



The development of intellectual property in China

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Abstract

This article traces the history of intellectual property (IP) development in China and demonstrates the evolutionary change before, and especially the revolutionary change after, the Open Door Policy from 1979. This development of the IP system in China is set out in the context of its social, economic and historical roots. The influence of the major international IP treaties to which China has acceded, such as the Paris Convention, Patent Cooperation Treaty, World Trade Organisation, is described. The many IP statutes within China, and their effects, are defined. The article identifies both positive and negative effects of these major changes and stresses the necessity of constant improvements to the current system of IP protection and enforcement for the economic development of China.

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1. Introduction

Since 1979, when China opened its door to the outside world, economic development has become the most significant focus of the country. Foreign direct investment (FDI) and international technology transfer lie at the heart of Sino-foreign relations. The encouragement of foreign capital, technology and information has extended the reach of multinational enterprises (MNEs). As a result, intellectual property rights (IPR) has been brought to the forefront of the economic development in China. The history of intellectual property (IP) in China indicates that the germination of the concept of IPR in China goes back more than 100 years, but in reality, no effective system of IP protection (IPP) started emerging until a little over two decades ago (Yang, 2002). Since then, an IP structure has been systematically set up in order to meet the needs of economic development.

The aim of this article is to reflect the evolutionary change of IP in China before 1979, and the revolutionary establishment of and improvements to systematic IP under the open economy after 1979. The reasons for, and effects of, the changes will also be discussed.

The article is structured as follows:

1. Introduction
2. Background: the current IP system of legislation, enforcement and administration
3. Evolutionary changes in the intellectual property system (pre-1979)
4. Revolutionary changes in the intellectual property system (post-1979)
5. Motivations on the formation and improvement of the IP system (post-1979)
6. The effects of the revolutionary changes
7. Conclusions and implications

2. Background: the current IP system of legislation, enforcement and administration

The current IP system is a triple system, i.e. a system with three inter-related national powers of IPP, i.e. legislative guidance, administrative control and judicial enforcement (Fig. 1). Legislative guidance means the Chinese legislative system and legal mechanism in guiding the patenting activities and protection. Administrative control refers to the administrative organs and their functions in patent applications, examinations, approval and protection. Judicial enforcement refers to the court system and its functions in dealing with patent disputes.

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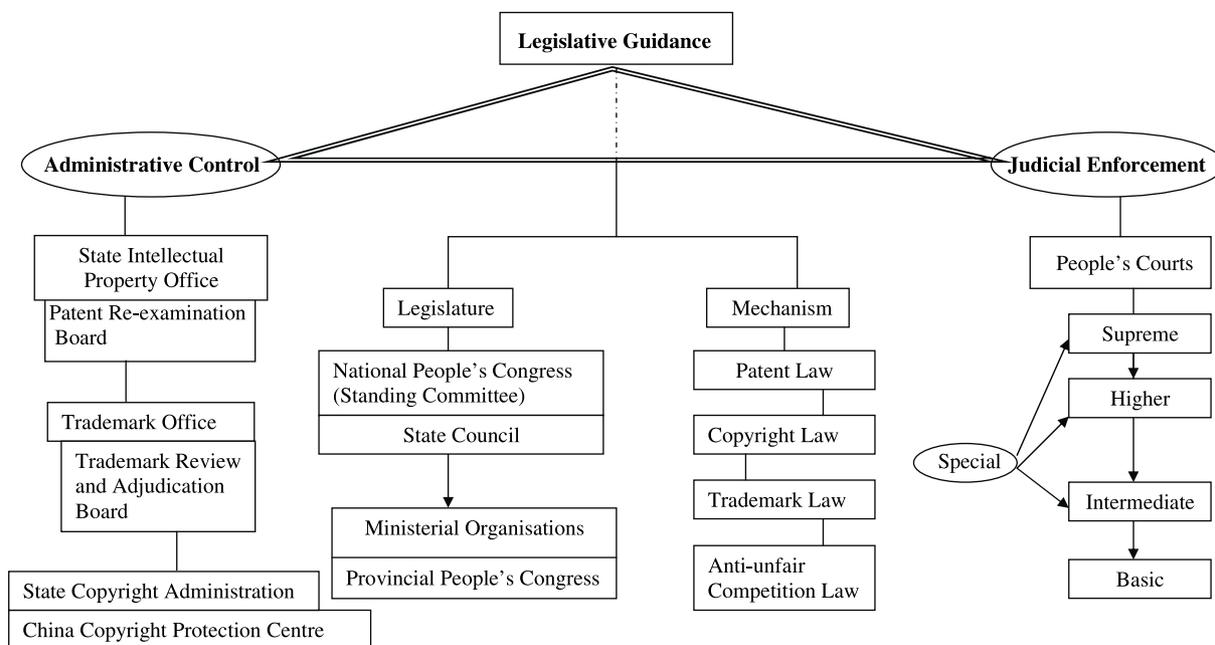


Fig. 1. Triple IP system in China. Note: State Intellectual Property Office was formerly the Patent Office. It was renamed in 1998 [21]. Source: Created by the author.

In relation to legislative guidance, China is a country with a two-tier legislative system. In other words, both the central government, and its ministerial and provincial government have the power to introduce legislation and regulations. Current IP laws and regulations include the *Patent Law*, *Trademark Law*, *Copyright Law*, and *Anti-Unfair Competition Law*, and their implementation laws, and other relevant regulations. The current Patent Law and relevant regulations protect three rights—*inventions*, *utility models* and *industrial designs*. Invention patents are “the exclusive right given to inventors or creators for technological solutions relating to a product or process” for 20 years [2]. Utility Models are the exclusive rights given to inventors or creators for minor technological solutions relating to a product or process for 10 years (op cit). Industrial Designs are the rights given for new configurations, shapes, patterns and/or colours with artistic features for industrial application (op cit). The current Trademark Law and relevant regulations protect trademark and service mark holders’ rights from infringement for 10 years from the date of registration approval and allow indefinite renewal. The current Copyright Law and relevant regulations protect the authors’ rights in literary, artistic and scientific works, and other related rights, including neighbouring rights and moral rights. The term of protection is an author’s lifetime plus 50 years after his or her death.

In addition to legislative guidance, administrative control has also been established to administer the implementation of IPP in China (Fig. 1). Different IP forms are currently managed by three separate organisations under the State Council—the State Intellectual

Property Organisation (SIPO), the Trademark Office and the State Copyright Administration (SCA). The responsibilities of these organisations are the examination and approval of IPR, interpretation of IP laws, supervision of IP activities and administrative settlement of IP disputes. In addition, ministerial and provincial organisations under the same names cooperate with the central offices and supervise local or organisational IP activities.

The Chinese people’s courts are directly responsible for the judicial enforcement of IP in China (Fig. 1). Particularly, Special People’s Courts or specialised IPP divisions within and above the Intermediate People’s Courts deal with IP disputes [17, p. 13]. These special courts have jurisdictional powers that enable them to handle IPP issues more efficiently. When there is no Special People’s Court or IPP division, cases are handled in the economic division within the courts. IP litigation is usually first brought to the Intermediate People’s Courts in provincial cities where the alleged infringers reside or where the infringement has occurred.

3. Evolutionary changes in the intellectual property system (pre-1979)

3.1. Early law, including the first Copyright Law (pre-1911)

The origins of IPP in China can be traced back to the Westernisation Movement in the latter half of the 19th century [10, p. 169]. The Westernisation Movement re-

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