



DeHeng Express

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Visits to DeHeng

Japanese Visitors Called on DeHeng

Japanese Visitors Called on DeHeng. On July 8, 2004, a group of Japanese in-house counsel from Marubeni Corporation and Itochu Corporation visited DeHeng. The delegation included Mr. Tanaka Masaharu, General Manager of Legal Department at Marubeni Itochu Steel, Mr. Yoshihiro Ikebe, Deputy General Manager of Legal Department, Compliance Team, at Marubeni Corporation, Mr. Liu Xinyu, Counselor in Chinese Law, Legal Department, Marubeni Corporation. The Japanese visitors were received by Ms. Wang Li, Managing Partner of DeHeng Law Office, Mr. Chris Lin, a global partner of DeHeng, Ms. Tian Hui and Mr. Dong Shu Guang, both DeHeng attorneys. They exchanged experiences with the Japanese guests and answered their questions about Chinese law and DeHeng's practice. The meeting was followed by a dinner hosted by DeHeng. Also attending the meeting and the dinner was Mr. Yasufumi Shimizu, trainee from Marubeni's Legal Department.

Judge Helen Ginger Berrigan from the federal district court of the US visited DeHeng

Chief Judge of the federal district court of Louisiana(EDLA), Ms. Helen Ginger Berrigan visited DeHeng on Sep.21, and made friendly communications with DeHeng lawyers. After a brief introduction of the US legal system, she made a detailed analysis of the relationship between federal laws and the ones in Louisiana both on substantive and in procedure sides. Then she made comparison between the federal and state court system in the U.S. Following the presentation, there was questioning and answering time on issues about the US legal system, death penalty system in US, etc. The whole meeting proceeded with a hot academic ambience.

Visit to DeHeng by Mr. Sukayri, Jordan's Ambassador to China

Ambassador from the Kingdom of Jordan, Mr. Rajab Sukayri visited DeHeng with Dr. Naser and Dr. Samir on the 4th of August of 2004 to celebrate the inauguration of successful cooperation between DeHeng Law Offices of China and J. Naser and Partners of Jordan. The director of International Department of the China's Lawyer's association, Ms. Lan Hong, attended the meeting, and partners and lawyers from DeHeng such as Dr. Wang Li, Dr. Li Gui Fang, Mr. Jia and Mr. Chai were present. Vice director of DeHeng Law Offices, Mr. Li Gui Fang hosted the meeting.

The Ambassador arrived DeHeng around 4:30 pm. Managing partner of DeHeng, Dr. Wang Li welcomed the Ambassador and made a comprehensive introduction of DeHeng Law Offices to the Ambassador. She emphasized the importance of the business development between China and Jordan, and the legal cooperation and services involved in the process. After Dr. Wang Li's remarks, Dr. Naser, former Minister of Justice of Jordan, now the managing partner of J. Naser and Partners made his remarks on the successful

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cooperation between DeHeng and J. Naser, which is first of its kind on such cooperation on matters of legal services between the two countries. He paid tributes to DeHeng's contribution to the cooperation and the overall business development between China and Jordan. Dr. Naser pointed out that although Ambassador Sukayri is leaving his post as the Ambassador to China after five years of services, he hopes that Mr. Sukayri will continue to serve the interests of the two countries. After Dr. Naser's speech, Ambassador Sukayri expressed his gratitude to the warm reception DeHeng had extended to his visit and the overall business contribution DeHeng had made to Sino-Jordanian economic cooperation. The ambassador said that the political and economical relationship between China and Jordan is at its high, and the President of China and the King of Jordan had exchanged visits to each other which had further boost the economic relationship between the two countries. The Ambassador also pointed out that during the last five years which he had served as the Ambassador to China, trade between the two countries more than tripled, from 150 million in 1999 to 550 million in year 2003. And he sees more potential of such trade. He emphasized that during the visit by President Hu Jin Tao to the Arab world last January, the President had sign economic agreements between the Arab community and China, and he hopes that DeHeng Law offices, being the first cooperative law firm in China with the Arab world, will involve more in the future development. Director of the International office of China's Lawyers' Association Ms. Lan Hong attended the meeting; she praised the creative move by DeHeng to cooperate with the Arab legal community. She also paid high recognition to Dr. Wang Li's foresight and wisdom in making such investment, and she hopes that after Ambassador goes back to Jordan, his Excellency will continue to introduce China's market to Arab business community.

The formal meeting was followed by an reception with food and drinks .

Speeches, Forums and Presentations

■ DeHeng Intellectual Property Forum Started Running

After almost half year's preparation, DeHeng Intellectual Property Forum started running on July 26th, 2004. The forum is sponsored by DeHeng Law Offices and Shanghai University Intellectual Property Law Institute. The purpose of the forum is to provide a platform to Chinese and foreign people who are interest in Intellectual Property Law research and practice and promote the development of IP. The forum focuses on helping Chinese enterprises to use IP law to protect rights in fierce international competitions. Dr. Wangli, chief global partner of DeHeng Law Offices, pointed out in her address, that DeHeng Law Offices always pays attention to the development of IP, and emphasizes on the promotion of lawyers' qualification, she hopes that DeHeng IP Forum could provide a chance for professionals to make contribution to the development of the field. Following her speech, other guests also gave remarks.

■ Ms Wangli Attended the LAWASIA Conference and made a speech

LAWASIA Conference on Trade Law: Legal Guidance to Free Trade Zone was held in Shanghai from 18-21 May. Ms. Liu Yang, Deputy President of China Law Society presided this conference. Mr. Han Zhubing, President of China Law Society, Mr. G.L. Sanghi, President of LAWASIA, and Mr. Han Zheng, Mayor of Shanghai attended the opening ceremony and made a speech. All over 100 judges, attorneys, prosecutors, experts and government representatives from Asia Pacific Area took part in the discussion on problems occurred in Asia Pacific Free Trade Zone. More than 30 speakers made proposal on the prospect, legal service, disputes resolution on Taxation, preferential treatment and national treatment in the country members in such trade zone.

Ms. Wang Li, Managing Partner of DeHeng Law Offices made a speech on COMPETITION AND COOPERATION: LEGAL SERVICE IN FREE TRADE AREAS. She analyzed in the difference and disputes in

the members, and made recommendation on the opportunities for the economic development as well as the legal service.

In the close ceremony, China Law Society invited participants to attend the 17th International Conference on Criminal Law in September in Beijing. The delegates from Malaysia invited them to the LAWASIA Conference in Kuala Lumpur October; and the delegate from Australia also invited all the delegates to attend the conference of LAWASIA held in Queensland March 2005. All the delegates showed great interest in the advocate.

■ The Presentation of Understanding Section 337 Proceedings of the US Tariff Act was held in China University of Political Science and Law

Understanding Section 337 Proceedings a seminal jointly organized by International Law Institute of China University of Political Science and Law (CUPL) and DeHeng Law Offices, was held on Sep. 23rd in CUPL. Mr. Paul J. Luckern, permanent administrative law judge at the US International Trade Commission, Mr. Raymond Van Dyke, a lawyer from Nixon Peabody LLP, and Mr. Chris Lin, adjunct professor of New York University Law School and CUPL, global partner of DeHeng Law Offices, gave speech on the presentation. Dr. Wangli, chief global partner of DeHeng Law Offices attended and addressed the meeting.

In recent years, with the rapid growth of export from China to the US and surge of US protectionism, more and more attacks on Chinese products are initiated through judicial procedures (anti-dumping, safeguard, Section 337 proceedings) which are provided by the US Tariff Act. These attacks have already made problems for the export enterprises in China, especially for the ones from southeast area, and the situation has worsened this year. Thus, how should Chinese enterprises meet such challenges, and how could Chinese enterprises win the lawsuit concerning these problems, have been a difficulty in dealing with China-US trading relationships.

The so called "Section 337 Proceedings" is the administrative investigation proceeding which is governed by Section 337 of the US Tariff Act. This proceeding is applied by the International Trade Commission (ITC). ITC is an independent judicial administrative commission, and does not pertain to any department of the government. If any of the US enterprise thinks that the importation infringes its Intellectual Property right, it can start a Section 337 proceeding in ITC. If the claimer prevails, then ITC has the power to prohibit the importation temporarily or permanently. Since the application of this proceeding till now, most cases concern patent; few are about trademark and copyright, rare are on the unregistered IP such as the trade secret. In the next ten years, Section 337 Proceeding will greatly threaten the export from China to the US, even exceeding the effect of anti-dumping. Because the Section 337 proceeding takes shorter period, and lower cost than general lawsuits, meanwhile, the decision could affect a wider range of producers, not only limited to the defendant. Therefore, at the present, it is the most efficient legal measure to prohibit unfair competitions.

For Chinese exporters, the consequences of losing the section 337 proceeding suit are serious. Because in general litigation, even if the defendant loses the suit, there is no effect on other producers of the similar products. However, in 337 proceedings, losing the suit means that not only the exporter itself, but all producers of the same products will lose the US market! Since 1984, the application of Section 337 proceeding against Chinese exporters has become more and more frequent, but almost no Chinese defendants appeared in the action.

Starting from 2003, some enterprises took active actions to the suit, and got some pleasant results. In 2004, more Chinese exporters are sued in ITC, now the threat of Section 337 proceeding attracts attentions from Chinese producers.

During the presentation, Mr. Paul J. Luckern, Mr. Raymond Van Dyke and Mr. Chris.Lin made the speech separately from the view of a judge, a lawyer and a Chinese respondent to demonstrate the issue, and gave their suggestions. From the presentation, the audience learned that it is possible for Chinese exporters to win a Section 337 proceeding. The proceeding provides enough protection for the defendant's interest. The main point is that defendants should know what the proceeding provides and how to use the right properly. In the past, Chinese enterprise always took a passive attitude to the suit, and gave no response to the action. As the speakers suggested, as long as you respond to the action, there is an opportunity to win,

Sources of Authority for Patent Law in China

China is a code law country. But the sources of Chinese Patent Law are found in a complex body of statutes, administrative regulations, and judicial interpretations. Scholars usually classify the sources as the following:

- 1) Major Sources: Patent Law of the People's Republic of China, Implementing Regulations of the Patent Law of the People's Republic of China, Patent Examiners' Handbook.
- 2). Relevant Provisions in Other Statutes: Relevant provisions in criminal law and customs law.
- 3). Judicial Interpretations issued by the Chinese Supreme Court and Internal Rules issued by the lower courts. Under the current Chinese constitutional framework, the Supreme Court has limited authority to issue "judicial interpretations" for the purposes of providing uniform guidelines to lower courts in applying various statutory laws. The internal rules issued by lower courts, are not considered judicial interpretations under the Chinese Constitution, but they play an important role in guiding the trial courts in patent infringement litigation on many procedural and substantive issues. This is especially true with the rules issued by the higher courts of each province or the four centrally administered cities (Beijing, Shanghai, Tianjin, and Chongqing).

Chinese jurisprudence theories make a distinction between "law in the broad sense" and "law in the narrow sense." Statutes enacted under the authority of the Constitution, such as patent law, criminal law, and customs law are examples of the first category. Into the second category fall administrative regulations that are issued by various levels of the executive branch, such as the Implementing Rules of Patent Law issued by the State Council and the Patent Examiners Handbook issued by the State Intellectual Property Office (SIPO). In addition, the second category also includes orders, and ordinances entitled Methods, Rules, and Notices, etc., issued by SIPO. In terms of their legal authority, the statutes are on the top of the hierarchy. Next comes the Implementing Rules. At the bottom are the administrative orders and ordinances.

China Will Open Its Books, Newspapers And Journals Wholesale Distribution Market To Foreign Investors

Based on her commitment made in joining WTO, China will open its books, newspapers and journals wholesale distribution market to foreign investors. Foreign investors have been allowed to set up solely owned packaging printing businesses and retail businesses for books, newspapers, and journals. They are also allowed to set up joint ventures with Chinese businesses in publications printing.

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