Meet the elite

Each year, induction into the IP Hall of Fame is reserved for a select group of individuals. The achievements of the people chosen this year certainly match those of their predecessors

By **Sara-Jayne Clover**

The IP Hall of Fame is an exclusive group: membership is open only to those individuals recognised by the IP Hall of Fame Academy as having made a tremendous contribution to the intellectual property system and to the development of IP as a crucial business asset. The Academy, composed of all living inductees from previous years as well as other distinguished international IP leaders, makes its choices from nominations received from the global IP community. For 2011 it chose Robert Armitage, Lynne Beresford, Donald Chisum, Randall Rader and Tian Lipu. They have each made a significant impact on intellectual property law and practice throughout their careers.

The selection process began in October 2010. Nominations came in thick and fast for many worthy candidates and, in December, a final list of more than 200 nominees was sent to the Academy for review. Each Academy member was invited to place up to five votes. Once those votes had been collated, the final five inductees for 2011 were revealed.

Established in 2006, the IP Hall of Fame seeks to identify individuals who have helped to confirm intellectual property as one of the key business assets of the 21st century. The aim is not only to acknowledge the vital role played by these innovators in fostering today's vibrant IP environment and ensuring its continued health, but also to show how central IP is to the global economy and to the wellbeing of people across the world. Furthermore, it is a way for the global IP community to thank those who have helped create a thriving industry.

Previous inductees to the IP Hall of Fame include US presidents Thomas Jefferson and James Madison, the great French author Victor Hugo and inventor Thomas Edison, as well as more current names such as Marshall Phelps, formerly head of IP at both IBM and Microsoft; Dolores Hanna, the first female president of the International Trademark Association; and British judge Lord Justice Robin Jacob.

Over the following pages we feature interviews with and profiles of this year's IP Hall of Fame inductees. On 20th June 2011, they will be honoured at a gala dinner in San Francisco. In the autumn, the process to find 2012's inductees will begin.

The support that the IP Hall of Fame receives from IP professionals across the world has been hugely gratifying; long may it continue. *iam*

You can find the names of all previous inductees into the IP Hall of Fame, as well as photos and profiles, at the IP Hall of Fame website. There is also a list of the current members of the IP Hall of Fame Academy. **www.iphalloffame.com**

Robert Armitage – an advocate for patent reform

Robert Armitage has no doubts about the merits and scope of the so-called America Invents Act currently being considered by Congress. "The bill makes the most significant changes to the US patent system since 1836," he states. "You could hardly, in a single piece of legislation, pack in more improvements to the patent laws. Any fair-minded look at this bill would conclude that it greatly simplifies the substantive patent law, as well as opens up for the first time an effective and comprehensive means for post-grant review of patents. Lastly, it entirely reforms how the USPTO will be financed," he continues. "Given this triple-pronged set of changes, it's really hard to imagine Congress has ever before, or will ever again, accomplish so much good for the patent system in a single bill!"

But Armitage did not always have the passion for patents that he demonstrates today. As a college student, his interests lay with mathematics and physics. Yet after a year of studying for a physics PhD, he decided to give law school a try. "It was something of an experiment," admits Armitage. "But once I got there and settled in for a while, I realised that this was something that appeared to me to have the makings of a fine career, so I've obviously stayed with it." Upon receiving his degree, Armitage decided to take a different career path from the big city law firm route on which many of his law-school contemporaries were embarking. Instead, he searched out a position in a small Midwest city. He found a position at The Upjohn Company, at that time a major multinational pharmaceutical company, based in Kalamazoo, Michigan. "That really didn't work out as well as I expected," jokes Armitage. "I only stayed with them for the next 20 years!"

Branching out

After a decade-long stay at the top of the IP tree at Upjohn, Armitage decided to spread his wings and try something that was – once again – pretty unusual: he moved into private practice. "A typical career path, especially today, begins in private practice before graduating into an in-house role," explains Armitage. "I decided to see what moving in the opposite direction might yield." He joined Vinson & Elkins as a partner in the firm's Washington, DC office, and was given the task of creating an IP practice in the US capital. Having moved his family away from his Midwest roots and ensconced himself in a law office overlooking Pennsylvania Avenue, Armitage planned to remain with the firm for the rest of his career. But it was not to be.

"I was at V&E for six years and thoroughly enjoyed the experience," Armitage recalls. "It was a chance to work in different areas of IP practice, with a raft of clients in different industries and technologies, and on a greater diversity of legal issues than I was ever able to experience working for a single company." However, one of his clients was sufficiently impressed with the work he did for them that they waged a persistent campaign to entice him back to the Midwest and into the pharmaceutical industry as an in-house counsel once again. So in 1999, Armitage returned to big pharma and has been with Indianapolis-based Eli Lilly and Company ever since. After serving for three years as the company's vice president and general patent counsel, he was promoted to senior vice president and general counsel in 2003. And that's where he is today.

Armitage is very grateful for the diverse paths his career has taken. "I'm in the unusual position of having had my career take the form of a three-act play, with each act having been personally and professionally gratifying and rewarding," he states. The perspectives he has gained from these various roles have greatly contributed to his views on the vital role that the patent system plays as an engine of business and commerce. For the last three decades of his career, Armitage has been campaigning for sweeping reforms to be made to the US patent laws. As far back as 1981, he was pushing for the publication of all pending patent applications, changing the patent term to 20 years from the filing date and switching the US to a first-to-file system.

He laboured for decades to get the major US IP bar and trade associations aligned with his belief that a modern patent system needed to work in fundamentally different ways from the established US model. His efforts helped to achieve the introduction of patent reform bills in 1992 and 2005, and both times he testified in Congress as to what he saw as the merits of a more transparent, objective, predictable and simple patent law. In his 1992 testimony to the US Senate, he stated that a move to the first-to-file system – one of the most contentious issues of the current proposals – would "benefit 'small entity' inventors who appear most disadvantaged under the multiple burdens of existing US first-inventor practice". In 2006 testimony, he noted what he sees as the ultimate irony and unfairness of existing US patent law: "The United States is the only country in the world in which a person can be the first to make an invention and be the first to seek a patent for an invention, but nonetheless forfeit the right to obtain a patent on that invention to someone who much later made the same invention and even later sought a patent on it. Only in the United States is a person who is the first to make an invention, and who becomes the first to seek a patent on it, saddled with the fear – and forced to bear the risk – that some johnny-come-lately inventor may wrestle away the right to patent."

Move with the times

One of Armitage's biggest concerns is that the current patent system, based on a 19th century model of patent examination, is not responding quickly enough to emerging technologies. "The new technologies develop and present themselves to the patent system at a much faster pace today than was the case early on in the Industrial Revolution," he states. "Recent experience demonstrates that a technology area relatively new to patenting does not immediately or automatically achieve an appropriate level of protection; there is a learning curve in applying the long-established patent law principles to the

brand-new technology field."

The biotechnology industry, says Armitage, experienced first-hand how painstaking it is to work through the issues of patentability to get an effective yet balanced availability and breadth of protection. This balance, he contends, is vital. "The system just won't work in the public interest, much less the economic interests of competitors, if the system is either too reticent to grant effective protection or too promiscuous in the protection being granted." While many advocates for patent reform have pushed for harmonisation of US laws with those of Europe and Japan, Armitage has long insisted that the goal of reform should be the identification of global best practices and their subsequent incorporation into US law. His efforts to move the patent system in this direction have led him to become involved in the upper echelons of many organisations representing patent professionals over the years. These include the IP Section of the American Bar Association, the Intellectual Property Owners Association and the American Intellectual Property Law Association. "For me, the ability to work within these groups is an opportunity to help ensure that the many voices and viewpoints of IP professionals can be heard on an array of policy issues impacting the patent system and IP systems more generally," he states. "In my experience, this cacophony can be forged into consensus on how best to advise lawmakers and policymakers on needed reforms."

Armitage is convinced that the America Invents Act is the culmination of such debate. "The current bills, which have been in the works since 2005, are certainly not perfect; they are merely excellent vehicles for improving our patent system," he claims. "These bills are fully aligned with what is now a consensus among IP-focused organisations in the United States on the best practices for crafting a modern, inventor-friendly, collaboration-friendly patent law that can produce predictable outcomes, yielding reliably enforceable patents."

If the America Invents Act passes in the summer, as many predict that it will, Armitage will certainly deserve major credit for his three-decade long devotion to seeing the job done. ■

Lynne Beresford – a career dedicated to trademarks

Lynne Beresford laughs when asked what inspired her to embark on a career in trademarks. "I'm not sure I was inspired as such!" As a young mother whose clerkship at the tax court in Washington DC was coming to an end, Beresford heard that the United States Patent and Trademark Office (USPTO) was hiring through a friend of a friend. "I was looking for a job where I didn't need to travel because I had to be there for my children," she explains. "So that's how I wound up at the USPTO. It was a practical decision based on my needs at the time. It turned out to be such an interesting area of law that I stayed there."

Beresford's career at the office spanned more than 30 years and culminated in her becoming commissioner for trademarks in 2005, the position she held when she retired in 2010. Having joined the office as a trademark examiner, Beresford was promoted to the ranks of management in 1985. Three years later the Trademark Revision Act was passed and Beresford was in a position to help implement the new law. "I have been very lucky to be in the right place at the right time throughout my whole career," she states. "In the mid-1980s I had an opportunity to be on the frontline of one of the major changes in US trademark law that have taken place in the last 20 years or so."

A few years later, in 1989, Beresford was once again in a prime position to witness another significant development: the creation of the Madrid Protocol. And this time she was able to provide input. "I was really there when a lot of interesting things were happening and was able to put in my two cents," she says. Beresford led the US delegation at the World Intellectual Property Organisation (WIPO) meetings in which the regulations for the protocol were negotiated and discussed. Her primary role was to ensure that the regulatory language in the agreement was compatible with the US system. "That was no small feat," she explains, "as Madrid is traditionally a system more suitable for countries with the civil law system, and this raised issues about how it should operate in a common law system."

Her experience in international negotiations led Beresford to make a move over to the international sector of the USPTO. It was during this time that she developed an increased interest in geographical indications (GIs). "Back then, one of the common views in the US was that the system of recognising GIs that Europe offered was the gold standard," explains Beresford. While recognising that the European system is a good one, Beresford felt that the US and other countries had equally good methods for protecting GIs. "I questioned the *status quo* and changed people's ideas about what US policy should be in that area," she states. "And that was a real accomplishment for me."

That GIs often get overlooked as an intellectual property right is of great concern to Beresford. "GIs are often identified with developing country needs, and yet my view is that GIs are purely source and quality indicating," she states. "They have immense value and have the same job as trademarks, effectively." In order that GIs receive the recognition that Beresford believes they deserve, representatives of trademark offices from around the globe need to sit down and work out a viable solution as to how they can best be managed and internationally respected. "Unfortunately the discussion has become divided, with it being much more of a political and agricultural issue in Europe, and more of a trademark issue in the US," Beresford explains. "IP protection is a business need and businesses need to have a level playing field and certainty as to how important rights will be protected. The best way to ensure certainty for IP owners is to have international systems. Unfortunately, I don't see that openness and willingness to work together on GI issues in the IP area."

Beresford's time in the international IP arena also coincided with the rise of the internet and the associated intellectual property issues. She was responsible for chairing WIPO meetings on the subject and

several joint recommendations were negotiated under her chairmanship. During this time the United States decided that the Internet Corporation for Assigned Names and Numbers (ICANN) should be created to oversee the governance of the internet. "I was involved in that decision," recalls Beresford. "I was the USPTO representative on the matter and was also responsible for writing the trademark portions of the white and green papers." She says that she is proud that during these negotiations she was an early promoter of the Uniform Domain Name Dispute Resolution Policy (UDRP), which states that disputes must be subject to arbitration before a domain name can be cancelled or transferred. "It was an idea that was initially scoffed at by a lot of people," recalls Beresford, "but moving towards that was an important accomplishment and essential to today's management of the internet."

Foresight and communication have been vital skills Beresford has had to employ throughout her career. Having been promoted to deputy commissioner for trademark policy and Projects in 2000, and then to commissioner in 2005, in 2008 she led the delegation negotiating the United States' ratification of the Singapore Trademark Treaty. In this role she was one of the five people from her group of nations that discussed the issues arising from the treaty and answered the questions from other international groups. "There were a few points we were really stuck on," recalls Beresford. In particular, she recounts how the African group was adamantly opposed to language that would allow a national patent and trademark office to require electronic filing. "None of us could understand why they were so opposed until we asked the right questions and realised that they felt the language deemed that you would have to talk to your attorney electronically," explains Beresford. "It was so far from how we interpreted that language in our group." The solution was the crafting of some additional text to overcome this particular problem. "There were a couple of instances like that which were pivotal in terms of listening to our colleagues to try to reach the middle ground and move negotiations forward."

During Beresford's career at the USPTO she witnessed many changes to trademark law and practice. Of these, the one that she believes had the greatest impact was the computerisation of the USPTO. "When I came to the office in 1979, the only place you could go to see if there was a confusingly similar mark registered in the US was the office in Arlington, Virginia," she recalls. "The introduction of this IT has improved the quality and the speed, and the type of examination that examiners can do – it is now more robust because they have more access through the internet to information."

Now retired from the USPTO, Beresford has time to reflect on those individuals who inspired her and helped her progress through the office. Among these is her predecessor as commissioner of trademarks, Anne Chasser. "Anne taught me so much and is really a wonderful human being," Beresford says. Among her other IP heroes are former colleagues Robert M Anderson, assistant commissioner for trademarks, and Jeff Samuels, another former commissioner. As for her induction into the IP Hall of Fame, Beresford admits that it came as something of a shock. "It's a tremendous honour," she states. "I had my 30 years at USPTO and sometimes I felt that I was labouring intensively on things that didn't matter too much. So it's really wonderful that my peers have recognised the work I did. I'm thrilled!" ■

Donald Chisum – on patents

Professor Donald Chisum is the author of *Chisum on Patents*, a text first published in 1978 and regularly updated since then to incorporate changes in US patent law and practice. Chisum was professor of law at several universities before co-founding the Chisum Patent Academy in 2009. In 1989 he received the Jefferson Medal Award for an outstanding contribution to the constitutional goals of the patent and copyright systems.

What inspired you to embark on a career in patents?

After law school, I spent a year as a law clerk to a brilliant federal appellate judge, Shirley M Hufstedler. That experience, together with my previous law studies at Stanford University, convinced me that the most fascinating feature of law in the United States was its federal system and the interplay between the substantive law of individual states and the central law.

After clerking, I embarked on an academic career and continued my exploration of the federal-state interface. Charles Black of Yale, a distinguished scholar of constitutional law, gave me a critical piece of guidance: if one really wished to understand the workings of the federal constitutional system, one should not simply study jurisdiction and procedure. Rather, one should plumb in depth some area of substantive law. Black had done that with maritime and admiralty law, writing a well-regarded text. I determined to do the same for some area of law, preferably intellectual property. The choice there was clear: good treatises already existed on copyright and trademark law. But the last major treatise on patent law had been published in 1890 by Professor William C Robinson, also of Yale. And patent law was ideal as a field for studying the role of the federal judiciary.

In 1974, I began work without even having a contract with a publisher. One publisher rejected my proposal. But in 1975, Matthew Bender reviewed the initial chapters and outline I had prepared and offered a contract. My patent law treatise was published in October 1978 as five volumes. Over 33 years, it has grown to 26 volumes, reflecting the grand rejuvenation of patent law over that period of time.

What would you say has been the most significant development in patent law since the first edition of your treatise?

The most significant development would have to be the creation of the Court of Appeals for the Federal Circuit in 1982. The Federal Circuit was given jurisdiction of appeals that previously went to 12 different appeals courts. Concentrating all appeals in patent cases in one intermediate appellate court had a major impact on the patent system.

Whether the influence of the Federal

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Circuit has been universally positive for the patent system is subject to debate. One thing is clear: the creation of that court presented a treatise writer with a new and possibly unique challenge in updating a legal text. It magnified the importance of each reported court decision. There are now well over 2,000 precedential decisions by the Federal Circuit, virtually all involving some point of law that might be dispositive of a real-life problem. It has not helped that some judges of that court have been prone to writing lengthy opinions, sometimes not well-organised, and too often taking inconsistent positions.

Have any of the changes you have witnessed been detrimental to the patent system?

Three major changes come to mind that, arguably, have been detrimental to the patent system as a whole.

One was the development of the pre-trial *Markman* hearing procedure in patent litigation. It has multiplied the expense of litigation for both patent owners and accused infringers. It has encouraged an excessively technical focus on the precise language of patent claims. None of this has increased the interest in certainty about the scope of patent rights, which *Markman* sought to foster.

A second change was the relaxation of venue rules in patent infringement suits after the Federal Circuit's 1990 *VE Holdings* decision. That decision enabled patent owners to sue in any district in which an accused infringer had distributed allegedly infringing products. That has led to a concentration of patent cases in certain plaintiff-favoured districts such as the Eastern District of Texas even though neither party has any substantial presence in the district.

A third change was the enactment in 1984 of the Hatch-Waxman Act. The act's provisions on US Food and Drug Administration (FDA) approval of generic equivalents to patented drugs and on patent owner suits created incentives for both brand name and generic manufacturers to misuse the patent system. Brand name manufacturers are encouraged to obtain minor patents of questionable validity in order to stall FDA approval of generics via the act's automatic 30-month stay. Generic manufacturers are encouraged to take cheap shots at the validity of good and valuable patents.

More detrimental than any of these changes to the patent system are the changes that did not occur over the 33 years following the publication of my treatise. Despite the vast increase in patenting activity and importance of intellectual property rights since the mid-1970s, there has been little fundamental change in how the US Patent and Trademark Office operates or in how patent disputes are resolved. Over almost that entire period, there have been proposals for patent law reform. But proposals have inevitably been burdened by the efforts of particular industry groups to obtain special advantages. What was and is needed: a comprehensive simplification of patent law, which is industry and technology neutral and reflects the broad public interest. Likely, it will never happen.

You have lectured in patent law extensively and, in 2009, co-founded the Chisum Patent Academy. What motivated you to open the Academy?

Through my entire career, I have been a teacher as well as scholar. I came to realise that the treatise is a form of teaching and its most important students are not law students, but law graduates and other professionals working in patent departments and firms who are confronted with the complexities of the patent system, which can be so intimidating and unforgiving of mistakes.

I and my spouse, Professor Janice Mueller – also an author on patent law – realised that, for this group of working patent professionals, quality legal texts are important, but not enough. There is a huge and continuing need to provide quality education and training in both patent basics and ongoing important developments in patent law. To respond to that need, we established the Chisum Patent Academy.

What do you think are the biggest challenges facing the IP world today and how do you think they could best be overcome?

The three biggest challenges are costs, costs and costs. Intellectual property operates in three major arenas: procurement of IP; evaluation of what IP rights exist and who owns them; and enforcement of IP rights. All three arenas are too costly and uncertain (which is another form of cost). Cost causes all kinds of distortions. The costs weigh both on original creators of IP (and those who own their rights) and on subsequent creators and users.

The excessive cost problem could best be overcome by a major simplification of both substantive standards and enforcement procedures. But that's unlikely to happen any time soon. Substantive simplification is theoretically possible, but would be opposed by interests seeking special treatment.

Procedural reform also faces obstacles, not least of which is that cutting costs in IP means, in effect, reducing professional employment.

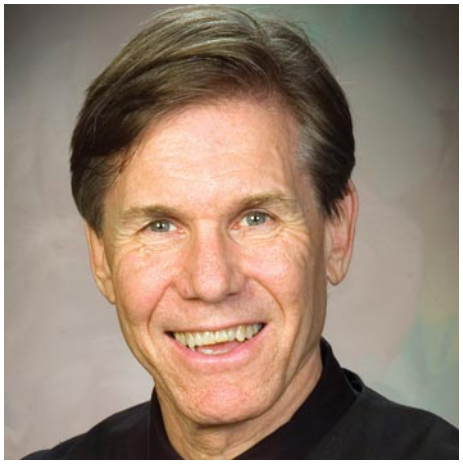
In the United States, a primary source of cost is the general legal structure, which promotes litigation and makes available onerous procedures, such as pre-trial discovery. The general structure is unlikely to see major reform, and giving IP rights special and favoured treatment would be difficult to sell.

Finally, who are your own IP heroes?

There are four giants in the history of United States patent law: Judges Joseph Story, Learned Hand and Giles Rich, and Professor William Robinson.

I admire the three judges, in part, because their careers extended for such long periods. From Professor Robinson's career, I learned two lessons – one positive and one negative. The positive one was about treatise writing. His 1890 three-volume work was and still is amazing, with its logical structure and copiously complete footnoting. The negative lesson was about staying focused on real work. Professor Robinson was lured into administration, becoming the founding dean of Catholic University Law School in Washington, DC. Unfortunately, the result was that he never prepared a second edition of his great treatise. It is a fate I have tried to avoid, keeping my professional focus on the treatise and making it responsive to the sweeping changes that patent law has witnessed since the 1970s and into the 21st century. ■

Chief Judge Randall Rader – the team player



Having graduated with a BA in English from Brigham Young University in 1974, Randall Rader moved to George Washington University to study law and completed his degree four years later. Upon graduation, he served as counsel for the House of Representatives' Interior, Appropriations, and Ways and Means Committees. He remained there until 1980, when he was transferred to the subcommittees of the US Senate Committee on the Judiciary. His move into intellectual property law was a happy accident. "While on the staff of the judiciary committee, I had responsibility for IP issues," Rader explains. This having sparked an initial interest in the subject, when Rader became a trial judge in the late 1980s he made a concerted effort to take on as many patent cases as were available to him. "I think that effort was acknowledged when I became a judge on the Court of Appeals for the Federal Circuit," he states. "Of course, my work on the Federal Circuit then propelled me on to a greater interest in patent law in particular."

The teacher

Once appointed to the Court of Appeals for the Federal Circuit (CAFC) in 1990 by President George Bush, Rader decided that he wanted to impart some of his knowledge and experience. He took up a position at the University of Virginia Law School, where he lectured on patent law for eight years. Rader subsequently went on to teach at Georgetown University before returning to his alma mater, George Washington University. He has taught there ever since. According to Rader, of all his titles and accolades, one of his most highly treasured is that of professor. "I just love the students," he states. "They challenge me and give me the opportunity to participate in their lives and that's what's really fun about teaching: you get to see people make choices and to progress because you've helped them and taught them and given them some vision of where they might go."

Making changes

Having been a judge on the CAFC for 20 years, on 1st June 2010 Rader succeeded fellow IP Hall of Fame inductee Paul Michel as the court's chief judge. With the new title have come additional responsibilities. They are ones that he is relishing: "I now have a great responsibility to work with my colleagues on all of the cases to see that the court is doing its best in trying to properly clarify and reflect the law," he explains. Rader has also taken steps to improve the running of the CAFC. He has initiated a drive to move the court to electronic filing as soon as possible and to reduce the costs of e-discovery. Rader says that the changes have been met with great enthusiasm from the rest of the court. "The other judges have been very supportive of these moves," he states. "It has been the greatest privilege I have to work with all of them: they have been key to any successes the court has exhibited."

Rader clearly holds his colleagues in very high esteem and he classes many of them among his own IP heroes, along with fellow IP Hall of Fame inductees and colleagues from his early career, Howard T Markey and Giles Rich.

Harmony

In addition to bringing the court's filing system into the 21st century, Rader has invited his fellow judges to accompany him on international trips. "This is to try to help the court catch a vision of its responsibility to facilitate rather than frustrate the marketplace," he explains. "The most important thing I can do in terms of enhancing international collaboration is to make my colleagues aware of the laws of foreign nations and where we can converge judicially that will help relieve the pressure that the market feels when it has divergent opinions from one nation to another."

Collaboration and harmonisation of patent systems are clearly themes close to Rader's heart. "There are many challenges facing the IP world today," he states. "But one that strikes me as particularly important is the need to harmonise and bring the differing standards around the nations together so that the market can operate more efficiently."

The proposed patent reform legislation currently being debated in Congress would help bring US patent law closer into line with the rest of the world. However, while Rader accepts that there is room for improvement, he is not comfortable with the idea that major reform is necessary. "It's a system that is working magnificently overall," he insists. "In fact, for the most part, the proposed changes to the law have been altered vastly because the courts, and the Federal Circuit specifically, have addressed and remedied most of the problems that were perceived."

Team effort

Rader has worked on some of the most important patent cases of the past few decades. So much so that, when asked to highlight the most important or interesting ones that he has heard, he is at a loss. "Oh, I could pick out two or three or four for every single year of my career and that would be at least 50 cases!" he exclaims. In recent years, however, he has worked on *In re Bilski, Microsoft v AT&T*, and *Festo*. Most notably, in each of these cases the Supreme Court has adopted at least a significant part of his reasoning in their ruling. However, despite these achievements, Rader is modest when asked to name his career highlights to date. "I'm proud that the Federal Circuit is the happy and prospering place that it is," he states. "That is not solely due to me, but I've tried to create an atmosphere that gives the court the opportunity to do its work and where the court will take more cases *en banc*. And I've succeeded so far. I'm trying to make the court a better institution in every way." Rader is quick to reiterate that he is not achieving this single-handedly. "If I'm implying that I'm doing all that alone, I certainly don't mean it!" he laughs. "It has to be done as a collaborative effort with all of us working together."

He is equally as modest about his induction into the IP Hall of Fame. "Of course I feel very honoured and very pleased," he states. "But I hope that it is recognised that this honour extends beyond me to the Federal Circuit and all the wonderful work that's done by my colleagues." ■

Tian Lipu – China's IP ambassador

Tian Lipu has devoted his career to the advancement of intellectual property in China. Having completed his education and received his master of science degree from the China Science and Technology University, he joined what was then the Chinese Patent Office in 1981. As it had only recently been established, the office and its employees found themselves on a steep learning trajectory – especially as China did not yet have a patent law. Like many of his colleagues, Tian was seconded abroad to learn from established patent offices. His trip took him to Germany, where he conducted research at the prestigious Max-Planck Institute and spent time with the German Patent Office and German Patent Court in order to study the country's patent laws and litigation system. He also visited the European Patent Office to research the processes it had in place to coordinate the patent application process across numerous jurisdictions.

Upon his return to China, Tian's insight into the workings of European systems proved invaluable and he played an instrumental role in the crafting of China's patent laws. First implemented in 1984, the statute was not met with great enthusiasm at home. Considered by many to be a step towards capitalism, it was seen as an unnecessary hindrance to the rightful sharing of the fruits of an individual's labour with the rest of the community. So began the long and difficult process of seeking to convince the Chinese public that IP assets can and should be protectable. In fact, it was only at the end of the 1990s that the term intellectual property was included in the Xinhua dictionary.

During the drafting and implementation of the patent law, Tian demonstrated that he had the ability to progress into the upper echelons of the office. Over the next few years he served as deputy division director, division director and deputy director general of the Patent Re-Examination Board. In 1988 he took on the role of deputy director general of the electrical invention examination department.

A reshuffle of government institutions in 1998 led to the rebranding of the Chinese Patent Office as the State Intellectual Property Office (SIPO). The change in title reflected a renewed focus on the role that intellectual property was to play in the Chinese economy: a focus that was shared by Tian. He continued to climb the ladder within the office and served as director general of the automation department. Then in 2001, he became SIPO's deputy commissioner, before finally making the move to the top spot in June 2005.

During Tian's tenure as commissioner, SIPO has become one of the leading five patent issuing authorities in the world. Furthermore, Tian has dramatically increased the agency's size, efficiency and quality. This has been necessary as SIPO seeks to process the astronomical rise in the number of both foreign and domestic filings it has received in recent years. According to a report published by Thomson Reuters in October 2010, China is set to lead the world in patenting activity by the end of 2011. Based on analysis of the total volume of first-patent filings in China, Europe, Japan, Korea and the US from 2003 to 2009, the report found that China experiences an annual growth rate of 26.1% in total patent volume. This far exceeded that of the other countries: following China was the US, with a relatively small growth rate of 5.5%.

Despite Tian's achievements as commissioner of SIPO, China does still have a problem with IP infringement and comes under frequent attack from foreign intellectual property owners doing business in the country, as well as from foreign governments. While Tian concedes that spreading the IP message to the people of China is a work in progress, in an open editorial published in the *The Wall Street Journal* in December 2010, he denied allegations that China's perceived lack of IP protection is systemic. "Since the intellectual property system has not been in place for a long period of time in China, intellectual property infringement is still relatively serious in some regions and with some products. The Chinese government has never denied these problems," he wrote. "Indeed, it has made unremitting efforts to resolve them. Since 2003 the Chinese government has published action plans every year to enforce and protect intellectual property." He also stated that concerns over IP infringement in China were often overplayed: "In April of this year [2010], the US Government Accountability Office submitted a report to Congress, 'Observations on Efforts to Quantify the Economic Effects of Counterfeit it and Pirated Goods.' It concluded that some US government forecasts of losses to US businesses caused by counterfeiting and piracy were unverified and groundless."

As well as promoting the protection of intellectual property – both domestic and foreign – Tian is committed to encouraging China to become a nation of innovators. In 2006 he was reported as saying: "Sustainable development is the only choice for the country to shift from 'Made in China' to 'Invented in China,' so as to get rid of the tag, 'The World's Factory'." Foreign companies have long made great use of China's cheap production and labour costs; however, the tide is now beginning to turn. Since 2003 the number of domestic patent filings received by SIPO has greatly exceeded that of foreign ones. The Chinese government has been doing what it can to encourage continued growth by offering innovation incentives and tax deductions on R&D spending, and SIPO has implemented a succession of five-year plans. This year sees the commencement of the 12th of these plans and this time the focus is very much on scientific development and building an economy based on innovation.

For Tian, the challenge is to continue to build the examiner base at SIPO so that it can keep pace with the number of applications it receives and ensure that the patents the office issues are of an acceptable quality. On top of this, he must also help ensure that patents and patenting become ever more engrained in the Chinese business psyche. The relatively short time in which patent law and practice has been a mainstream subject in China means that this will be easier said than done.

But throughout his career, Tian has shown himself to be capable of doing the seemingly impossible. Given how far China has come in the last 25 years, there is no reason to believe that he cannot pull it off. If he can, the country's voice will become more widely heard in the field of international discussions over procedural and substantive harmonisation. Already a significant player through the recently established IP5 of leading patent granting authorities (the EPO, the USPTO, the JPO, the KIPO and SIPO), China's increasing influence looks set to become even more marked. Whether this would have happened as quickly and as successfully without Tian Lipu is very much open to question. ■