



BULLETIN

VOLUME 21

MARCH, 1982

NUMBER 5

NOMINATIONS NOW OPEN INVENTOR OF THE YEAR — 1982

Nominations are now open for the Inventor of the Year — 1982. The requirements for nomination are set forth on the enclosed Nomination Form.

The fourth annual award will be presented in October.

In past years, nominations have come principally from corporate patent departments. Surely the general patent bar must have clients worthy of consideration.

Be the first patent attorney on your block to nominate a client.

COLLOQUIUM

On April 21, 1982, the Committee on Patents of the Association Of The Bar Of The City of New York will sponsor a colloquium entitled "Can The Law Reconcile The Interests Of The Public, Academe And Industry (Learning from Experience in Biotechnology)". The colloquium will deal with issues raised by, and the sometimes conflicting interests involved in the funding of scientific research at academic institutions by business and philanthropic organizations. The colloquium will be held at the House of the Association in New York City from 10:00 a.m. to 5:00 p.m.

Scheduled speakers and their topics are:

"Academic Responsibilities And Dependencies"
Steve Müller, Ph.D.

President, The Johns Hopkins University

"Two Milieux/Competing Loyalties"

Joshua Lederberg, Ph.D.

President, The Rockefeller University

"Corporate Purposes And Social Responsibilities"

Edward E. David, Ph.D.

President, Exxon Research and Engineering Company

"Creating The Whitehead Institute"

Edwin C. Whitehead

Founder, Whitehead Institute for Biomedical Research

"Manageable Contractual Relationships"

William Griesar

Member, New York Bar

"Patents And Publications/Patenting Life"

David W. Plant

Member, New York Bar

"Overview And The View Ahead"

A. Thomas Bartlett, Ph.D.

President, Association of American Universities

There is no fee for the colloquium. Those wishing to attend a Buffet Lunch should send a check for \$30.00 to Mr.

Gerald T. MacDonagh, The Association of the Bar of the City of New York, 42 West 44th Street, New York, New York 10036.

IMPRESSION OF A PATENT LAWYER IN CHINA

Last September, Jerry Lee, immediate past president of the NYPLA, visited China and subsequently provided us with this article. We thought you might be interested in his experiences and observations.

Introduction

Last May China sent a delegation to the United States as part of a trip around the world to study foreign patent systems. The New York Patent Law Association was asked to host the delegation during the two weeks that the delegation was in New York. Because I was President, I organized and chaired a Host Committee.

The Chinese delegation was from The China Council for the Promotion of International Trade (i.e., CCPIT). Their visit was a great success.

In response to an invitation extended by the Chinese delegates, Mrs. Lee and I went to China in September.

We were surprised over and over again by what we saw in China. The speed of change and liberalization is much greater than what you think.

Our host was Mr. Liu Gushu, Deputy Director of Legal Affairs for CCPIT, who headed the delegation to New York. He and CCPIT were very kind to us. Mr. Liu escorted us to the Great Wall of China, to the Ming Tombs, the Summer Palace and the Peking Opera. His colleagues at CCPIT took us to all the great museums and places of interest in and around Beijing.

Beautiful Downtown Beijing (Peking)

As we drove with Mr. Liu from the airport to our hotel, our first impression was that of millions of people riding bicycles. We later learned that there are three million bicycles in Beijing alone. During our stay in China, we were always surrounded by people on bicycles.

Beijing is in a state of reconstruction. Buildings are going up everywhere. Building cranes are everywhere. We were told that during the ten year period of the cultural revolution there was no construction of buildings in China. Now much of China's resources are devoted to putting up office buildings and apartments.

Everything in Beijing is laid out on a grand scale with broad avenues and imposing buildings. The new roads are eight to ten lanes wide.

The CCPIT building stands on a broad avenue running through the center of Beijing. It is a large, beautiful and modern office building about ten stories high and the length of a city block. The building is a testimonial to the importance of CCPIT.

CCPIT has eight large divisions covering every aspect of promoting international trade. One of these divisions will be responsible for filing all patent applications in the Chinese Patent Office and for filing all patent applications abroad on behalf of Chinese inventors. Its jurisdiction also

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includes joint technical ventures, licensing and the filing of all trademark applications in China and abroad.

The China Patent Office

A few days later I visited the new Chinese Patent Office. There I saw the contrast. The new patent law has not yet been promulgated in China, so the Patent Office has no official standing. Its priority for office space is exceedingly low. The beautiful CCPIT building was at one extreme and the quarters of the Patent Office were at the other. The Patent Office is temporarily housed in a primitive building with minimal furnishings.

Liberalization

The degree and speed of liberalization is surprising.

Although we had a busy schedule, we were given substantial amounts of free time to go off by ourselves. There were taxis available to take us wherever we might want to go. When we took walks along the streets, several young people walked up to us and asked if we were Americans. They were eager to speak to us and practice English.

The Chinese seem to be well informed. Everybody we met was informed about events in China and about events in the rest of the world. Their news covered most of the sports too — worldwide.

We saw many street vendors. They were selling vegetables, fruits, leather goods, and even such things as ice cream cones. Apparently some Chinese citizens are permitted to be self-employed. They can keep the proceeds of their own labor.

No Crime

The Chinese people are extremely honest. A vendor can leave a cart of vegetables on the street. While he is gone, no one will take as much as a single cabbage. You probably could leave a hundred dollar bill on your chair and no one would touch it.

It was explained to us that no one steals in China for two reasons. First, the children are repeatedly taught by their parents and school teachers that stealing is a crime against the state, subject to severe punishment. Second, it appears that punishment in China is based on remedies we do not have here. In China, the educational system is based on rigid examinations. Some children are sent to trade schools. Some go to the fields. Only children with highest character and intelligence go on to college and a university.

So if a person steals or commits a crime, he is taking a big risk. A petty crime may affect his whole life. He may be taken out of school and reassigned.

Handicrafts

The arts and crafts in China are still of highest quality and beauty. Things no longer done by hand in other countries are still being done by hand in China.

The Great Hall of the People contains seventeen large conference rooms — one for each of the seventeen provinces of China. Each room contains the finest examples of the arts and crafts of that province.

For example, we saw beautiful handmade tapestries and embroidery of the finest detail. One was a large picture of a tiger equal to the finest painting I have ever seen. Each whisker of the tiger was delicately done by hand through embroidery!

Agriculture

China relies largely on manual labor. We saw few tractors and little farm machinery. We were driven near farms with large fields where there was no automatic machinery in sight. There were a few donkeys and a few small horses. There were no large draft horses. Instead, squads of people in the fields were doing many things by hand.

All of this is different from our country where we are accustomed to automatic cutters, automatic balers, and we even load trucks automatically on our farms.

Because China had advanced so rapidly in other areas of technology, I expect that China soon will have adequate numbers of tractors and farm machinery. But at the present time, much is done by hand.

Friendliness and Determination, They Think Big!

The Chinese people are very friendly and seem to be contented. They appear to have a genuine affection for Americans. They have a great deal of confidence in themselves and in their country. They think big.

The Great Hall of the People is an immense building. You have seen it on television. Because of an anniversary deadline, they decided it had to be built in only ten months. Almost every citizen of Beijing worked on it. Chou En Lai himself took a shovel and helped dig the foundation.

The main hall seats 10,000 people with no pillars or posts in between. There is another room in which President Nixon had a luncheon for 5,000 people. It was a sit-down affair. That room is also immense.

My wife asked our guide whether the meals were catered or cooked somewhere else. The guide said it would be impossible to cook so many meals elsewhere and bring them to this place. They are cooked in two kitchens — adjacent to either end of the room. Actually, the entire Hall of the People is about the size of ten Madison Square Gardens under a single roof.

Impact of the Cultural Revolution; Shortage of Consumer Goods

Since bicycles are virtually the only transportation used by the masses in China, one would expect that it would be fairly easy to buy a bicycle. However, I was surprised to learn that bicycles are in short supply. If a worker has a traffic accident and his bicycle is damaged, it is a tragedy. He may have to wait a very long time to get a replacement. Traffic accidents occur every day involving bicycles. In my own personal experience, I saw two or three a day.

Because so much of the country's resources are being devoted to construction of buildings and industry, consumer goods are standardized and simplified, though not necessarily plentiful. Clothing is standardized. Men and women dress alike. The clothing seems to be dark gray or dark blue with white shirts and blouses. You see a few women wearing pastel blouses with a few prints. The higher leaders from the government bureaus frequently wore well tailored Mao suits. The children wear bright, colorful clothing.

All of the ladies wear trousers. My wife caused attention because she wore a skirt.

Business Dealings

I had three meetings with government bureaus to negotiate potential joint venture agreements. The routine was exactly the same. Tea was served continuously. There was no tension. The Chinese like to laugh and tell jokes at business meetings. It is bad to raise one's voice. You lose face if you get angry.

English

A Chinese adult who can speak English is probably slotted for an important job. Chinese are finding that English is very helpful in expanding their relations in the outside world. No college technical degree is granted until the student learns English. All important government bureaucrats are asked to take English courses to learn some English.

English is now taught to all school children starting with the third grade. In about ten to fifteen years when these children grow up, China will have tens of millions of people who speak English.



Mr. & Mrs. Lee are shown here with Mr. Liu Gushu and various senior staff members of the CCPIT.

Lawyers

There are few lawyers in China. According to the "China Daily", China now has only 4,800 lawyers. In comparison, the number of lawyers in the United States is well over 500,000. On the other hand, the Chinese are capable of doing things that we could never hope to do. Here is an article from the "China Daily":

57,000 army men are trained as jurists

"Fifty-seven thousand Chinese army officers — aged between 19 and 45 — have been transferred to civilian life and are now receiving judicial training, Li Yunchang, First Vice Minister of Justice disclosed.

Li Yunchang told the North China Lawyers Meeting currently in session here that these judicial trainees, after graduation, will be assigned to the public security departments, procuratorates and courts of various levels.

More than 200 professors, scholars and lecturers from all parts of the country have gathered in Beijing to take part in the compilation of teaching materials for law universities, law courses in middle schools and other judicial training courses, he said. Law courses are being added in some middle schools starting this autumn.

8,000 graduates

China now has 4,800 lawyers and 200,000 judicial workers. There are now in China fifteen political science and law universities and college departments with an enrollment of 5,500. More than 8,000 law students will be graduated in 1985.

China re-established its judicial ministry in 1979. A series of laws has been adopted by the National People's Congress since then, and 1,300 law advisory offices have been established throughout the country.

The current North China Lawyers Meeting is being attended by one hundred and thirty lawyers from fourteen provinces, municipalities and autonomous regions,

Status of Patent Law

There is as yet no patent law in China. A comprehensive patent law has been drafted but it has not yet been released or promulgated into law.

Much progress has been made. The Patent Office has existed since January of this year. It has accumulated a search library and is training examiners. Chian also joined WIPO, the World Intellectual Organization, in March. As a result, Patent Offices abroad have rushed to help.

The head of the China Patent Office told me he had received several tons of prior patents and printed publications from the United States, several tons from France and several tons from Switzerland. This pile of search material must be gigantic.

The CCPIT has set up a patent agency division consisting of attorneys and agents. They will prosecute patent applications before the Patent Office when the new patent law is promulgated. However, it is not expected that the new patent law will be promulgated until 1982 or 1983.

Although the patent law has not yet been released, various details regarding the law are known. Some of you may be surprised by what is being seriously considered.

First, you may be surprised to know that patents may be owned in China by individual citizens as well as by government agencies.

Ownership will be determined by the same rules as in the United States. If the invention was made as part of the employee's work, the patent will belong to the state organization for which he worked. If the invention was made by the employee on his own time outside of the scope of his work, the patent rights will belong to the individual. This will be done to encourage private invention and innovation.

China may base priority on first to file rather than first to invent. However, the matter is still being seriously debated.

At the start of the patent system in China, there will be a shortage of skilled examiners. For this reason, although it has not yet been finally decided, it is likely China will have an early publication system with deferred examination up to two years after publication. It is possible that the entire patent system will be held back for a year or two after promulgation of the patent law until enough examiners have been trained.

Because of lack of skilled man-power, it is possible that no patents at all will be granted in the beginning years in certain fields of subject matter, such as chemical, pharmaceuticals, food and nuclear energy. The Chinese are still thinking about it. They may resolve this problem by deciding to grant patents in the chemical, pharmaceutical and food areas, but limit them to methods or to products of methods.

Another matter of internal debate in China has to do with protection of utility models and industrial designs. The best guess is that China will probably adopt a system based on utility patents and design patents of limited terms.

The term for a regular China patent probably will be fifteen (15) years.

One of the most interesting aspects of the new China draft patent law has to do with enforcement. Apparently all litigation will be handled by special economic tribunals that will be part of the so-called medium courts. By medium courts, I think the Chinese mean courts similar to our courts of general jurisdiction, as distinguished from municipal courts or village courts.

Suits will be permitted on patents. If infringement is intentional and reckless, criminal penalties will be granted. As I understand it, criminal penalties may include incarceration in jail.

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Patent Lawyer in China—Continued from Page 3

CCPIT itself is working on the development of rules to interpret and to implement the new patent law — similar to our own Patent Office rules of practice.

China is a Giant

China is already accomplishing great things. While I was there, China launched a rocket that placed several satellites in orbit simultaneously. The "China Daily" also carried an article reporting the completion of a chemical plant for producing polyester. The output was 40,000 tons of polyester per year, which is tremendous.

There is no question about the fact that China is becoming more and more important in world affairs.

OBITUARY

George C. Bower a long time member of the Association died January 26 at the Veteran's Administration Hospital in Wilmington, Delaware at the age of 64. A graduate of Stevens Institute in Hoboken, N.J. and Brooklyn Law School, he was associated in the 1950's and 1960's with the firm of Holland, Armstrong, Wilkie and Previto in New York City and later was in the Patent Department of Massey-Ferguson in Detroit, Michigan.



Mr. & Mrs. Lee, shown here on the Great Wall of China with Mr. Liu Gushu, Deputy Director for Legal Affairs of the CCPIT.

The New York Patent Law Association, Inc.
BULLETIN

261 Madison Avenue, New York, New York 10016

Volume 21 1981-82 Number 5

The BULLETIN is published periodically for the members of the New York Patent Law Association. Annual Non-Member Subscription is \$15.00/year. Single copies \$2.00. Correspondence may be directed to the Chairman - Subcommittee - Bulletins, James W. Badie, 261 Madison Avenue, New York NY 10016. Telephone (212) 687-0911.

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