

# China Intellectual Property & Innovation Law and Policy

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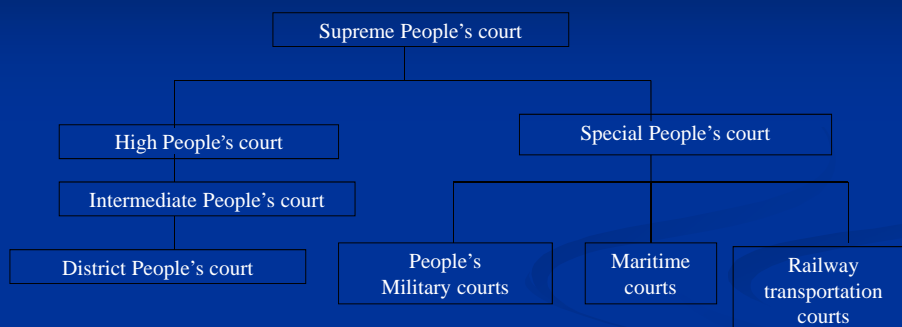
Beijing	北京	Guangzhou	广州	Harbin	哈尔滨	Hainan Dao	海南岛
Lhasa	拉萨	Lanzhou	兰州	Mount Everest	珠穆朗玛峰	Lanzhou	兰州
Nanjing	南京	Shanghai	上海	Shenyang	沈阳	Taipei	台北
Tianjin	天津	Wuhan	武汉	Xi'an	西安	Zhengzhou	郑州

<http://chinapage.com>

## China's current IP law system

- Statutes
  - General laws concerning IP matters: Civil law, Contract Law, etc.
  - Specialized IP Laws: Patent Law, Trademark Law, Copyright Law, Anti-Unfair Competition Law
- IP Administrative Regulations
  - Implementing regulations of IP statutes
  - Special or independent regulation related to IP
- Judiciary Interpretations
  - Supreme Court released interpretations to unify trial standards
- Administrative Rules
  - Formulated by various Ministries under State Council to implement laws and regulations
- Ordinances
  - Passed by local legislative branch of govt.

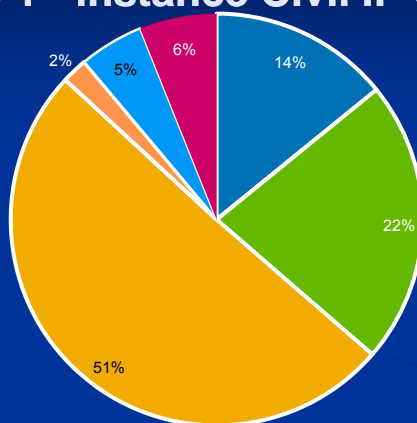
## China Court System



## China IP litigation in 2009

New filed 1st instance Civil IP case	30626	↑ 25.49%
Finished 1st instance Civil IP case	30509	↑ 29.73%
New filed 2nd instance Civil IP case	5340	↑ 12.21%
Finished 2nd instance Civil IP case	5492	↑ 16.88%
Finished Criminal IP case	3660	↑ 10.04%
Judgments become binding	5836	↑ 8.31%
Guilty Verdict	5832	↑ 8.28%
New filed 1st instance administrative IP case	2072	↑ 92.92%
Finished 1st instance administrative IP case	1971	↑ 90.99%

## 2009 1<sup>st</sup> instance Civil IP cases



Copyright: 51%; trademark: 22%; patent: 14%;  
unfair competition: 5%; technology contracts: 2%; others: 6%

## Amendments on IP Specified Laws

- Amendment on Patent Law
  - enacted in 1984 and came into effect on Apr. 1, 1985
  - 3<sup>rd</sup> Amendment adopted in Dec. 2008 and is effective in Oct. 2009
  - Revised technology transfer terms: to strengthen protection of local technology:
    1. transfer patent to foreigners shall follow certain procedures
- Article 10: assignment of the right to apply for a patent or of the patent right from a Chinese entity or individual to a foreigner, foreign enterprise or other foreign organizations, shall be done in accordance with procedures in the related laws and administrative regulations.

## Amendments on IP Specified Laws

- Amendment on Patent Law(continued)
- 2. file a foreign patent for an invention “made in China” shall be subject to confidentiality examination in advance
- Article 20(new add): Any entity or individual intending to file a patent application in a foreign country for an invention-creation made in China shall apply in advance for a confidentiality examination conducted by the patent administrative under the State Council. The procedures and duration regarding the confidentiality examination shall be enforced in accordance with the State Council regulation. Any foreign patent application that violated this provision will not be granted a patent right if the patent is applied for in China
- New detailed implementation rule simply defines “invention-creation made or finished in China” as the invention or utility model’s substantial solution is finished in China, but still hard to identify, esp. for multi-national companies which have cooperative technology development in many countries.

## Amendments on IP Specified Laws

- Amendment on Patent Law(continued)
  - Strengthen the protection of employee inventor's rights
  - ---the clause in the law remains the same, but rules in New Implementation were added on inventor's remuneration

Article 16: the entity that is granted a patent right shall reward to the inventor or creator of a service invention-creation and, upon exploitation of the patented invention-creation, shall give the inventor or creator a reasonable remuneration based on the extent the invention-creation is applied and the economic benefits it yields.

- Rule 76---78 : Agreements made between employer and employee or employer's lawful internal regulations prevails. If no agreements or internal regulations, the relevant Articles and Rules shall bind. In 3 months after issuance publication of an patent application, employer shall remunerate the inventor: no less than RMB3000 per invention patent, or no less than RMB1000 per utility model or design patent. If an invention is made under suggestions of inventors adopted by the employer, remuneration amount should be much higher. If the patent is exploited, no less than 2% of annual profit for invention patent or no less than 0.2% of annual profit for the design patent shall be paid to inventor, or pay relevant total amount once for all. If the employer grants license to others, no less than 10% of the royalty fees shall be paid to inventor/creator.

## Amendments on IP Specified Laws

- Amendment on Copyright Law
  - enacted in Sep. 1990, effective in June 1991, once amended in Oct. 2001
  - The 2<sup>nd</sup> amendment enacted on Feb.26th and took effective on April.1<sup>st</sup>
  - only very minor revision
  - 1.Remove Article 4: Works the publication or distribution of which is prohibited by law shall not be protected by this law.
  - 2. Add new clause as Article 26: Copyright can be pledged, and pledgee and pledgor shall file registration within authority of copyright management
- Trademark Law is still under amendment
  - enacted in Aug. 1982, effective in March 1983, amended in 1993 and 2001
  - 3<sup>rd</sup> amendment began in 2004 and last till now

## China National IPR Strategy

- Important National strategy and guideline
  - SIPO submitted request to State council for implementation of a National IPR Strategy on Aug.30, 2004
  - State Council began to set a working group on this Strategy in Jan. 2005
  - The draft of Strategy solicited comments from various parties and industries
  - China State Council released on June 5, 2008
  - Not legally binding, but with significant impact on IP legislation and economy
- Purpose
  - construct a self-innovation-oriented country with better use/protection/management of IP
- Main content
  - 5-chapters, 65-Articles : key terms in this Strategy including Self-independent IPR, 9 hits; innovation-oriented country, 5 hits; IP creation, application, protection and management, 4 hits

## China National IPR Strategy

- Specific tasks: encouraging companies developing different types of IP
  - Improving the IP regime
  - Promoting the IP creation and utilization
  - Strengthening the IP protection
  - Preventing the abuses of IP
  - Fostering an IP culture
- Measures of the strategy
  - Improving the innovation capability in IP in companies
  - encouraging commercialization and utilization of IP
  - accelerating the construction of IP legal system
- Long term goal by 2020
  - to make China a country with high capability of IPR creation, use, protection and management

## China Self-Innovation Product (SIP) Recognition

- **Background & Development**
  - "National Mid to Long Term Plan for Science and Technology" makes SIP a national priority in china public policies
  - "consider SIP first" in Gov. procurement: Only the products containing local owned IPRs can be qualified as SIP & it should be given preference in gov. procurement otherwise the purchaser will be punished
  - SIP is managed at both central level (MoST, NDRC & MoF) & local territory level, since 2006 to 2009, Central Gov. releases many rules
  - More and more local gov. developed implementation rules inconsistent with each other: different criteria, treatment & catalogue due to inconsistent understanding & local protectionism
  - Central Gov. is improving the implementation, tightening the control, latest regulation was the Implementing Guidance on application for certifying products as SIP by MoST on Nov.15, 2009
  - After persistent lobby efforts by foreign governments, MoST announced a draft measures for launching the Recognition of National SIP on April 10, soliciting public comments now

## China Self-Innovation Product (SIP) Recognition

- **Key requirements on IP rights**
  - ownership of Chinese IP related to applying product which developed itself or obtained from domestic company, and the use/disposal/development of IP should not be subject to restrictions of overseas entities
  - ownership of product brands registered as Chinese trademark from the very beginning of creation and should not be subject to influence of other overseas trademarks
- **other requirements**
  - product should be in compliance with relevant laws, regulations and industry policies
  - product has a high degree of innovation, technology used for the manufacturing of products are internationally cutting edge compared with similar products
  - product should be of reliable quality and has gone through testing of labs and inspection agencies if required
  - product have been introduced to the market and have potential economic benefits

## China Self-Innovation Product (SIP) Recognition

- How it impacts foreign invested companies
  - the regulation NEVER exclude foreign companies attending SIP recognition
  - most foreign invested companies cannot meet IPRs requirements: (a) local developed/registered IPRs to core technology of the products; (b) product brand originally registered in China; and (c) such IPRs are not subject to any restrictions from outside China
  - So far, only Emerson in Shenzhen got successfully certified by local gov.
  - Some foreign invested company's non-SIPs cannot compete with local SIPs in Gov. procurement, so losing the shares in Gov. procurement market
- key improvements in the draft Circular on April 10
  - The requirement for the full ownership of IP used in the product is changed to "the applying entity is either entitled to the IP, or is licensed to use the IP in China"
  - The requirement for full ownership of the trademark of the product is changed to "the applying entity either owns the exclusive right of the registered trademark, or owns the right to use the trademark in China."

Q & A

Thank You

