Dr. Helen Yu, CeBIL – The Evolution of the Utility Requirement to the Promise Doctrine under Canadian Patent Law

In 2017, the Supreme Court of Canada (SCC) ruled on the case of AstraZeneca Canada Inc. v Apotex Inc. where the SCC was asked to decide on whether and to what extent the utility requirement under Canadian patent law can be met by an implied promise associated with the doctrine of sound prediction. The SCC unanimously agreed that the 'Promise Doctrine' is "not good law" and "inconsistent with the purposes of the Patent Act". The decision brings much needed clarification to this controversial doctrine that has been developed by the Federal Court's jurisprudence to invalidate patents based on whether promises made in a patent as a whole are met to satisfy the utility requirement. This presentation will focus on the evolution of the case law leading up to the ultimate denouncement of the Promise Doctrine by the SCC and the two-step approach the court proposed as the correct way to assess patent utility.

Dr. Henning Grosse Ruse-Khan, University of Cambridge - Invoking Investment Protection for IP rights in the Pharmaceutical Industry - a Review of State and ISDS Practice

Beyond the conventional international means of protecting intellectual property (IP) through treaties such as TRIPS, investment protection for IP has become a practically relevant and politically contested tool for right holders to ensure their IP assets are protected abroad. Most bilateral investment treaties (BITs) and investment chapters in Free Trade Agreements (FTAs) cover IP rights as a form of protected investment - which in turn allows right holders to claim the broad standards of investment protection (such as fair and equitable treatment or limits on expropriation) against host state measures in investor - state dispute settlement (ISDS). Most cases where IP rights have been litigated in ISDS all involve public health matters, and several involve the pharmaceutical industry. Against the background of IP-related ISDS Awards and reports on further cases, this presentation reviews the emerging body of case law. It primarily considers whether litigation so far indicates that host states' policy space to regulate life science industries, patent protection for pharmaceuticals and public health is affected by investment protection. It concludes that while host states have so far not lost a single IP-related investment dispute, several aspects especially in the Eli Lilly vs Canada Award are troubling, and open the doors for future claims by investors. Occasionally, states have tried to respond by setting more limited protections in investment agreements, or by expanding public interest defences. At least one recent Award however calls into question whether these approaches are indeed fit for purpose.

PhD-fellow Behrang Kianzad, CeBIL - "TRIPS Flexibilities - The tricky intersection of Public Health Policy and Patent Protection"
The TRIPS agreement has a number of flexibilities allowing for member states to diverge from the otherwise stated obligations in regards to IPR protection (patents on pharmaceuticals, among others) when it is called for from a public health protection policy angle. The extent and vigour to which these flexibilities can and should be enforced are a matter of contentious debate following cases such as Bayer-Nacto in India and Eli-Lily vs. Canada. This presentation looks to the different articles in the TRIPS agreement as well as adjoining and related text such as the Doha Declaration in order to make sense of how and if the said flexibilities can be used in regards to public health policy derived from the TRIPS statutes". 