

2018 BFSU-WANHUIDA Intellectual Property Moot Court

Competition

OFFICIAL RULES

January 2018

This Competition is organized by School of Law at Beijing Foreign Studies University (BFSU) with an aim to promote legal education and awareness of the actual problems in intellectual property disputes arising in China.

The Competition is open to all college students who meet the basic requirements specified below.

1 GENERAL

- 1.1 **Organizing Committee.** An Organizing Committee is hereby formed to draft the Problem, provide general guidelines, promulgate rules, conduct supervision, and seek financial support for the activities of this Competition. The Committee will be made up of members chosen by BFSU School of Law.
- 1.2 The Competition will be conducted in English in terms of the problem, the procedural rules, written briefs and oral presentation.
- 1.3 The location of the Competition will be chosen by the Organizing Committee.
- 1.4 The Competition is scheduled for **May 26 and 27, 2018** during the weekend.
- 1.5 **Fictitious Procedural Rule.** The trial court, *for purposes of this Moot Court*, shall have the power, under merger jurisdiction (or special jurisdiction), to adjudicate the present disputes relating to the same subject matters and/or arising under the same underlying facts, involving patent and trademark infringement, or administrative issues. The reviewing court shall have the power under appellate jurisdiction. However, different rules of procedure and evidence do apply for the pertinent claims.

2 PARTICIPATION

- 2.1 **English Proficiency.** All participants must conduct the Competition in English in respect of written briefs, oral or written communication with the

judges, and research. Translation of reference materials may be provided upon special request, and possibly with cost.

- 2.2 **Application.** Any team willing to participate must send an Application Form as early as possible to the Organizing Committee by e-mail (preferred), fax or phone (contact information is listed at the end of the Rules and the Application Form). The Application Form shall indicate the team name, members of the team, and other items as required. The Application is recommended as early as possible, and must be completed no later than **March 31, 2018**.
- 2.3 **The IP Problem and Reference Materials.** The Problem and essential reference materials are available for download at the BFSU Law website <http://sl.bfsu.edu.cn>.
- 2.4 **Anonymity & Code Name.** All participating team shall remain anonymous throughout the Competition until the final announcement of winners. Each team, upon application, will receive a four-digit code representing the team's identity in all activities of the Competition, which shall be used on all written briefs, submissions and other materials. For violation of the Anonymity Rule, a penalty will be imposed by reducing the points. A team member, however, may use his/her name as counsel for the party.
- 2.5 **Team.** A participating organization may send one team. Each team has no more than five (5) members, including one coach, and four advocates for the oral presentation. But a team should include no fewer than two (2) advocates.
- 2.6 **Problem Clarifications and Corrections.** Teams may request clarification and corrections to the Problem by submitting a written request to the Organizing Committee no later than **April 20, 2018**. Based upon the requests received from all teams, the Organizing Committee will publish Problem Clarifications and Corrections no later than **April 30, 2018** at BFSU law website <http://sl.bfsu.edu.cn/> and through email.
- 2.7 **Withdrawal.** In the event that a team wishes to withdraw from participating in the activities, a written notice must be sent to the Organizing Committee no later than **May 1, 2018**.

3 THE COMPETITION

- 3.1 The Competition is scheduled for **May 26 and 27(Saturday and Sunday), 2018**, at a location in Beijing (check <http://sl.bfsu.edu.cn> for announcement).
- 3.2 Depending on the number of participating teams, the Organizing

Committee may further announce the specific arrangement for the activities.

- 3.3 Each oral presentation will be presided by a panel of three (3) judges who will grade the performance of the teams for the presentation.
- 3.4 All teams will participate in at least two (2) rounds of presentation, each for the petitioner and the respondent, for which each team will receive a grading.
- 3.5 The matching of the competing teams in the first round shall be decided by lottery one day before the Competition, on the afternoon of **May 25**, at **16:00** in the **MOOT COURT ROOM** of **BFSU East Campus**.
- 3.6 The four (4) highest-ranking Teams from the first round will advance to the “semi-final” in which the first-ranked Team will play the fourth, and the second will play the third.
- 3.7 Championship Round. The winners of the semi-final will enter the final round. The other two will both be the third place without competing.
- 3.8 In the semi-final and final round, the determination as to which team will be petitioner and which will be respondent will be made by lot. If the two teams argued against each other in the first round, they will argue for the opposite party in the following round.
- 3.9 In the semi-final and final round, the way to determine the winner will depend on how many votes a team could get from the hearing judges instead of depending on the grading.

4 COURT PROCEDURES

- 4.1 Unless otherwise specifically announced, the Competition is set presuming that all factual disputes and procedural issues have been resolved, and only legal issues are left for discussion.
- 4.2 The two (2) sides involved in the Problem will be referred to as
Petitioner, and
Respondent
despite the fact that there may be cross-claims.
- 4.3 Any procedural issues for the Competition are supposedly resolved, such as
 - 4.3.1 Jurisdiction of the court,
 - 4.3.2 Venue,
 - 4.3.3 Competency of judges,
 - 4.3.4 Competency of counsels, and
 - 4.3.5 Effectiveness of statutes and regulations (up to the date of the Problem).

- 4.4 Chinese laws, regulations and the Supreme People’s Court’s interpretive announcements will be the governing law in general; guiding cases issued by the Supreme People’s Court of People’s Republic China could be used as reference; international laws and treaties which by adoption have been incorporated into Chinese laws will also be binding; all other legal authorities, such as national laws of other countries, judicial decisions of any court other than guiding cases issued by the Supreme People’s Court of PRC, domestic or foreign, or commentaries made by legal scholars, will be considered at best as persuasive but not binding.
- 4.5 For issues of first impression (meaning: not dealt with in the governing laws), a team is free to make an argument citing secondary authorities, which will be considered at the judges’ discretion.
- 4.6 **The Problem.** The Problem is the complete record of all the facts available to both parties and the court; both written and oral arguments must be based solely on such facts; and any argument based on outside information will be ruled as either groundless or irrelevant.
- 4.7 **Reference Material.** Although some statutory materials have been given in the form of footnotes or appendixes, it has to be understood that all participating teams will make their own research on legal authorities, and present their argument on the basis of such authorities.
- 4.8 **Written Briefs.** Each participating team will submit two (2) written briefs, one for Petitioner, and the other for Respondent. There will be independent awards for the best memoranda, two for Petitioners, and the other two for Respondents.
- 4.8.1 **Submission.** Both written briefs, for Petitioner and Respondent, must be submitted to the Organizing Committee in 8 copies on paper at the address listed at the end of these rules (except for teams from outside Chinese mainland, the Organizing Committee will prepare for them) , *and* electronically at ipmootcourt@bfsu.edu.cn, no later than May 13, 2018. For safe receipt, please check the contact information at the end of these Rules.
- 4.8.2 **Identification.** Both of the written briefs must be identified by the four-digit code name assigned by the Organizing Committee followed by “P” for Petitioner or “R” for Respondent. For example, Team 1234 should indicate on the cover of a written brief for Petitioner as “1234-P” and for Respondent as “1234-R.”
- 4.8.3 **Electronic File Name.** The file name of the electronic submission should correspond to the team’s code names. For example, Team 5678’s submission of Respondent Brief should be 5678-R.
- 4.8.4 **Format.** The written brief must be

- In MS Word or PDF format, with default margins (2.54cm on top and bottom, 3.17 on left and right),
- printed by laser on A4 paper,
- in the font of times new roman, size 12, and
- with single space between the lines, and one and a half (1 ½) spaces between paragraphs.

(An example of the format is like this document.)

A reduction of points applies for incorrect format.

4.8.5 Length. The written brief shall be no more than five thousand words or fifteen pages long, whichever is shorter, excluding a cover page, a list of contents, a list of authorities, and an appendix. A reduction of points applies for exceeding the length.

4.8.6 Copyright license. Unless otherwise specifically announced by participating teams, for all written briefs, once submitted, it will be presumed as licensing the Organizing Committee to use them in some limited ways, including posting them on our website, publishing them with no commercial purpose, etc. All these uses will be certainly with due respect to the moral rights of the authors.

4.9 Oral Presentation.

4.9.1 The oral presentation of a team must be based entirely on its written brief, and no argument will be allowed which is not included in the written brief.

4.9.2 Each team will present its argument within twenty (20) minutes during which the first team member may announce the time allotment for each team member, and the presentation should include:

- A brief Opening Statement, to announce the contending goals;
- An Argument, to present analysis and support for the contention;
- A Conclusion, to summarize the argument.

The hearing judge may interrupt a speaker if s/he finds anything inappropriate in the presentation.

4.9.3 No exhibits, diagrams, charts, PPT display or other visual aids will be allowed during oral presentation.

4.9.4 Each team will engage in at least two (2) oral presentations each for Petitioner and Respondent.

4.9.5 During each oral presentation, questions may be raised by the hearing judges, which the presenter must address.

4.9.6 Upon completion of the oral presentation by both sides, there will be two rounds of debates. The total time of court debate will be twenty (20)

minutes. The petitioning party may make a rebuttal for no more than five (5) minutes, to which the responding party may make a surrebuttal in like manner. The second round of debate is in the same way. However,

4.9.6.1 No further argument may be made during the rebuttal or surrebuttal;

4.9.6.2 The responding party may not address a point not raised in the rebuttal; and

4.9.6.3 In case the petitioning party waives rebuttal, there will be no surrebuttal from the responding party.

4.9.7 All participants in the oral argument must address the panel of judges with due respect, and show appropriate courtesy toward the opposing side. In no circumstance will personal attacks be tolerated either against the panel or the opposing side.

4.9.8 During each oral presentation, there will be a “bailiff” to keep time and order in the courtroom. The Bailiff will also keep record of violations of the procedural rules in terms of respect and courtesy, or exceeding time limitation, etc.

5 GRADING AND SCORES

- 5.1 Each team’s oral performance will be graded by the panel of three hearing judges upon completion of the oral presentation, using a scale of 60 (minimum) to 100 (perfect), the average of which grading, minus any reduction of points for violation of procedural rules, will be the score for the oral presentation of the team in the first round, which will not be carried into further rounds in case the team advances.
- 5.2 The grading of the first round will be made on the overall performance of a team, that is, including the grades of written briefs (30%) and oral presentations (70%) on behalf of both Petitioner and Respondent.
- 5.3 For violation of any procedural rules, such as courtroom mannerism, observance of written format, or exceeding time limits, no more than ten (10) points may be reduced from a team’s grades.
- 5.4 The judges may choose to vote in a separate room without giving any comments. However, they are encouraged to give critique or comments after each presentation.

6 AWARDS

The awards given in the Moot are:

The Competition Champion, the Runner-up, and the Second Runner-up.

The best Memorandum (4).

The best Oralist (4).

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7 COMPLAINTS

- 7.1 A team may not make any complaint as to the judges' grading.
- 7.2 A team may make a complaint as to improper administration of the courtroom procedure, such as time-keeping and penalties. However, a team may not request extension of time simply on basis of judges' interruption or questioning.
- 7.3 All complaints, except minor complaints not affecting proper conduction of the oral presentation, must be filed in writing with the Organizing Committee *after* the oral presentation.
- 7.4 The only remedies available, if the complaint is sustained by the Committee, will be in the form of cancellation of the penalties or imposing a penalty on the opposing side. In no event will the oral presentation be conducted again.

8 INTERPRETATION OF THE RULES

- 8.1 These rules are final and interpretation must be made by the Organizing Committee.
- 8.2 Errata and corrigenda may be posted on the BFSU Law website.

9 CONTACT INFORMATION

- 9.1 All written briefs are to be sent to:

<p>Liu Xin School of Law Beijing Foreign Studies University, No. 2 Xisanhuanbeilu, Haidian District Beijing, China 100089</p>	<p>北京海淀区西三环北路 2 号 北京外国语大学法学院 刘辛老师 邮政编码: 100089</p>
<p>Tel.: 86-1390-105-6026 Liu Lijuan</p>	<p>电话: 86-1390-105-6026 刘丽娟</p>
<p>E-Mail: ipmootcourt@bfsu.edu.cn</p>	<p>电邮: ipmootcourt@bfsu.edu.cn</p>

- 9.2 Any suggestions or comments may be sent to

BFSU IP Moot Court Competition

The Organizing Committee

E-Mail: ipmootcourt@bfsu.edu.cn, or liulijuan@bfsu.edu.cn

Attention: Liu Lijuan

Tel.: 86-1390-105-6026