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PROLOGUE

The first patent law in the United States was enacted by the first Congress in 1790. The subject has been evolving ever since, and now in the twenty-first century many believe it to be at major crossroads. Whether patent law will remain relevant in the information age and in this era of expanded world trade is a question being pondered in government and business, as well as in academia. The University of Houston Law Center is pleased to bring you the scholarly output of this year's symposium on the modern directions, actual and hoped for, of patent law.

The first paper is an article by Professor John R. Thomas, formerly of George Washington University and now at Georgetown University. He discusses the use of patents as instruments of public advocacy rather than in their more traditional role as excluders of competition and preservers of market shares. He describes the possible constitutional abuses that can come from patents used in this way, especially in light of the leniency with which modern patents are issued.

Next, Professor Toshiko Takenaka of the University of Washington puts forth her view that § 102 of the U.S. patent law—the one listing novelty-defeating events—needs shortening. The present version of this statute is unnecessarily cumbersome and presents an unnecessary barrier to the international harmonization she believes is needed to keep the patent system relevant in an era of expanded world trade.

Professor Craig Nard of Case Western Reserve University argues that the federal courts should be more attentive to empirical and social science scholarship in reaching their decisions in modern patent cases. He sees the patent law as part of a larger mix of social benefits and costs that is often obscured by legal and factual complexities in patent litigation.

My contribution to the symposium is a piece questioning the conventional wisdom of using arbitration as a way to reduce the

cost and intrusiveness of litigation in resolving patent disputes, especially international ones. I focus on the questions of availability and meaning of injunctive relief from arbitrators and on the issue-preclusive effect of their rulings.

Professors Mark Janis of the University of Iowa and Jay Kesan of the University of Illinois co-author an article discussing the emergence of *sui generis* systems of exclusivity for new plant varieties. They trace the development through the trademark law and then the Plant Variety Protection Act, pointing out inaptness of characterizing the PVPA as a "patent-like" form of protection.

Scholarly writing on patent law in recent years has been marked by substantial increases in empirical studies. Professor Kimberly Moore of George Mason University has been a major contributor to that literature. In her essay, she analyzes the results of jury trials in patent cases and argues for more detailed special interrogatories in order to enable meaningful appellate review and to guide consideration of reforms of the patent law.

We hope the great pleasure we have had in sponsoring this symposium will be matched by yours in reading the proceedings, and that beneficial changes in the law will be stimulated by both.

Paul M. Janicke
University of Houston Law Center