Comments

CHINA’S INTELLECTUAL PROPERTY RIGHTS PROTECTION TOWARDS THE 21st CENTURY

DUAN RUICHUN*

Two years ago, a delegation from China’s State Science and Technology Commission, known elsewhere as the ministry of science, visited the United States. During the visit, the delegation reached an agreement with Duke University and the Haythe & Curley law firm. That agreement created a joint research project on hi-tech venture capital and protection of intellectual property rights (IPRs).

That joint research project, of far-reaching significance, included a meeting in the beautiful capital city of Brussels, Belgium, the seat of the European Union headquarters. The subject of the meeting, mechanism and cost of IPRs law enforcement: public and private initiatives, is of common concern to us all. The topic of this introductory paper, delivered at the Brussels meeting, is China’s IPR protection towards the 21st Century.

CHINESE INTELLECTUAL PROPERTY RIGHTS

In the Chinese view, IPRs are:

a symbol of human civilization;
the outcome of scientific advancement;
a legal system and intangible assets; and
one of the rules of hi-tech cooperation and competition.

A. IPRs Protection is an Important Policy of China’s Reform and Development

Five months ago, China lost its chief reform architect—Deng Xiaoping. Deng had led China in its modernization drive. Specifi-

* Director General, Office of Intellectual Property Executive Conference, State Council, China.
cally, he laid the foundation for China’s IPRs system. In 1979 when
the Chinese departments were divided over the establishment of a
patent system, it was Deng who decided that “it is better to have a
patent system.” Later, when problems and diverse views occurred
during the IPRs legislation process, he made it clear that this was due
to lack of understanding of IPRs. As a result, he encouraged us to
learn more and requested training of IPRs specialists. In 1992, dur-
ing a south China tour, Deng visited a number of hi-tech industries.
With great interest he asked about the details of their IPRs manage-
ment, and requested that an internationalized protection system be
established. It is because of his guidance that China has made IPRs
protection a pre-requisite for its policy “respect knowledge and tal-
et,” and an indispensable component of a socialist market economy.
Thus, it is China’s foundation and objective to initiate IPRs protec-
tion, and internationalize that protection.

B. Current IPRs Protection in China

The current status of IPRs protection in China can be described
briefly in three parts.

(1) China has established a basic IPRs legal system. The current
system includes laws and regulations on trademark, patent, copyright,
trade secrets, and unfair competition—most of which are in
conformity with the Agreement on Trade-Related Aspects of
Intellectual Property Rights (TRIPS Agreement) of the World Trade
Organization (WTO).

In 1997, two events merit attention. First, the State Council, or
the Chinese cabinet, formulated the Regulations on Protection of
New Varieties of Plants in March (promulgated on October 1, 1997).
On April 25, 1997, China initiated the process of accession to the In-
ternational Union for the Protection of New Varieties of Plants
(UPOV), and is expected to become a UPOV member. On April 29,
the UPOV council meeting reviewed the Chinese legislation favora-
bly, finding that it was agreeable with the 1978 version of the UPOV.
Second, the Chinese government resumed sovereignty over
Hong Kong on July 1, 1997, under a policy of “one country, two sys-
tems.” Hong Kong has basically completed the local process of IPRs
legislation. Its regulations on patent, copyright, and registration of
exterior designs went into effect on June 27, 1997. In addition, its
1989 Law on Trademarks will remain in force. Furthermore, China is
a party to the Paris Convention, the Berne Convention, the Universal
Copyright Convention, the Patent Cooperation Treaty, and the Convention Establishing the World Intellectual Property Organization—all of which will be applicable in Hong Kong. In the operation of their IPR's systems, China's mainland and Hong Kong will cooperate closely.

(2) China has continuously strengthened enforcement institutions. Based on its existing institutional structure, IPR's enforcement in China consists of law enforcement agencies, government administration, and related functional departments.

The People's Court and procuratorates have made IPR's a priority. China's Supreme Court and fourteen district courts at the provincial level have established IPR's tribunals with a sizable contingent of specialized employees.

The administrative law enforcement departments have employed a team of up to one million people to work cooperatively, including: patent offices, patent management offices, administrative bureaus for industry and commerce, trade mark offices, copyright administration, customs, public security, publication, cultural, and the news media.

In July 1994, the Chinese government established within the State Council the Intellectual Property Executive Conference (IPEC), with similar subordinate committees in all thirty provinces, autonomous regions, and municipalities. The IPEC deals with major IPR's issues in their study, decision making, domestic legislation and enforcement, and international consultations. The IPEC has subsequently initiated a nationwide action program for IPR's enforcement and protection.

During implementation of the IPEC, an inter-agency task force was created with publicized telephone numbers and contact persons. In some places, certain months of the year were identified as special periods for the fight against infringement. A concerted effort by law enforcement agencies, administrative departments, and other related institutions has played a greater role in enforcement.

(3) Further efforts are needed to strengthen enforcement and weak points, despite the marked achievements that have been made.

THE WORK OF THE IPEC

A. Progress Since Implementation

The IPEC promulgated an action program in February 1995, and
satisfactory implementation has been reported since that time. Under the program, local governments have launched waves of coordinated actions, each targeted on specific types of infringement activities. This kind of coordinated action has now become a routine work program.

IPRs infringement is not a problem that is localized in only one country. Rather, it is universal problem. China is very large and faces problems associated with unbalanced development of the economy and legislation. Admittedly, IPRs infringement, some of which is serious, is still found in China from time to time in different regions. In some cases, local protectionism is the real culprit.

Under tightened enforcement, many infringement activities took new camouflage. Some activities have moved overseas as the advancement of hi-technology has provided new tools for infringement. Infringers are more frequently employing such hi-tech tools, operating in groups, and taking part in cross-border activities. Against these obstacles, the IPEC is determined to protect IPRs with higher financial commitments and manpower to promote higher levels of protection.

B. Future Efforts of the IPEC.

First, the IPEC’s new focus will shift to law enforcement, after the establishment of a fairly comprehensive legal infrastructure. Second, implementation of the IPEC action program is aimed to stop law breaking activity at all levels of infringement, including: production, storage, marketing, import, and export. Third, the IPEC will provide guidance in the establishment of industrial IPRs associations, especially in science and industrial technology parks. In addition, it will help advance IPRs management and protection in industries, research, and institutions of higher learning. Fourth, future work will focus on increased public awareness. Up to fifty percent of civil servants, and eighty percent of the management staff at research institutes and industries will receive IPRs education within a few years. Fifth, the IPEC will focus on promotion of famous products by helping industries employ IPRs for development of famous brands and products, including cultural and arts products.

In conclusion, China is creating a modern environment for IPRs protection for the 21st Century, to better facilitate international cooperation, and its national modernization construction.