

## **IEEM Intellectual Property Law Programme 2016**

### **The 13<sup>th</sup> Intellectual Property Law School 21 – 25 November 2016, Macau Cultural Centre**

The IP Law School is a unique initiative in Asia offering a taught programme in international Intellectual Property Law and its relevance for global, European and Asian economic development and innovation policy.

The IP Law School is extremely suited for trainee lawyers, Intellectual Property professionals with an economic or policy background, and master students in Intellectual Property wishing to enhance their skills at post-academic level.

Starting from the basics of the Paris and Berne conventions, the course covers the development of Intellectual Property Law all the way to the WTO TRIPS Agreement and the WIPO Copyright treaties. Attention is also devoted to regional arrangements, such as the European Patent Convention, and other new international and national initiatives. From a policy perspective free trade agreements and bilateral investment arrangements covering Intellectual Property, as well as ongoing negotiations in the area of protection of traditional knowledge will be covered.

Classes are offered in an intensive Socratic format in the course of one week by experts in the field.

This challenging programme also expects participants to jointly prepare and argue several moot cases in a friendly, yet competitive atmosphere, providing a unique insight in the way in which colleagues from various jurisdictions approach international and domestic legal problems.

### **The 16<sup>th</sup> Intellectual Property Seminar: Property – Of Pharmaceuticals, Tobacco, Commodities and Other Matters 28 and 29 November 2016, Macau Grand Lapa Hotel**

The two-days Annual Intellectual Property Seminar offers a forum for IP professionals wishing to be part of a thought-provoking discussion on cutting-edge developments in intellectual property law and policy. Distinguished practitioners, judges and academics from all over the world have contributed to this event. The papers they have presented have been published in book form by Kluwer Law International and Hart Publishing.

The 2016 event will cover the way in which intellectual titles function as property. Not content with approaching intellectual property as a title conferring a 'negative right' to exclude others, right holders have increasingly argued that the right to property entitles them to a 'positive' right that protects their investment against expropriation or other measures that negatively affect their 'legitimate expectations'. The seminar thus looks at the way in which regulatory and policy freedom of a state is curtailed by intellectual property rights, but also how intellectual property can be valued, act as collateral for the purpose of investment and IP exchanges.

### **The Professional IP Update 2016: IP Exchanges 30 November 2016 - HK IP Department, HK**

The annual professional update provides an overview of all relevant cases and legislative developments of the past year from all over the world. During one day you will be brought up to speed on the major important legal decisions and developments in intellectual property law and policy. For this edition, the IP discussion will also include IP Valuation and Exchanges.



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INSTITUTO DE ESTUDOS EUROPEUS DE MACAU

## Tentative Programme

21 – 25 Nov 2016		The 13 <sup>th</sup> IEEM Intellectual Property Law School	
<b>Monday, 21 November</b>		<b>Lecture:</b> Introduction: History and Structure of IP Laws	
		<b>Lecture:</b> Introduction: History and Structure of IP Laws	
		<b>Lecture:</b> International IP treaties and its guiding principles: National treatment, independence, priority, jurisdiction and dispute settlement	
		<b>Mock trial:</b> Preparation for mock trials	
<b>Tuesday, 22 November</b>		<b>Lecture:</b> Principles of trade mark law, passing off and the protection of well-known marks	
		<b>Lecture:</b> Trademarks: confusion/dilution/passing off, three-dimensional marks	
		<b>Case studies:</b> Trade marks	
		<b>Mock trial:</b> Opel (Trademarks; similarity; confusion)	
<b>Wednesday, 23 November</b>		<b>Lecture:</b> National and international copyright law	
		<b>Lecture:</b> Interfaces - Slavish imitation, copyright and works of applied art	
		<b>Case studies:</b> Digital Copyright	
		<b>Mock trial:</b> Wheelies – Designs, trade marks, exhaustion	
<b>Thursday, 24 November</b>		<b>Lecture:</b> National and international patent law – Basic Principles	
		<b>Lecture:</b> How to read patents, claims, descriptions, priority issues	
		<b>Case studies:</b> Patents: Monopolies, Rights and Limits	
		<b>Mock trial:</b> Expeditie Sulawesi – Copyrightable works, acts of copying, private use, communication to the public, applicable law	
<b>Friday, 25 November</b>		<b>Lecture:</b> Enforcement Issues	
		<b>Lecture:</b> Internet Issues: Infringement and Liability	
		<b>Lecture:</b> Technology Transfer and Licensing	
		<b>Mock trial:</b> Tick Card – Patents, validity, claim interpretation	





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The 16<sup>th</sup> IEEM Intellectual Property Seminar  
**Property – Of Pharmaceuticals, Tobacco, Commodities and other Matters**  
**Grand Lapa Hotel, Macau 28 and 29 Nov 2016**

*Morning*

**Monday**  
**28 Nov 2016**

09:00 Registration

**09:30 Welcome Address**

José Luís de Sales Marques - IEEM President

Gonçalo Cabral – Legal advisor to the Secretary for Economy and Finance, Macau – Seminar  
Convenor

**09:45 IP as Property – An Introduction to the Seminar**

Anselm Kamperman Sanders - Maastricht University, The Netherlands  
t.b.a.

**10:30 Q&A followed by Coffee Break**

**11:00 Dispute Resolution in International and Bilateral Agreements**

Bassem Awad – Centre for International Governance Innovation, Canada (t.b.c.)

**12:30 The origins of Investor Dispute Tribunals**

Julien Chaisse – Chinese University of Hong Kong, Hong Kong

**13:15 Q&A followed by Lunch**

*Afternoon*

**14:30 IP and the WTO – Dispute Resolution; Property vs Flexibility**

Anthony Taubman – IP Division at WTO, Switzerland

**15:15 IP Legislation before National Courts – The Tobacco case in Australia and the EU plain  
Packaging discussion**

Robert Burrell – University of Sheffield, UK

**16:00 Q&A followed by Coffee Break**

**16:30 Closure**

19:30 Dinner



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<p><b>Tuesday</b> <b>29 Nov 2016</b></p>	<p style="text-align: center;"><i>Morning</i></p> <p>9:00 <b>IP and Investor-State Dispute Settlement (ISDS)</b> Covering cases such as <b>Eli Lilly v. Canada; Philip Morris Asia v. Australia, Philip Morris v. Uruguay</b> Daniel Gervais, Vanderbilt University, USA (t.b.c.)</p> <p>9:45 <b>IP as Property – What state measures may be relevant?</b> Anselm Kamperman Sanders - Maastricht University, The Netherlands</p> <p><b>10:30 Q&amp;A followed by Coffee Break</b></p> <p>11:00 <b>IP Rights before CJEU and ECtHR – Balance of Rights and Mandate Commission</b> Covering cases such as <b>EctHR Anheuser-Busch v. Portugal; CJEU Scarlet Extended, etc.</b> Lothar Ehring - European Commission, Brussels (t.b.c.)</p> <p>11:45 <b>IP Disputes before National Courts – Direct Application of International Law</b> t.b.a.</p> <p><b>12:30 Q&amp;A followed by Lunch</b></p> <p style="text-align: center;"><i>Afternoon</i></p> <p>14:30 <b>Mock Trial: t.b.c.</b></p> <p><b>17:00 Closure &amp; drinks</b></p>



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香港特別行政區政府知識產權署  
The Government of the Hong Kong Special Administrative Region  
Intellectual Property Department

## **Hong Kong IP Update**

**Wednesday 30 November 2016**

**Hong Kong Intellectual Property Department, Function Room 2501**

**25/F Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong**

## **IP Exchanges**

IP trading has brought to the fore the challenges of valuation of IP assets and their trade separate from traditional connections such as goodwill, products, services or indeed any physical embodiment. The legal title of intellectual property can be transferred, but what is its value without ancillary know-how, workforce, or marketable product? Does the value of IP then lie in a mere promise, or in the ability to use an IPR as a nuisance to other traders?



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## **Fees**

- IP Law School, 21 to 25 Nov 2016: MOP 8000 or USD 1000
- IP Seminar, 28 and 29 Nov 2016: MOP 6,000 or USD 750
- Annual Professional IP update, 30 Nov 2016: MOP 3000 or USD 375
- IP Law School + Annual Professional IP update + IP Seminar: MOP 14,400 or USD 1800
- Each IP Seminar dinner: MOP 400 or USD 50

## **Early bird registration**

Discount of 15% for enrolment before 15 September 2016 and discount of 10% for enrolment before 14 October 2016

## **Requirements for admission to the IP Law School**

The expected level of English proficiency is the equivalent of a minimum of 6.0 on the IELTS/550 on the TOEFL.

Participants should hold a bachelor degree or above, preferably in law or economics. Work experience will also be considered.

In order to safeguard interactive teaching, the number of participants to the IP Law School is limited to 24 individuals, with a cap of 4 participants per jurisdiction. Should applications exceed 24, a waiting list will be opened until there are sufficient candidates to warrant the opening of a second group.

For the Annual IP Seminar and the Professional IP Update no restrictions apply.

## **Registration**

IP School (with option to register for IP Seminar and Update):

<http://lawstudy.maastrichtuniversity.nl/conference/files/index.asp?cn=12>

IP Seminar and Update only:

<http://lawstudy.maastrichtuniversity.nl/conference/files/index.asp?cn=11>



## **Terms and Conditions**

Program cancellation: The IEEM reserves the right to cancel the whole or part of the IP Programme should there be insufficient registrants;

Registration deadline: Enrolment is open until 10 November 2016;

Refund policy: 80% of fees paid for the IP Law School will be refunded if cancellation occurs before 23 October 2016. Dinner fees are not refundable;

Payment: Fees should be settled by remittance to the following bank account:

Banco Comercial de Macau

Av. da Praia Grande, 572. Macau

Account n. 706450

Name of beneficiary: Instituto de Estudos Europeus de Macau, Swift code: CMACMOMX

Please specify “Fee for the IPS2016” and your name in the message column and send a copy of your remittance form to:

Instituto de Estudos Europeus de Macau

Calçada do Gaio, 6

Macau

Tel: +853 2835 4326

Fax: +853 2835 6155

E-mail: [beatrice@ieem.org.mo](mailto:beatrice@ieem.org.mo)

**Monday**  
**28 Nov 2016**

**The 16<sup>th</sup> IEEM Intellectual Property Seminar**  
**IP as Property – Of Pharmaceuticals, Tobacco, Commodities and other Matters**  
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***Morning***

09:00 Registration

09:30 **Welcome Address**

José Luís de Sales Marques - IEEM President

Gonçalo Cabral – Legal advisor to the Secretary for Economy and Finance, Macau

09:45 **IP as Property in the Context of International Law- An Introduction to the Seminar**

Anselm Kamperman Sanders - Maastricht University, The Netherlands

*This seminar introduction will focus on the substantive and procedural issues to be discussed: How industrial property has morphed from an arbitrary policy tool in the 19th Century to a quasi-property right whose limitations are perceived as acts of expropriation and challenged in the context of multilateral and bilateral trade agreements, and before international and domestic courts, often at the expense of public interests or other equally valid private rights.*

**10:30 Q&A followed by Coffee Break**

11:00 **Dispute Resolution in International and Bilateral Agreements**

Shahla Ali – University of Hong Kong, Hong Kong

*This presentation will focus on the mechanisms provided by international and bilateral agreements in order to resolve disputes over the interpretation and compliance, who the parties can be to these disputes, how the courts or tribunals are composed of, how proceedings are structured, whether there are appeals, and what the powers of the arbitration tribunals are in terms of remedies, and how these can be enforced. The contribution takes a look at international and bilateral agreements in general and is not limited to those involving intellectual property rights.*

11:45 **The origins of Investor Dispute Tribunals**

Julien Chaisse - Chinese University of Hong Kong, Hong Kong

*Investor Dispute Tribunals are one of the most controversial parts of currently negotiated bilateral trade agreements, namely TTIP and CETA. They are suspected of intransparency, because proceedings are not public, of unequal treatment, because they give foreign investors a right of action where domestic investors would have none, and they are suspected of hollowing out the sovereignty of States by allowing acts of legislation to be challenged. Often, these tribunals can award damages. The presentation looks at the history of investor dispute tribunals, explains how widely used this form of dispute resolution is in current and currently negotiated agreements is, addresses the above-mentioned concerns and explores possible alternatives.*

**12:30 Q&A followed by Lunch**



## *Afternoon*

### **14:30 Dispute Resolution under the WTO Regime**

Wolf Meier-Ewert - IP Division at WTO, Switzerland

*The WTO Agreement for the first time in a multilateral agreement set up a comprehensive – and compulsory – dispute resolution system. This is markedly different from dispute resolution under bilateral agreements and is credited with greater transparency, a level playing field (in that plaintiffs and defendants can only be States) and a balanced enforcement mechanism. It further provides for a two-tier enforcement mechanism with the possibility of an appeal. This presentation looks at the history of this part of the WTO Agreement, its mechanism, what use has been made of this system hitherto, and whether it has provided a satisfactory answer to non-compliance.*

### **15:15 IP Disputes before National Courts - Direct Application of International Law**

t.b.a.

*The direct application of international agreements in domestic disputes before domestic courts is a scaled-down version of the direct application by investor-state tribunals. The argument plaintiffs make is usually that due to an imperfect or missing implementation of an international agreement into domestic law, there is an inconsistency that should be resolved by direct reference to the international agreement. Past cases in the field of intellectual property rights concern the Paris Convention (Art. 6bis on well-known marks) and the TRIPS Agreement (duration of patents and patentable subject matter). Direct application of an international agreement (in contrast to a convention-friendly interpretation of domestic law) touches upon the sovereignty of parliament and is refused by some courts (US, UK, Brasil), while other courts have affirmed direct application (Austria, Portugal, Germany).*

### **16:00 Q&A followed by Coffee Break**

### **16:30 Disputes about IP Legislation before Investor Tribunals, the WTO or national courts – where is the Future?**

Peter Yu - Texas A&M University School of Law, USA

*This provocative end-of-the day presentation will analyse where disputes over intellectual property rights should best be argued, taking into account the expectations of right owners, the interests of the general public and the proper functioning of domestic law-making. Should lawmakers be held ransom by private investors? Should private right owners depend on States in order for them to comply with their obligations or initiate a dispute settlement against States that neglect their obligations? Should the general public be given transparent access to proceedings?*

### **17:15 Q & A and Closure**

19:30 Dinner

<p><b>Tuesday</b> <b>29 Nov 2016</b></p>	<p style="text-align: center;"><i><b>Morning</b></i></p> <p><b>9:00 Intellectual Property Legislation before Investor-State Tribunals</b> Daniel Gervais - School of Law at Vanderbilt University, USA</p> <p><i>To date, three high-profile cases involving industrial property rights have been litigated before investor-state tribunals based on an alleged failure to comply with the terms of bilateral investment agreements: In the first case, Philip Morris Asia v. Australia, the focus was not on the plain packaging regime for cigarettes enacted by Australia, but the question who could benefit from a bilateral agreement. Only the second dispute, Philip Morris v. Uruguay, indeed addressed questions of substance, namely the nature of trade marks as property, and the leeway of States to limit trade mark use in order to address health concerns. The third case, Eli Lilly v. Canada (still pending), challenges the limitations of patent law as stipulated in the Canadian Patent Act.</i></p> <p><b>9:45 Intellectual Property Legislation before National Courts</b> Robert Burrell - University of Sheffield, UK</p> <p><i>This presentation looks at the two challenges against the plain packaging regime of cigarettes that were litigated before domestic courts, one in Australia (2012) and one in the UK (2015). While both suits were dismissed, the decisions extensively dealt with the nature of trade mark rights and the discretion enjoyed by national legislation to limit such rights when trying to address major public concerns such as health and safety. Both courts also addressed the issue what “expropriation” could mean in the context of intellectual property rights and arrived at a rather narrow definition thereof.</i></p> <p><b>10:30 Q&amp;A followed by Coffee Break</b></p> <p><b>11:00 Should the Commission re-focus its approach on IP legislation? Balance of Rights and Mandate Commission</b> Lothar Ehring - European Commission, Brussels</p> <p><i>In Scarlet Extended, the Court of Justice of the EU assessed the legality of enforcement of copyright on the internet. In striking down an order imposing a duty to monitor internet traffic for infringing activity, the court held that one needs to balance the interests of owners of intellectual property rights in their enjoyment of property as a human right with other societal interests equally protected by the Charter of Fundamental Rights of the European Union. This presentation assesses how these other societal interests (e.g. right to free speech and information, health, privacy etc.) could and should guide the future EU IP policy, and whether there are limits to developing such a new policy by the fact that IP rights are protected as property titles.</i></p>
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**11:45 Intellectual Property and the State's Freedom to Operate**  
Anselm Kamperman Sanders - Maastricht University, The Netherlands

*At a conclusion of the seminar, we look back at the presentations and ask whether it is possible for a (domestic) legislature to know ex ante whether and to what extent is it possible to limit the existence or exercise of intellectual property rights in order to achieve societal goals. Could legislature limit the duration of future or existing copyrighted works? Can new patent exemptions be introduced? Can the scope of trade mark protection be reduced in view of their unlimited duration? Going over a number of examples, like the abolitionist movement for patents, we arrive at today's Brexit scenario, where the question has already been put forward: "Can we completely start afresh and eradicate all European law from our IP system?"*

**12:30 Q&A followed by Lunch**

*Afternoon*

**14:15 Mock Trial:** The Hole in the Wall

**17:00 Closure & drinks**



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Anselm Kamperman Sanders, Maastricht University, The Netherlands

Robert Burrell, University of Sheffield, UK

Daniel Gervais, School of Law at Vanderbilt University, USA

Henry Wheare, Hogan Lovells, HK

Kung Chung Liu, Academica Sinica, Taiwan

Ron Yu, International IP Commercialization Council – IIPCC

Wolf Meier-Ewert - IP Division at WTO, Switzerland

Tianxiang He – City University, HK



## IEEM IP Programme 2016:

### The Professional Intellectual Property Update

Hong Kong Intellectual Property Department, Function Room 2501  
25/F Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong

### IP Exchanges

Wednesday 30 November 2016

	8:30 - 8:45	Registration
	8:45 - 9:00	<b>Welcoming remarks:</b> José Luís de Sales Marques, IEEM President Ada Leung, Director of Intellectual Property, the Government of the HKSAR
	<b><u>Morning</u></b>	
	9:00 - 10:15	<b>IP Exchanges – How to Value, How to Commercialize?</b> Ron Yu, International IP Commercialization Council - IIPCC <i>IP trading has brought to the fore the challenges of valuation of IP assets and their trade separate from traditional connections such as goodwill, products, services or indeed any physical embodiment. The legal title of intellectual property can be transferred, but what is its value without ancillary know-how, workforce, or marketable product? Does the value of IP then lie in a mere promise, or in the ability to use an IPR as a nuisance to other traders?</i> Q & A
	10:30 - 11:00	Coffee break

	<b>11:00 - 11:45</b>	<b>Round-Table on the Effects of Brexit on IP</b> Robert Burrell, University of Sheffield, UK Daniel Gervais, School of Law at Vanderbilt University, USA  Moderator and Commentator: Prof. Anselm Kamperman Sanders, Maastricht University, The Netherlands Q & A
	<b>12:00 - 13:30</b>	<b>Lunch</b>
	<b><u>Afternoon</u></b>	
	<b>13:30 - 16:00</b>	<b>New Developments in IP Law – A Panel birds-eye view and discussion</b> <b>Greater China and Asia</b> <ul style="list-style-type: none"> <li>• Henry Wheare – Hogan Lovells, HK</li> <li>• Tianxiang He – City University, HK</li> <li>• Kung Chung Liu – Academia Sinica, Taiwan</li> <li>• USA – Daniel Gervais, Vanderbilt University, USA</li> <li>• WTO - Wolf Meier-Ewert - IP Division at WTO, Switzerland</li> <li>• EU - T.b.a.</li> </ul> Moderator and Commentator: Anselm Kamperman Sanders, Maastricht University, The Netherlands
	<b>16:00</b>	<b>Closing remarks</b>