

TRANSITIONAL REVIEW MECHANISM OF CHINA

Communication from China

The following communication, dated 17 September 2002, has been received from the Permanent Mission of the People's Republic of China with the request that it be circulated to Members.

INTELLECTUAL PROPERTY RIGHTS PROTECTION IN CHINA

The Government of People's Republic of China believes that intellectual property rights protection system is of great importance in promoting science and technology development as well as cultural and economic prosperities. Effective intellectual property protection secures the smooth operation of the socialist market economy and facilitates international exchanges and cooperation in the fields of economy, science, technology and culture. Intellectual property rights protection is an important component of the policy of reform and opening-up of China. It is also an important element in the process of China's construction of a socialist legal system. Formulation of intellectual property related laws and regulations in China began at the end of 1970's concurrently with China's enhanced participation in the activities of relevant international organizations and strengthened exchanges and cooperation with other countries. The intellectual property rights protection system in China has been kept abreast to the latest development and international standards in the world ever since its establishment. China's accession to the World Trade Organization (WTO) provides another opportunity to further perfect the system established thus far. To implement the commitments made in the Accession Protocol and to bring China's intellectual property legislation into full compliance with the Agreement on Trade-Related Aspects of the Intellectual Property Rights of the WTO (the TRIPS Agreement), the Chinese Government has launched a massive program to amend and improve its major intellectual property related laws and regulations and the protection level of intellectual property rights in China is further enhanced. Apart from the efforts in perfecting the legislation, enormous manpower and resources has also been devoted to the enforcement of the legislation by the Chinese Government and remarkable progress has been achieved in this respect.

I. OVERVIEW OF CHINA'S INTELLECTUAL PROPERTY RELATED LEGISLATION

1. 1980's to 1990's - Birth and incremental development of intellectual property related legislation

China formulated major intellectual property related legislation, including Copyright Law of the People's Republic of China, Trademark Law of the People's Republic of China and Patent Law of the People's Republic of China during the period from 1980's to the beginning of 1990's.

In the *Trademark Law* and its Implementing Regulations that became effective in March of 1983, the provisions regarding trademark filing, examination, registration, etc were brought in compliance with relevant international practices. With the deepening of the reform and opening-up policy and the economic development, China amended the Trademark Law and its Implementing Regulations in 1993 with the view to effectively cracking down on trademark counterfeiting, preventing trademark infringement and protecting the legitimate right of trademark owners. In this amendment, the scope of trademark protection was expanded to include trademarks for services, and rectification procedures were provided in trademark formality examination in favor of the applicants, which were in line with the draft TRIPS Agreement then negotiated in the Uruguay Round negotiations. In February of 1993, the Standing Committee of the National People's Congress of China issued *Supplementary Stipulations on Punishing the Crimes of Counterfeiting Registered Trademarks*, which further intensified the punishment on trademark counterfeiting and infringement. These laws and regulations ensured the effective and sufficient protection to the registered trademarks.

The *Patent Law* and its Implementing Regulations that became effective in April 1985 extended intellectual property right protection to patents of invention creations. For the purpose of increasing the patent protection level in China in light of the international standards, the Standing Committee of the National People's Congress passed the revised *Patent Law* on 4 September 1992 with major amendments to its previous version. To meet the needs for deepening the open-up policy and promoting science and technology development, the revised *Patent Law* extended protection to any inventions, whether products or processes, in all fields of technology, with pharmaceuticals, chemical products, food, beverage etc included. The protection term was also extended from 15 years to 20 years from the date of application for patent for invention, and from 5 years to 10 years for utility model and design patent. Furthermore, apart from the extension of protection of a patented process to cover also the product directly obtained with it, the patent protection was also strengthened in the revised *Patent Law* with the stipulation that importation of patented products must have the authorization from the patent owner. The revised *Patent Law* also redefined the conditions of compulsory licensing. Thus, the patent protection was upgraded to a new level.

The *Copyright Law of the People's Republic of China* and its Implementing Regulations promulgated in September 1990 and 1991 respectively defined the copyright and related rights for literary, artistic and scientific works. According to the Law, the copyright protection in China covers not only the works, oral works, musical, dramatic, choreographic and acrobatic works, works of fine art and architecture, photographic works, cinematographic works, graphic works, but also computer software. China is one of the few countries in the world that explicitly include computer software as the subject matter for copyright protection. The State Council of the People's Republic of China also promulgated *Regulations on Protection of Computer Software* which set down specific implementing rules for computer software protection. This supplementary regulation to the *Copyright Law* came into force in October 1991.

China also formulated other intellectual property related laws and regulations in addition to those mentioned above. *Regulations on Administrative Protection of Pharmaceuticals* promulgated in 1992 provided certain administrative protection to pharmaceuticals inpatentable before the revision of

Patent Law, *Anti-Unfair Competition Law of the People's Republic of China* promulgated in September 1993 specified the protection for commercial secrets. In the 1997 *Criminal Law of the People's Republic of China*, criminal liabilities for serious infringing acts against commercial secrets were defined. *Regulations on Protection of New Varieties of Plants* promulgated in 1997 filled up the legislative void in this field in China. 1997 *Criminal Law of the People's Republic of China* specially provided for crimes infringing intellectual property right, which carry a maximum jail term of 7 years.

2. Year 2000 up to date - Further improvement and perfecting of intellectual property related legislation

To implement the commitments made by the Chinese Government during the course of its accession to the WTO and to ensure the consistency of China's intellectual property legislation into with the TRIPS Agreement, from the year 2000 and onwards, China has amended its major intellectual property related legislation including *Patent Law of the People's Republic of China*, *Trademark Law of the People's Republic of China*, *Copyright Law of the People's Republic of China*, *Regulations on Protection of Computer Software*, *Implementing Regulations of Patent Law of the People's Republic of China*, *Implementing Regulations of Copyright Law of the People's Republic of China*, *Implementing Regulations of Trademark Law of the People's Republic of China*. *Regulations on Protection of Layout-Design of Integrated Circuit* has also been enacted.

The revised *Copyright Law* extends the scope of protection, clearly defines the right of performers and producers, adds the provisional measures of property and evidence preservation, stipulates the amount of statutory damages and enhances the administrative sanction on the infringements that harm the public interests. All of these amendments have brought the China's *Copyright Law* into full compliance with the requirements of the TRIPS Agreement.

The revised *Trademark Law* specifically provides for the protection of geographic indications and well-known trademarks, expands the scope of eligible subject matter of trademark, stipulates the right of priority, adds the judicial review to the administrative decisions relating to trademark registration and strengthens the cracking down on trademark infringement.

The revised *Patent Law* consummates the conditions for granting compulsory licences, adds the provision of judicial review for the administrative decisions regarding patent of utility model and design. *Regulations on Protection of Layout-Design of Integrated Circuit* issued in April 2001 defines the protection of the layout-design of the integrated circuit.

In the revised *Patent Law*, *Trademark Law* and *Copyright Law*, preliminary injunctions on desisting from the infringing acts before the trial have been stipulated to further strengthen the protection of the right owners.

In addition to the foregoing intellectual property related laws and regulations, China has also amended *Regulations on Administration of Agriculture Chemicals*, *Regulations on Administration of Veterinary Chemicals*, *Regulations on Administration of Feeds and Additives* to include protection for undisclosed information.

With all these legislative activities, a well-structured and sophisticated legal system for intellectual property rights protection has been successfully established by the Chinese Government which is in full compliance with the TRIPS Agreement.

II. INTERNATIONAL EXCHANGES AND COOPERATION ON INTELLECTUAL PROPERTY RIGHTS PROTECTION IN CHINA

From the 1980's, China has acceded to a series of major international conventions, treaties and agreements relating to intellectual property right protection and the Chinese Government has faithfully honored its commitments and strictly abided by its international obligations.

1. China's accession to international conventions, treaties and agreements

Since 1980s, China has joined in succession a number of major international conventions, treaties and agreements on intellectual property rights protection, namely: *the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Universal Copyright Convention, the Madrid Agreement Concerning the International Registration of Marks, the Madrid Protocol Concerning the International Registration of Marks, the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks, the Lugano Agreement of Establishing International Classification of Industrial Designs, the Patent Cooperation Treaty, the Strasbourg Agreement on the International Patent Classification, the Geneva Convention for Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, the Budapest Treaty on the international Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedures.*

The extensive involvement in the international exchanges and cooperation on intellectual property rights protection has been a principal approach to draw on the advanced experience from these international organizations and other countries, and enhanced greatly the capacity and level of China's intellectual property rights protection.

2. Bilateral cooperation regarding intellectual property rights protection

While actively participating intellectual property related international conventions, the Chinese government has also established extensive bilateral cooperative ties with many countries on intellectual property rights protection. In May 1996, the Chinese Government signed an agreement with the European Union and launched China-EU Programme on Intellectual Property Right Cooperation. This project has sponsored various cooperation activities including bilateral exchanges in EU, international symposium and seminars in China regarding intellectual property rights protection. Scores of government bodies, research institutes and colleges have benefited from this cooperation programme. In addition, China has also established bilateral cooperation on intellectual property right protection with the US, Japan, Italy and etc.

III. ENFORCEMENT OF INTELLECTUAL PROPERTY RELATED LEGISLATION IN CHINA

The enforcement of intellectual property related legislation in China takes the pattern of "Parallel channels and Coordinated operation". Where infringement occurs, the right holders of intellectual property may either bring a lawsuit to the court or file a complaint to the governing administrative bodies.

Administrative bodies for intellectual property rights protection may take various remedy measures including preliminary injunctions desisting from the infringement and fines. Administrative measures are welcomed by right holders for their quick response to the infringing activities and low cost. The Quality Brand Protection Committee of Foreign Investment Enterprises in China acknowledges the great importance attached and effective measures taken by the Chinese Government at all levels to crack down on counterfeiting.

The Chinese Government at all levels is fully aware of the significance of intellectual property right protection in promoting economic development. Local authorities have promulgated a large number of regulations strengthening intellectual property right protection in line with those at national level. Effective measures including cross-region joint actions have been taken to eliminate regional protectionism for infringers and to crack down on the illegal practice like counterfeiting. Cooperative networks on trademark enforcement have been established in the Three Provinces and One Municipality in East China (Shandong Province, Jiangsu Province, Zhejiang Province, Shanghai Municipality), the Three Provinces in North-East China (Heilongjiang Province, Jilin Province and Liaoning Province) and etc. Cross department cooperation among governmental bodies for intellectual property right enforcement has been continuously strengthened. In May 2001, the State Administration of Industry and Commerce, the Ministry of Public Security and the State Intellectual Property Office convened the State Council intellectual property right work conference and reached consensus on establishing an inter-agency liaison mechanism, information notification and sharing mechanism, enforcement coordination mechanism, etc. This kind of cooperation and coordination among regions and government enforcement bodies has proved to be an effective and forceful tool against counterfeiting and infringements.

1. Patent right enforcement

In the year 2001, the patent administrative bodies at all levels in China took on 977 patent disputes in which 888 were concluded. In all these disputes, 924 were patent infringement, 23 were disputes over right ownership, and 30 were miscellaneous cases. 80 of the 977 disputes were related to inventions, 426 were for utility model, and 471 for design patent. 223 out of the 977 disputes were concluded with rulings, 487 were concluded with mediation, and 178 were withdrawn or settled by other means. The patent administrative bodies also investigated and dealt with 413 cases of fraudulent patent.

From 1985 to the end of 2001, the total number of patent disputes handled by the patent administrative bodies is 7,600, with 6,608 concluded.

In the year 2001, the State Intellectual Property Office received 62 applications for layout-designs of integrated circuits, and 29 of them were publicized.

2. Trademark enforcement

In the year 2001, 41,163 trademark law violation cases were dealt with in total, among which 22,813 cases were trademark infringements and 18,350 cases were related to other violations. Administrative authorities confiscated 250,000,000 illegal trademark signs and 14,004 molds, blocks and other tools directly used for infringing production. There were 2227.74 tons of infringing products destroyed in the year and the total value of fines amounted to RMB 210,000,000. Infringers were ordered to pay the right owners damages of RMB 3,343,400 in total and there were 86 cases transferred to criminal procedures, which involved 88 persons.

3. Copyright enforcement

In the year 2001, copyright administrative authorities around China received 4,416 cases in total in 2001, with 4,306 cases concluded, among which, 3,607 cases were concluded with imposition of a fine upon the infringer and 633 cases concluded with mediation. 66 cases were transferred to criminal procedures.

The top five provinces with copyright cases reception and conclusion were Guangxi Zhuang Ethnic Autonomous Region, Hunan province, Jiangsu province, Liaoning province and Sichuan

province. According to incomplete statistics, enforcement forces launched at least 161 assaults in 2001 against market for illegal publications and unregistered shops and outlets.

4. Border control for intellectual property right

In the year 2001, Chinese Customs authorities have greatly enhanced the intellectual property right protection at borders. Through close coordination with judicial bodies, administrative bodies for intellectual property right protection, and the strengthened cooperation with right holders, infringing acts in import and export have been forcefully contained, and the legitimate rights of right holders have been effectively safeguarded.

In year 2001, the Customs authorities around China investigated and dealt with 330 cases of infringements. Domestic right holders were protected in 116 cases and foreign right holders were protected in 230 cases. The total value of all these cases amounted to RMB 134,900,000. Among these cases, 297 cases involved export and import goods bearing counterfeit trademarks. Further more, the State Customs Administration received in total 803 application for protection from right holders, among them 648 were approved after examination, a 34% increase over last year.

Intellectual property right protection is more an intrinsic development requirement of the market economy in China than merely an imposed fulfillment demand of China's international commitments. The Chinese Government has consistently given high priority to this undertaking. With decades of efforts, China has now in place a well structured and sophisticated intellectual property protection system which is in line with international standards. The Chinese Government is committed to further rigorous enforcement of the intellectual property related laws and regulations, strict fulfillment of its international obligations and close cooperation with other countries in this field with the view to raising the protection of intellectual property right to a higher level.
