

# Current IP Issues in China and the Multilateral Trading System

Intellectual Property Center, CASS

Mingde Li

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# 1. Three Phases of IPR Development in China

- Phase one: the laws in paper
- China started to establish its modern intellectual property system since the end of 1970's
  - Enacted the Trademark Law, Patent Law, Copyright Law, and Unfair Competition Law, and amended the laws thereafter
- TRIPS Agreement has played an important role in this phase
  - First China-US Memo in 1992 was based on the draft of the TRIPS Agreement
  - China amended the Patent Law, enacted the Unfair Competition Law, adhered to Berne Convention
- Before adhere to WTO, China amended its Patent Law, Trademark Law and Copyright Law in accordance with TRIPS Agreement
- China has met the requirement of the TRIPS Agreement
- However, they are mainly the laws in paper

# 1. Three Phases of IPR Development in China

- Phase two: enforcement
- Second China-U.S. Memo in 1995, focused on the enforcement of IPR
- Another branch of TRIPS Agreement: enforcement
- Before adhered to WTO, China amended its patent law, copyright law, and trademark law: focused on the enforcement as well
- Transnational Companies and foreign leaders have all criticized on the enforcement of IPR
- Chinese officials, judges, scholars, companies, media, all talking about the enforcement of IPR
- We are struggling in the mess of enforcement until today

# 1. Three Phases of IPR Development in China

- Phase three: utilization
- After adhered to WTO, China accepted a high standard for the protection of IPR, many criticize
  - We have to do, no other choice
  - And with the fast development of the economy and society, this system is good for China
- China shall step into phase three, stress the utilization
  - The works, inventions, designs, trademarks covered by IPR shall be fully utilized
  - To become the enterprises' competitive power, become the nation's core competitive power, and strongly promote the social and economic development
- To stress on the utilization dose not mean to forget about the enforcement

## 2. China's IPR Strategy

- Focus on the utilization
  - To respond to the challenges from China's economic and social development
  - To respond to the change of the development model
  - China shall be depend more and more on intellectual creations, not just natural resources, labors, and investment
- National IPR strategy (2004 to 2008)
  - At the end of 2004, the State Council decided to enact a national IPR strategy
  - The Outline of National IPR Strategy was passed by the State Council on April 12, promulgated on June 5, 2008
  - Creation, utilization, protection, and management of IPR

## 2. China's IPR Strategy

- This commentator in 2011 submitted an inner report
  - To shift the focus of the national IPR strategy from protection to utilization
  - To resolve the problems concerning with the protection while to utilize IPRs
  - To promote the economic and social development by creation, utilization, protection and management of IPRs
- Utilization has been reflected in the Party's documents
- In 2007, the 17<sup>th</sup> Congress of the Communist Party
  - “To enhance the ability of self-innovation, and to construct an innovation country.”

## 2. China's IPR Strategy

- In 2012, the 18<sup>th</sup> Congress of the Communist Party
  - Set up a strategy: to promote the development by innovation.
  - Stress on the protection of intellectual property rights.
- In 2013, the Third Plenary Congress of the Center Committee of the Party
  - Emphasized on the utilization and protection of intellectual property rights
  - First utilization, then protection
  - To explore the possibility to establish IP courts
- All of the terms above focused on creation, utilization, and protection of IPRs

# 3. China's IP Courts

- In August 2014, the Standing Committee of National Peoples' Congress made a decision to set up IP courts
  - China began to establish its special IP tribunals since 1993, first in Beijing Intermediate Court and High Court, then in the Supreme Court of China, and in the courts in different level, about 410 tribunals now
  - At the end of 2013, there are 87 intermediate courts to adjudicate first instance patent cases, 45 for plant variety cases, and 46 for circuit layout cases, and 7 basic courts for utility model patent and design patent cases
  - Special tribunals for IPR cases
  - Some of the tribunals for patent, plant variety, and circuit layout cases



# 3. China's IP Courts

- The decision decided to establish special IP Courts in Beijing, Shanghai, Guangzhou
  - Intermediate court, to adjudicate the first instance cases concerning patent, plant variety, circuit layout, technical secret, and computer program
  - To adjudicate the civil and administrative cases, not criminal cases
  - In the first three years, the IP courts shall adjudicate the cases from all areas within the province or municipality areas
  - How about three years later? To adjudicate the cases from other provinces?

# 3. China's IP Courts

- The purpose of IP Courts is to encourage technological creations and utilizations
  - By effectively protection of patents, plant varieties, technical secret, and computer programs
  - By specialized trial courts and trial judges
- We are waiting for more IP courts
  - Three years later, the Supreme Court shall report to the Standing Committee
  - Not every province one IP court, east coast area, west area
  - Single appeal court?
  - Three-in-one or two-in-one: civil, administrative, and criminal cases in one court or tribunal

# 4. Concluding Remarks

- TRIPS Agreement, including its draft, has effectively impacted on the IP System of China
- TRIPS Agreement has at least two important parts: to set up a minimum standard for the protection of IPR, and to set up a mechanism for the enforcement of IPR
- For the first branch, China has met the requirement of the TRIPS Agreement since 2001
- For the second branch, China now is struggling to fulfill the requirement of the enforcement
- The two important parts are roughly parallel with phase one and phase two of IP System in China

# 4. Concluding Remarks

- How about utilization?
  - The IP system, as a public policy, shall not only emphasize on the standard for the protection and enforcement of IPRs, but shall also emphasize on the utilization of IPRs
  - It shall promote the economic and social development
- Utilization is not so clear in TRIPS Agreement
  - It is clear for the West, but may not so clear for the East
  - 1.8 million trademark registration applications in 2013
  - 2.3 million patent applications (including design)in 2013
- How to effectively utilize IPRs is a hard task for China, and maybe a topic for the future multilateral trading system

Thanks for your attention!

[mdli@cass.org.cn](mailto:mdli@cass.org.cn)