

focus on

China's Entry Into the WTO

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China Joins The WTO: A New Era For Intellectual Property Rights In China

China enters a new era in its economic and legal history with the agreement on its admission to the World Trade Organization, reached at the WTO's ministerial meeting of November, 2001 in Qatar. Of the many challenges and opportunities that lay ahead of China, those relating to intellectual property ("IP") will be particularly important as the generation and commercialization of IP becomes an ever more important part of the Chinese and world economies. Membership in the WTO sets forth an obligation to observe the standards of intellectual property protection outlined in the WTO's Agreement on Trade-related Aspects of Intellectual Property Rights ("TRIPS").

Recent Changes to Meet WTO Standards

China has been actively engaged in reforms of its economic and legal systems in order to meet the requirements of WTO membership. The important developments with respect to intellectual property and compliance with TRIPS have been:

China joined important international IP institutions and agreements:

- World Intellectual Property Organization (WIPO), 1980;
- Paris Convention for the Protection of Industrial Property, 1985;
- Madrid Convention for International Trademark Registration, 1989;
- Berne Convention for the Protection of Literary and Artistic Works, 1992;
- Patent Collaboration Treaty, 1993.

Trademark Law (enacted 1982):

- Rights arise from registration;
- Revised Trademark Act enacted in 1992, strengthening infringement remedies;
- Rules regarding famous marks took effect in 1996, to comply with the Paris Convention

Patent Law (enacted 1984):

- Provides a first-to-file system, with a 20 year term from the filing date;
- Revised Patent Law enacted in 1993, enlarging the scope and extent of patent protection;
- Amendments to further raise standards of patent protection and to simplify procedures, to comply with TRIPS, took effect in July, 2001.

Copyright Law (enacted 1990):

- Offers protection for the life of the author plus fifty years;
- Accompanying regulations, enacted in 1991, outline protection of the rights and interests of creators of computer software;
- Criminal sanctions for copyright infringement introduced in 1994;
- Amendments regarding fair use, assignments, infringement remedies and more, to comply with TRIPS and the Berne Convention, took effect in October, 2001.

Anti-Unfair Competition Law (enacted 1993):

- provides for protection of trade secrets.

Regulations on Customs Protection of Intellectual Property Rights (enacted 1995).

Rules on Resolution of Domain-Name Disputes (enacted 2000).

General Advantages of WTO Membership

Membership in the WTO generally promotes:

- Economic growth, including job creation, through the exploitation of competitive advantages and the elimination of protectionism;
- Lower costs of production through the promotion of efficiency;
- Greater consumer choice and lower consumer prices;
- Good government and the rule of law;
- Peaceful, constructive resolution of international conflicts.

Specific Advantages of Strong IP Enforcement

TRIPS sets the minimum standards of IP protection to be enforced by each member of the WTO and thus encourages the strengthening of IP legal regimes. Strong IP enforcement provides general economic benefits by:

- Encouraging growth and development;
- Attracting investors.

Owners of intellectual property directly benefit from:

- Enforcement (active protection): This is the ability to sue alleged infringers who, among other things, make, use, sell, offer to sell, or import patented technology, who copy copyrighted material, or who use a confusingly similar trademark.
- Marketing (public recognition): The existence of "patent pending," "patented" or "copyrighted" intellectual property, or a strong trademark may provide a significant marketing or promotional benefit.
- Deterrence (passive protection): The existence of a patent, a patent application, a strong trademark, or a copyright may deter: a) competitors from venturing into the owner's market area; b) competitors from proceeding without a license to use the owner's technology or brand; and/or c) investors from funding competitors. Competitors may be more reluctant to file a patent law suit against the owner if they may, in turn, be faced with a potential counter suit based on the owner's patent(s).
- Branding (separating from the competition): Patents, copyrights and trademarks may be helpful in limiting direct copying to prevent competitors from "riding on the coattails" of the IP owner. They are a useful "branding" tool, separating the owner from the competition.

IP Protection in the United States and the Future of IP Protection in China and the Rest of the World

Currently, the U.S. has the "strongest" IP enforcement in the world, as measured by the breadth of its laws and the degree to which they're enforced. While China is making significant progress towards a strengthened IP regime, there are a number of areas in which IP protection within the U.S. differs from China and from many other foreign nations.

- Existence of a strong, independent judicial system;
- Elimination of rampant piracy;
- Coverage of software systems;
- Coverage of medical processes;
- Design patent protection for computer displays;
- Coverage of biotechnology ... and more.

As countries take steps towards a "global economy," China will without question continue to become an even more powerful force in the world marketplace. In the years ahead, China, the U.S. and the rest of the world will continue to take great steps towards increased protection for creation and inventorship.

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Stephen Parker is counsel in the McLean office of Hogan & Hartson L.L.P., and a member of the firm's Intellectual Property Group. He has over 15 years of experience in a wide range of intellectual property matters, including patents, trademarks, copyrights, trade secrets, and unfair competition. Mr. Parker's practice involves patent and trademark prosecution, intellectual property litigation, strategic intellectual property counseling, legal opinion work, due diligence studies and licensing. Mr. Parker has substantial experience in a wide range of technologies, with particular emphases on computer and communications systems, software and e-commerce technologies, and medical systems and devices. Mr. Parker has extensive experience in Patent & Trademark Office practices and procedures, and from 1987-89 was a patent examiner for the U.S. Patent & Trademark Office. In this role, Mr. Parker examined patents in fluid delivery systems, elevators, electronic conveyors, and other technologies. Mr. Parker received a B.S. in mechanical engineering from Cornell University (dean's list), his J.D. from Catholic University, and has coursework in George Washington University's Telecommunications Engineering part-time graduate certificate program. Mr. Parker is a registered patent attorney and is admitted to both the Washington, D.C. and Virginia bars. Mr. Parker is actively involved in a wide range of legal and technical organizations, including the American Intellectual Property Law Association (Chair of Subcommittee on Medical Devices, 2001), the Giles S. Rich Intellectual Property Inn of Court at the Federal Circuit (webmaster of the organization's web site), the Virginia Piedmont Technology Counsel (Telemedicine Committee), the Northern Virginia Technology Counsel, Cornell Society of Engineers, George Washington University Moot Court (moot court Judge), and other organizations.

Valerie Brennan is a member of Hogan & Hartson L.L.P.'s Intellectual Property and Technology Law Groups, and her practice includes advising clients on trademark and copyright matters, obtaining trademark and copyright protection for clients, advising clients regarding trade secret protection, drafting and implementing employee proprietary information and inventions agreements, supervising intellectual property due diligence reviews in connection with internal audits and corporate transactions, domain name-related matters, and drafting and reviewing trademark and technology license and assignment agreements. Prior to joining Hogan & Hartson, Ms. Brennan was an associate at a large Washington, DC based firm. While at that firm, she managed the firm's domestic and international trademark prosecution practice and drafted and negotiated license and franchise agreements. Ms. Brennan was a cooperative engineer at Caterpillar, Inc. while in college. Ms. Brennan received her Bachelor of Science degree in general engineering from the University of Illinois in 1991. She received her law degree from the University of Michigan in 1994. Ms. Brennan is a member of the Virginia Bar, the District of Columbia Bar, the Illinois Bar, the American Bar Association and the Women's Bar Association. She also is actively involved in the International Trademark Association and in Women in Technology.