JURIDICAL PROTECTION OF INTELLECTUAL PROPERTY IN CHINA

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In China, intellectual property is deemed to be an extremely important asset owned by natural persons, legal persons, and other organizations. Therefore, it is an important job for the People’s Court to protect intellectual property in accordance with relevant laws and regulations.

A great deal of interest in enacting legislation relating to intellectual property has accompanied China’s economic reforms and liberalization. Such legislation is needed to protect fair market competition, a robust market economy, and the development of science, technology, economy, and culture. Since 1982, China has issued and implemented a series of laws and regulations, such as the Trademark Law, Patent Law, Technology Contract Law, Copyright Law, Anti-Unfair Competition Law, and Regulations on Protection for Computer Software. Although China does not have a long tradition of intellectual property law, it has established a relatively complete legal framework for the protection of intellectual property. This development demonstrates that China is able to learn from and absorb the successful experiences of other countries and adapt that knowledge to the circumstances of China and international development trends.

While reforming the domestic legal system for the protection of intellectual property, China has joined a number of international organizations and conventions, such as the World Intellectual Property Organization, the Paris Convention for the Protection of Industrial Property, the Madrid Agreement Concerning the International Registration of Marks, the Berne Convention for the Protection of Literary and Artistic Works, the Universal Copyright Convention, and the Convention for the Protection of Products of Phonograms Against Unauthorized Duplication. China has also signed various treaties for the mutual protection of intellectual property with several countries, including the United States. In short, China is fulfilling its international obligations to protect intellectual property and promote com-

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communication and cooperation with other countries. China's intellectual property regime is already highly developed and will gradually conform to international standards.

Laws without enforcement, however, are meaningless. The basis of the effective execution of a law is that the public voluntarily takes actions within the scope allowed by law on the one hand and the person violating law is punished by the state on the other hand. According to China's laws and regulations of intellectual property, punishment against illegal actions may be imposed by administrative and juridical means, with the latter having final adjudicatory authority.

ACTIVITIES OF THE SUPREME PEOPLE'S COURT

Intellectual property cases are highly specialized and technical, and the applicable laws and regulations, which are very complicated, have been enforced only for a short time. For the uniform execution of law, Chinese courts have taken a series of measures.

(1) The Intellectual Property Trial Division has been established in the Supreme People's Court. Besides hearing some very important intellectual property cases, the Division is also responsible for the instruction and supervision of intellectual property matters of lower level courts. Intellectual property divisions were also established in the provincial higher courts and some intermediate courts in regions where the economy is relatively developed (including Beijing, Shanghai, Guangdong, and Jiangsu) and where there are more intellectual property disputes than in other areas. In some other provincial higher and intermediate courts, collegial panels have been established in economic and civil divisions to hear industrial property and copyright cases, respectively. Under such a system, intellectual property cases will be heard by special juridical organs and judges. It is hoped that this system will be conducive to the uniform execution of the law. Furthermore, judges can accumulate experience and improve their ability to handle intellectual property cases.

(2) Heavy emphasis is placed on reinforcing the special legal training of judges. The Supreme People's Court and provincial higher courts have taken several measures to train judges and improve the overall quality of judges in charge of intellectual property cases in a short period of time. These measures include holding training courses, lecture courses, conferences, and appointing judges to visit, study, and practice abroad.

(3) In order to clarify the intellectual property litigation system, the Supreme People's Court has published several judicial interpreta-
tions and other explanatory documents that cover many aspects of substantive and procedural law and are helpful in instructing the lower courts on how to handle intellectual property cases.

(4) Chinese courts have accepted and decided many civil cases relating to intellectual property disputes. It is calculated that from 1991 to 1996, Chinese courts accepted 19,404 cases of intellectual property civil disputes (of which 17,588 cases were decided). These cases included 4,138 patent dispute cases (of which 3,687 cases were decided); 3,036 copyright dispute cases (of which 2,892 cases were decided); 1,227 trademark dispute cases (of which 1,095 cases were decided); 8,162 technology contract dispute cases (of which 7,208 cases were decided); and 2,841 other cases, including infringement of trade secrets (of which 2,706 cases were decided).

(5) Severe penalties have been imposed on perpetrators of intellectual property crimes. In civil tort actions, Chinese courts have the right to assess civil liabilities on tortfeasors. Chinese courts also have the right to levy criminal sanctions on persons whose actions seriously impair other persons' intellectual property or jeopardize the socio-economic system or state interests. Chinese procurators are responsible for investigating criminal cases and filing for public prosecution. In cases where the public security authorities or procurators decline jurisdiction or find that no criminal liabilities can be imposed, the complainant can file criminal suit in his own name if he presents sufficient evidence that the defendant had infringed his intellectual property rights. Chinese courts are obligated to handle criminal cases filed by procurators or complainants in a similar fashion. However, Article 126 of the Criminal Procedure Law provides a different set of rules for cases filed by a private person. From 1991 to 1996, Chinese courts accepted 1,934 criminal cases of trademark infringement of which 1,927 case were concluded, and 1,675 people were sentenced to imprisonment or other punishment. This record demonstrates the Chinese court system's commitment to the enforcement of intellectual property rights.

In the new Criminal Law published by the Fifth Conference of the Eighth People’s Congress on March 14, 1997, there is one chapter addressing crimes of intellectual property infringement. The new Criminal Law came into effect on October 1, 1997, providing even more legal ammunition for Chinese courts to punish intellectual property transgressions.
TRIAL SYSTEMS

According to the Constitution and other laws, Chinese courts have the power and right to hear intellectual property cases independently, free from interference by other administrative institutions, social organs, and persons. All citizens, legal persons, and other organizations, including foreign citizens, shall be treated equally under the law. Chinese courts must handle cases on the basis of facts and according to applicable laws and regulations. Courts must also grant awards strictly pursuant to the law. In order to ensure publicity, fairness, and seriousness of trials, Chinese courts must resolve cases according to the Civil Procedure Law of the People’s Republic of China. The following characteristics of the Chinese judicial process are applied in intellectual property trials in the collegiate system and public and civil trials.

A. Collegiate System

The collegiate system involves a process of collective hearing. The collegiate body is comprised of three to seven members with each member having equal rights. All important issues of the investigation, trial, and judgment of the case are discussed by all the members, and decisions are made by a simple majority vote. Minority opinions are kept on record.

In the first instance of intellectual property cases, the collegiate bench may jointly consist of judicial officers and assessors or only judicial officers. In practice, while hearing some patent cases of a specialized and technical nature, Chinese courts usually invite experts to assist the bench in clarifying facts and to ensure proper handling of the cases.

B. Public Trial

All intellectual property adjudications are open to the public except when state secrets or personal privacy would be compromised. The cases concerning trade secrets, however, can be held in public if the parties so agree.

C. Civil System

In the civil system, the parties have the right to appeal the decision made by the court of first instance. The decisions of the second instance court, however, are final and the parties cannot appeal its judgment.
D. Jurisdiction in Patent Infringement Cases

In intellectual property infringement cases, the domicile of the defendant or the place where the infringement actions took place determines which court has jurisdiction. Chinese courts are divided into four levels: the Supreme People's Court, the Provincial Higher People's Courts (the level of provinces, municipalities under direct administration of central government, and autonomous regions), the Intermediate People's Courts (the level of cities and areas), and the District or County Courts. The Supreme People's Court has assigned forty-three of the 400 Intermediate People's Courts in China to serve as courts of first instance for patent infringement cases, while corresponding higher level courts are responsible for handling appeals. The Basic Courts hear in the first instance cases of ordinary intellectual property infringement other than patent infringement cases. In litigation involving important foreign intellectual property cases, the Intermediate Courts are the court of first instance, and its corresponding higher level court is the appellate courts.

E. Property Preservation System

The property preservation system entails compulsory measures taken by the People's Court against the properties or the object in dispute after the case is accepted but before the judgment is awarded by the People's Court in order to ensure the full enforcement of future effective judgments. The following conditions shall be met for such property preservation measures:

1. The case must involve some payment obligation; and
2. There is objective possibility that the enforcement of a judgment may become impossible or difficult because of the acts of either party or for other reasons.

The People's Court can order that the property be placed in conservatorship upon application by one of the parties of the case. The applicant shall provide adequate security as determined by the court, and the court may reject an application if the applicant fails to do so. The People's Court can also order the property be placed in conservatorship on its own initiative.

Property preservation shall be limited in scope by the claims on the defendant or by the property of the defendant(s). If the person whose property is preserved provides relevant and enforceable security, the People's Court shall cancel the property preservation in a timely fashion. If an application for property preservation is wrongly made, the applicant shall compensate the affected person for his
or her resulting losses.

INTELLECTUAL PROPERTY DISPUTES INVOLVING FOREIGN ELEMENTS

The People's Court adjudicates intellectual property infringement cases involving foreign elements in accordance with Chinese law, relevant conventions, international treaties (excluding the clauses for which China has made reservations) and bilateral agreements signed by China, and international customary law. The People's Court applies the principle of national treatment and reciprocity in its decisions.

Foreign citizens, legal persons, and other organizations participating in an intellectual property infringement lawsuit should also be aware of the following:

(1) Foreign citizens, legal persons, and other organizations have the same legal rights and obligations as Chinese citizens, legal persons, and other organizations.

(2) If foreign citizens, legal persons, and other organizations want to engage an attorney, they must engage a Chinese attorney. A foreign client can engage a foreign attorney as an agent provided that such attorney does not act in his or her capacity as a lawyer.

(3) If foreign citizens, legal persons, or other organizations want to bring an action in China, they must have a vital interest in the case. If the plaintiff is a foreign enterprise or organization, it shall deliver to the court its legal entity certificate or incorporation certificate which shall be confirmed by a Public Notary. If the plaintiff is a natural person, he or she shall deliver to the court their identification certificate. There must be definite defendant(s) and a concrete controversy.

(4) According to the Civil Procedural Law of the People's Republic of China, a participant in a lawsuit may apply to the People's Court to preserve evidence which may be lost or may be difficult to obtain later. The People’s Court can also take preservation measures sua sponte. The evidence preservation may occur before the suit begins and is usually conducted by the Public Notary. Such evidence shall be transferred to the court after the lawsuit process begins. The preserved evidence is of the same validity as other evidence investigated and collected by the court during the suit.

(5) The plaintiff must pay the case acceptance fee as a prerequisite to instituting a lawsuit. The rate of the fees is inversely proportional to the amount in controversy. Fees are assessed at the same
rate on foreign and Chinese parties. Such fees will initially be paid by the plaintiff, but will be assumed by the losing party at the conclusion of the lawsuit.

For the last ten years, China has made great advancements in the judicial protection of intellectual property, but there are still many areas that must be improved, such as the quality of judges, uniform application of the law by the local courts, removal of local protectionism, and raising the level of damages awarded. Such problems are to be resolved gradually with the reform of legislation and judicial practice.

In summary, judicial protection of intellectual property is a long-term task of the People’s Courts in China. The courts must exercise their duties efficiently, enforce the law seriously, and punish the infringement actions firmly in order to protect the legal rights and interests of Chinese and foreigners.