Professors Riskin and Westbrook have noted that "[a] resurgence of interest in alternative methods to prevent and resolve disputes is sweeping across the United States." RISKIN & WESTBROOK, *supra*, at 1 & n.1.

For a general discussion of ADR methods to resolve disputes involving intellectual property rights, see Scott H. Blackmand & Rebecca M. McNeill, *Alternative Dispute Resolution in Commercial Intellectual Property Disputes*, 47 AM. U.L. REV. 1709 (1998).

(\*2) The patents course was taught by a few years by an adjunct professor, a practicing lawyer in St. Louis, who commuted to Columbia (about 200 kilometers) once a week.

part reflected the IP curriculum and teaching faculty at Missouri until a few years ago.<sup>(\*)3)</sup>

Recognizing the significant role of intellectual property in contemporary law practice, about five years ago, Missouri added new courses (e.g., Cyberspace law, E-commerce law<sup>(\*)4)</sup>) and hired additional faculty. The discussions among faculty and administrators toward best enhancing the IP curricular offerings have been continuing and informative. Among the factors to be considered are trends in intellectual property law, faculty expertise and preference, student demand, career placement possibilities upon graduation, and logistical limitations. I would venture to guess that other law schools in the U.S. have completed are currently engaged in similar conversations.

It was at about the time my colleagues and I were discussing the most ideal IP curriculum for Missouri when I learned of the visiting research opportunity at the IIP. During my previous visit to Japan in 2002 (as a Fulbright lecturer at Waseda University), I had learned of the new American-type law school that would begin in Japan beginning from 2004. Given my interests in intellectual property and in legal education in Japan, I was curious as to how intellectual property would be covered in the new law school in Japan.

## Research in Japan

My initial task was to gain an understanding of the intellectual property curriculum in Japan, both in the faculties of law at the universities where IP has been taught, and the new *ho-gahk dai-gahk-goo-in*, a graduate level program in law modeled in significant part after the U.S. law school. To this end, I interviewed a number of professors who teach

intellectual property at various universities and who will continue their role in the new law school, mostly in Tokyo but also in Osaka and in Kyoto. I also met with judges of the Tokyo District Court, and IP practitioners in the private sector. The IIP library also provided various sources on the subject, mostly in Japanese text that were translated into English.<sup>(\*)5)</sup> Learning more about how and why intellectual property law is taught in Japan reminded of the U.S. equivalents, which provided for me an opportunity for a comparative discussion. Such a discussion invites thought on how the Japanese and U.S. approaches to the teaching and learning of intellectual property law reflect the norms, histories, and priorities of the respective societies.<sup>(\*)6)</sup>

## Resulting Report: Summary

The result of my research is an article entitled *Intellectual Property Legal Education in Japan in the New Millennium: Observations and Lessons from the U.S.* The article begins with a brief background of intellectual property in Japan and the teaching of intellectual property law in Japanese higher education in the opening years of the millennium. In brief, it appears that a key factor in the economic success of Japan is a sound policy to protect intellectual property rights.<sup>(\*)7)</sup> Indeed, the Japanese government has acknowledged a plan to continue such a policy with references to Japan as a "nation built on intellectual property."<sup>(\*)8)</sup> This discussion is followed by observations and queries concerning various aspects of intellectual property education in Japan, from an "outsider." Observations include the emphasis on technology in intellectual property courses.<sup>(\*)9)</sup> Questions are raised relating to, among other matters, the

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(\*)3) For the results of a survey taken of U.S. intellectual property law faculty relating to the IP curriculum at their respective law schools, see Roberta Rosenthal Kwall, *The Intellectual Property Curriculum: Findings of Professor and Practitioner Surveys*, 49 JOURNAL OF LEGAL EDUCATION 203, 203 (1999) (by Professor Kwall of DePaul University College of Law).

(\*)4) International intellectual property has also been approved for inclusion in the curriculum.

(\*)5) *E.g.*, JAPANESE PATENT OFFICE, INTERIM REPORT ON THE INFORMAL GATHERING FOR DISCUSSION CONSIDERING THE FUTURE OF RESEARCH AND TRAINING IN INTELLECTUAL PROPERTY, CURRENT CONDITION ON RESEARCH AND EDUCATIONAL TRAINING SYSTEM REGARDING INTELLECTUAL PROPERTY (1997) (Japanese text), *available at* <<http://www.jpo.go.jp/shiryoutoushin/chousa/taisei.htm>>; JAPAN INSTITUTE OF INVENTION AND INNOVATION, REPORT FOR ACTUAL CONDITION SURVEY ON INTELLECTUAL PROPERTY RIGHTS COURSES AT UNIVERSITIES (1999) (Japanese text) (sponsored by Keirin); RESEARCH PROJECT FOR INTELLECTUAL PROPERTY AT UNIVERSITIES (REPORT I): PROGRESS OF INDUSTRIAL PROPERTY RIGHT PROTECTION AT UNIVERSITIES AND NEW ISSUES ON TECHNOLOGY TRANSFER (March 2001) (Japanese text) (report submitted by Ritsumeikan University, funded by Japanese Patent Office); A STUDY CONCERNING INTELLECTUAL PROPERTY EDUCATION AT EDUCATIONAL INSTITUTIONS FOR THE STRENGTHENING OF INDUSTRIAL COMPETITIVENESS AND THE HANDLING OF RESEARCH OUTCOME AND COMPETITION POLICIES (2001) (Japanese text) (study funded by Japanese Patent Office, conducted by Tokai University) [hereinafter STUDY CONCERNING INTELLECTUAL PROPERTY EDUCATION]. This study also includes the proceedings of a symposium, "Intellectual Property Education of an Educational Institution," held on November 8, 2001. *Id* at 24.

(\*)6) In addition to IP and ADR, I have research interests in law and society in East Asia. Included in this is the relationship between law and culture in an East Asian jurisdiction.

(\*)7) See Christopher Heath, *Japan's Influence on Asian Intellectual Property Systems*, in INTELLECTUAL PROPERTY: JAPAN AND THE NEW ASIA, CONFERENCE PROCEEDINGS (BEST PAPERS & RESOURCE GUIDE) 129 (Oct. 21-22, 1997).

(\*)8) Strategic Council on Intellectual Property, *Intellectual Property Policy Outline*, Introduction (July 3, 2002), *at* <[http://www.kantei.go.jp/foreign/policy/titeki/kettei/020703taikou\\_e.html](http://www.kantei.go.jp/foreign/policy/titeki/kettei/020703taikou_e.html)>.

(\*)9) For example, patent law appears to receive much attention in the Japanese curriculum.

distinction between IP courses in the faculty of law in contrast to those in the new law school, the teaching methods of IP subjects in the new law school,<sup>(\*10)</sup> the selection of new IP faculty<sup>(\*11)</sup> and their research and scholarship responsibilities. The article then provides a brief description of intellectual property curriculum in the U.S. law school,<sup>(\*12)</sup> and highlights specific items of discussion by IP faculty stateside that may be of interest to law educators and administrators in Japan. For example, the legal academy in Japan may be interested in the U.S. discussion relating to the merits of the "survey" IP course, and the debate over including intellectual property in the first-year core curriculum.<sup>(\*13)</sup>

The article was written with the hope that faculty in Japan could benefit from the experience of a more developed and seasoned curriculum in intellectual property in the U.S., while developing a system tailored for *Japanese* objectives, while American counterparts could also benefit from a comparative discussion in efforts to enhance their own IP curriculum.



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(\*10) For example, will law professors in Japan adopt something akin to the "Socratic method" of (professor) question and (student) answer still seen in many U.S. law schools?

(\*11) Given the demand of new IP faculty, how will law schools produce new professors to teach the subject?

(\*12) As noted above, Professor Kwall's article provides a description of the intellectual property curriculum at various law schools in the U.S. The article also reports the findings of a survey sent to attorneys practicing in intellectual property, eliciting their views on the desired IP curriculum. Finally, the article includes suggestions for those schools contemplating expansion of intellectual property curricula.

(\*13) One proponent of such inclusion is Professor William Mock, who writes,

First, it would help to open students' eyes to the value of intellectual and informational property in modern society and business dealings, so that they are better positioned to protect their future clients' interests. Second, it would help put to rest the stale notion that only engineers become intellectual property lawyers. Third, . . . it would reinforce the students' awareness of the growing importance of information and similar intangibles.

William B. T. Mock, *Informing Law Curricula: Modifying First-Year Courses To Reflect the Information Revolution*, 51 JOURNAL OF LEGAL EDUCATION 554, 559 (2001).

