

Chapter 1 : Best Practices: Intellectual Property Protection in China | US China Business Council

Intellectual property rights (IPRs) have been acknowledged and protected in the People's Republic of China since [citation needed] The People's Republic of China has acceded to the major international conventions on protection of rights to intellectual property.

Summary of the dispute to date The summary below was up-to-date at Consultations Complaint by the United States. On 10 April , the United States requested consultations with China concerning certain measures pertaining to the protection and enforcement of intellectual property rights in China. The four matters on which the United States requests consultations are: Authors of works whose publication or distribution has not been authorized and whose publication or distribution is therefore prohibited appear not to enjoy the minimum standards of protection specially granted by the Berne Convention in respect of those works and may never enjoy such protection if the work is not authorized, or is not authorized for distribution or publication in the form as submitted for review. In addition, the rights of authors of works whose publication or distribution is required to undergo pre-publication or pre-distribution review appear to be subject to the formality of successful conclusion of such review. On 20 April , Japan requested to join the consultations. On 25 April , Canada and the European Communities requested to join the consultations. On 26 April , Mexico requested to join the consultations. On 13 August , the United States requested the establishment of a panel. On 13 December , the Director-General composed the panel. The panel expected to issue its final report to the parties by November On 26 January , the panel report was circulated to Members. The panel exercised judicial economy with respect to the claim under Article 5 2 of the Berne Convention , as incorporated by Article 9. At its meeting on 20 March , the DSB adopted the panel report. Implementation of adopted reports On 15 April , China informed the DSB that it intended to implement the DSB recommendations and rulings and that it would need a reasonable period of time to do so. On 29 June , China and the United States informed the DSB that they had agreed that the reasonable period of time for China to implement the DSB recommendations and rulings shall be 12 months from the adoption of the report. Accordingly, the reasonable period of time expired on 20 March Thus, it had completed all necessary domestic legislative procedures for implementing the DSB recommendations and rulings. Share Problems viewing this page? If so, please contact webmaster wto.

Chapter 2 : Enforcing Intellectual Property Rights in China - China Business Review

Lighthizer just completed a seven-month investigation into China and intellectual property at Trump's direction. international property rights. The Ministry of Commerce says China is a.

Intellectual property IP is a longstanding, critical concern for companies operating in China. Concern about IP enforcement remains a major factor influencing company strategies and operations in China. At the same time, counterfeiters and infringers in China are increasingly sophisticated. They often exploit procedural loopholes, proactively seek to invalidate legitimate patents and trademarks, deploy advanced techniques such as reverse engineering, and find new ways to infiltrate legitimate distribution networks and build their own parallel networks. Decades in the trenches have equipped multinational corporations with hard-won expertise and a set of strong preventive best practices, including internal controls and external engagement with key stakeholders. To be successful in China, companies should develop an integrated IP protection strategy that reflects the nature and extent of the IP problems they face and is grounded in a realistic assessment of internal goals and resources. This best practices document lays out key strategies and tactics that companies should adopt in their attempt to identify and protect their IP in China, both to prevent IP problems before they occur and to tackle IP infringement once discovered. To protect their IP in China, companies should follow several steps: Classify IP-relevant information according to its level of sensitivity, and integrate that classification into information control and operational procedures. Make IP protection a core responsibility of the entire China management team, not merely a function of the legal or brand protection teams, and adjust internal information flows and reporting structures to reflect those responsibilities. Regularly communicate the value of IP protection and the appropriate ways to handle IP to key stakeholders, including government officials, employees, contract manufacturers, business partners, and customers. While the level of IP consciousness among Chinese citizens is growing, regular communication of the importance of IP is critical to instill a sense of ownership of company IP among key stakeholders. Take clear steps to document company IP protection policies and efforts as such documentation can play an important part in infringement disputes, particularly in areas like trade secrets. Ensure that the legal protection the company is seeking for its IP in China is available. For example, many software products that are eligible for patent protection in other jurisdictions are not in China, and are more commonly protected as copyrighted products. Examples of areas that may require scrutiny include employment contracts, IP licensing arrangements, and evidence collection procedures. Companies should register or record eligible IP in China as early as possible. Companies should also understand the full range of IP for which they might file, including multiple types of patents utility model, design, and invention, as well as trademarks and copyrights. Companies should ensure that their patents are properly translated before filing. Many companies have experienced challenges in which a local competitor registers a very similar trademark in a different product category, a practice allowed under the Trademark Law. Balance global IP protection needs with China market opportunities in transferring or licensing IP Conduct a realistic assessment of the business risks and benefits of transferring IP to China. For many companies, this means keeping vital designs and latest-generation technologies overseas while bringing to China IP that supports their business in country. Negotiate clauses in technology transfer and licensing contracts to address company needs on royalty rates and ownership of improvements. Design the manufacturing process to protect IP Compartmentalize critical steps in the design and production processes for IP-intensive products and the equipment used to manufacture these products to limit the likelihood that any one employee has access to all the information needed to copy IP. Consider incorporating into the production process technologies and techniques that are difficult to copy, such as chemicals, foils, inks, labels, papers, stamps, and threads. Incorporate IP protection needs into facility design. Some companies, for example, limit IP exposure by ensuring that sensitive information is kept in low employee traffic areas or behind unmarked doors. Utilize information technology tools to track and protect information Consider tracking data flows and employee file transfers both paper and electronic, engage internal stakeholders such as the human resources department in early conversations about developing and implementing policies that monitor employees in this manner. Closely monitor or prohibit the use of flash

disks, portable hard drives, laptops, cell phone cameras, and other devices that could be used to capture and transmit sensitive information. Establish IT mechanisms to limit employee access to sensitive information, such as separate computer terminals or specialized passwords. Delineate based on job title and function which employees have access to what types of information. Control and monitor employee access to sensitive equipment and facility areas based on job title and function. Conduct exit interviews with departing employees to recover any sensitive materials and remind them of confidentiality obligations. Carefully select, monitor, and engage with business partners. Conduct comprehensive due diligence on suppliers and distributors prior to any agreement and on a regular basis thereafter. As part of that due diligence, investigate how those companies view IP, including IP they access through business partnerships and their own IP. Include IP protection clauses in all contracts and agreements. Regularly engage business partners to share the importance of those clauses to the ongoing business relationship, and ensure that partners fully understand what those obligations mean for both parties. Regularly engage business partners to reiterate the importance of IP protection, and, where appropriate, partner to boost IP protection efforts, such as supplementing monitoring resources or jointly engaging with government officials. Manage supplier, vendor, and distributor relationships through multiple personnel to limit the ability of local staff to abuse business networks. Review information that could be sent to third parties before transmission to ensure that it is not sensitive, or that the benefits of sending it outweigh the risks of it being leaked. Build internal lines of communication on IP. Establish an anonymous internal hotline, as well as an outside hotline for confidential communication with suppliers, distributors, customers, and other third parties to report IP infringement. Such a database can help educate staff about the types of infringement that a company may face, and increase the likelihood of spotting future problems. Work with outside IP service providers and industry associations. Engage with industry associations, including IP-, industry-, and country-specific associations, to exchange best practices for IP protection, identify cases of infringement, and if appropriate develop collective strategies and actions to advocate on concerns. Build ties with, and conduct due diligence on, IP service providers and investigative firms to identify enforcement resources that fully comply with relevant Chinese regulations. Work with local and national media as appropriate to address negative publicity that could accompany an IP case against a domestic company. Actively monitor for instances of infringement. Send representatives to look for counterfeiters at industry trade shows and trade fairs, such as the Chinese Export Commodities Fair Canton Fair. Review distribution networks at all levels regularly for weak links and possible entry points for counterfeit products. Establish and publicize clear reporting channels for outside stakeholders to report cases of IP infringement. Check the Internet regularly for infringing domain names and for websites that are used as platforms for counterfeit products. These include e-commerce sites such as Alibaba and Taobao. Work with Internet marketplaces and Internet service providers, such as Alibaba and Taobao, to remove infringing goods or pirated materials from websites, and to take down websites providing infringing products or content. Build clear cases against IP infringers. Conduct a careful review of internal documents that can demonstrate infringement, including physical and electronic evidence. Companies should be aware that documentary evidence as opposed to oral testimony or non-official documents such as marketing materials carries more weight with Chinese officials. Consider possible locations where the company could file an infringement case, and collect evidence accordingly. Utilize official enforcement channels to pursue infringers. Weigh various channels available to halt infringement in China, including administrative, civil, and criminal channels. In determining a course of action, companies should consider company resources, timelines for action, and the strengths and weaknesses of each channel. For more on the pros and cons of various enforcement channels, see the next page. Engage with local government officials to convince them to conduct enforcement proceedings. Such ties can sometimes give companies access to additional penalties under other laws, such as the Food Safety or Environmental Protection laws.

Chapter 3 : WTO | dispute settlement - the disputes - DS

Intellectual property (IP) is a longstanding, critical concern for companies operating in China. IP enforcement has consistently placed among the top handful of issues raised by US-China Business Council (USCBC) member companies every year in USCBC's annual membership survey.

Literary counterfeiters even produce Harry Potter books in Chinese that do not exist in English. However, even when the goods are removed after the raid, the individuals involved in the operation very seldom go to jail. Since then China has made and continues to make progress in reforming its laws and in enforcing intellectual property rights to stop the flow of fake products, but the Chinese producers of jia huo are prolific and stay one step ahead of anti-counterfeiting measures. Despite recent advances, China still lags very far behind developed Western nations in protecting the rights of inventors, creators, authors, composers, designers, and other innovators. The Western Concept of Intellectual Property Intellectual property can be thought of as any original creative work that can be protected by law, and the scope of what is considered intellectual property is immense. Intellectual property includes television shows, fashion designer logos, computer software, plant varieties, industrial processes, genetic engineering, branded consumer products, and pharmaceutical products. However abstract these artistic commercial and scientific works may be, they enjoy private property rights similar to those awarded to tangible assets. From the corporate perspective, intellectual property is an important commercial asset. All companies seek to establish themselves and their products within an industry; their sales and competitive edge often depend on their name, brand and logo identity in the market at issue. There are four major pillars of intellectual property rights: Copyrights Copyright protects creative works from being reproduced, displayed, or disseminated by unauthorized users. Original written and non-written works, including books, computer software, plays, television shows, songs, advertisements, paintings, sculptures, and movies, can be protected by a copyright. Once copyrighted, these works cannot be copied or published without permission from the creator. The copyright does not keep the works from being available to the general public; rather, like tangible property, the copyright can be sold or licensed to others, but not without providing the owner with appropriate royalties. The protection of intellectual property rights in general has been embodied in the U. Constitution from the very beginning. Article I Section 8 of the U. Constitution, which laid the groundwork for intellectual property rights in the U. The duration differs for anonymous and pseudonymous works, as well as those published prior to that date. Generally speaking, the patent is a document issued by a government which grants a special right or privilege to protect a technical innovation. In the United States, patents can be granted for improvements, discovery or innovations relating to a wide range of fields such as art, manufacturing, and even genetic engineering. In order for an innovation to qualify for a patent, the invention must be new, it must involve an inventive step, and it must be capable of being applied across the entire industry. The invention can be some sort of novel equipment, an industrial process or even a method of operation never seen or made public. Like copyrights, ownership of patents can be transferred as easily as any good that can be bought or sold. Once a patent is granted, it remains effective for twenty years. Trademarks Through trademarks, we associate golden arches with McDonalds or a swoosh with Nike. Trademarks allow us to readily distinguish similar goods from one another. A trademark can be a word, sign, slogan, or just about anything that a consumer can use to identify the source of the goods and distinguish it from a competitor. Trademarks express the quality of the product and the goodwill of the owner by a mere symbol. The trademark protects this symbol by preventing others from using it. By providing exclusive use to the owner of the trademark, the only way others can use the trademark is by licensing or buying the trademark. Companies can eventually lose their trademark protection. Aspirin, cellophane and escalator were once trademarks; now they are commonly used to refer to other brands of painkillers, plastic wrap, and people-moving devices. Trade Secrets Many people are aware that Coca-Cola does not disclose the recipe for its famous soft drink. If a disgruntled employee were to post the recipe for Coke on the Internet, the company would lose its most valuable asset: A trade secret is a secret kept by commercial entities in order to attain or maintain their success. There are as many forms of trade secrets as there are patents, copyrights and

trademarks: Trade secrets differ from patents, copyrights and trademarks in that while patents and copyrights require you to make your information public as part of the application process, trade secrets require you to actively keep the information secret by maintaining reasonable security measures. These measures can include physical means, such as keeping hard copies of relevant documents in locked cabinets and electronic copies on password-protected computers, and policies, as when employers require employees who have access to the trade secret to sign non-disclosure agreements requiring them not to release the information to unauthorized individuals and entities. If another individual or company discovers the same information independently, they are free to produce, market, and sell a product by using that information. Similarly, if another entity acquires the knowledge or information because the company holding the trade secret failed to take reasonable measures in keeping it secret, the second entity may also use the information as they see fit. According to this agreement: The first generation of Chinese intellectual property laws offered considerably less protection to owner-creators than did the comparable Western laws. The Trademark Law of is the oldest of these. Based on a first-to-file system, trademarks registered under this law are valid for 10 years after approval, with a 10 year renewal option. Like the Trademark Law, the Patent Law operates on a first-to-file basis. Moreover, the Chinese socialized many of the traditional notions of trademark and patent protection, and consequently these laws carried a distinctly socialist flavor most clearly seen in the limits exerted by the government on the rights granted by the patent and trademark laws. China passed a copyright law in in response to this international pressure, but the law was more symbolic than substantive. For example, under the law foreign works copyrighted in other countries would be given no protection unless and until they first registered for copyright protection in China. Additional threats of U. GATT, founded in at the Geneva Round of Negotiations, operated as a provisional international organization focusing on international trade with the primary goal of preserving stability among nations following World War II. To accomplish this mission, GATT strove to facilitate economic recovery through the reduction of tariffs and other barriers to trade and to arrange mutually advantageous relationships between nations by eliminating discriminatory treatment in international trade agreements. Reporting to the Ministerial Conference is the General Council, also composed of all members. The General Council oversees the operation of the WTO between meetings of the Ministerial Conference and operates one of the most important functions of the WTO, the dispute resolution process. These committees meet more regularly than the other bodies to discuss issues regarding international trade policies. The World Trade Organization is vested with the power to enforce global commerce rules through the imposition of economic sanctions. As the WTO holds judicial authority, when the organization issues an adverse ruling, a non-complying country must either amend its law to conform to WTO requirements or submit to trade sanctions. Many have criticized this sweeping power as undemocratic, especially since the power is vested only in unelected WTO bureaucrats. Any state or separate customs territory possessing full autonomy in the conduct of external trade may apply for membership. TRIPS serves as an instruction manual for member nations of the WTO and provides direction as to how they are to protect intellectual property rights. TRIPS became effective on January 1, and covers all areas of intellectual property rights such as copyright, trademarks, patents, industrial designs, varieties of plants, layout designs of integrated circuits and undisclosed information including trade secrets and test data. The minimum standards for intellectual property right protection set forth in TRIPS mirrors Western notions of intellectual property rights. In effect, member nations must surrender their sovereignty to the WTO with respect to the standards for the creation and enforcement of intellectual property rights, and TRIPS has thus triggered an intense debate on the morality and ethics of the Western notions of intellectual property rights. TRIPS extracts many provisions from each of these agreements and appends additional requirements where the previous agreements were considered deficient. TRIPS also provides procedures and remedies for the enforcement of intellectual property protection. It also outlines civil and administrative procedures and remedies, provisional measures, and special requirements related to border measures and criminal procedures. During the year accession process, China negotiated dozens of trade agreements with WTO members to change legal regulations and to recognize individual property rights. WTO membership signifies that China is a growing economic power in the international community. Given its immense size and market potential, China is expected to play a significant role in these

negotiations. It will not be easy to eradicate counterfeiting in China without adversely affecting the domestic economy. Many local governments are even afraid to step up and combat counterfeiting because it is such a crucial part of local economies. Daniel Chow, a professor at the Ohio State University College of Law, believes that the total abolition of counterfeiting would be ruinous in many parts of China: China is one of the fastest growing economies over the last decade, making it very attractive for foreign firms to conduct their business there. However, a significant portion of its economy is based on counterfeiting and the violation of most intellectual property laws known to the Western world. Lax enforcement and healthy demand for Western goods, particular among the younger generation of Chinese, together with inadequate protection for intellectual property rights under the law ensures that counterfeiting remains safe and prolific. As a result, foreign firms find themselves competing with cheap, low quality imitations of their goods. In some cases, especially in the pharmaceutical product area, counterfeiters of name brand products are placing the health of consumers at risk. General Efforts by China China continues to rework its legal system on an ongoing basis to provide an improved environment for economic and social development. The judges of the Chinese Supreme Court have made a point of attending lectures and training courses on WTO rules, and senior justices have even been sent to study laws in developed countries. Efforts Pertaining to Patent Protection Chinese patent law has recently been revised to allow the holder of a patent to petition the court to issue an injunction against the infringing party. Prior to passage of this law, patent holders did not have the right to seek injunctive relief against violators of the patent. Efforts Pertaining to Trademark Protection Within the last decade, China has made substantial progress in reforming its trademark laws. On January 22, , China amended its Trademark Law to allow parties to seek preliminary injunctive relief to stop infringement and preserve evidence. China again amended its Trademark Law in to protect geographic indicators that are often important to Western companies and incorporated these changes in the Implementing Rules and Regulations. Chinese trademark law in the past had never given protection to such geographic indicators. A first filing does not guarantee one ownership according to this new law. This policy falls under the sphere of prior protection of rights, which has been added to Chinese Trademark Law to fall in compliance with the Implementing Regulations of the Trade Mark Law. Efforts Pertaining to Copyright Protection China also recently amended its copyright laws. In addition, there have been modifications regarding Internet copyright: Although the exact nature and severity of punishment has not yet been clarified, particularly in patent law, the language in these laws leaves no doubt that violators will face harsher penalties. One of the more recent copyright cases that occurred in China ironically involves a famous U. Chinese goods will face new and strong competition from WTO member nations. Furthermore, unemployment in China is already a problem, and it is bound to grow even more serious as China integrates itself into the WTO community. Although the official unemployment rate was 4. These migrant workers are often unemployed and are not represented in any official unemployment rates. One strategy employed by the task force does is to exercise more criminal statutes rather than administrative laws, but lack of transparency makes it difficult to find out what penalties are imposed and what individuals should be convicted. The court also plans on laying out a 7-year prison term for the worst offenders. Although violators have been fined, it remains unclear how many individuals have been jailed. Even the sales of over-the-counter drugs OTC are anticipated to increase as patients switch from prescriptions to OTC.

Though the protection of intellectual property rights in China is not as developed as in other countries, things are starting to change, and there are several steps a company can take to protect.

The Report calls on U. Trade Representative Robert Lighthizer. Government estimates, IP-intensive industries directly and indirectly support This Report draws attention to IP-related trade barriers and the steps foreign countries can take to open their markets to IP-intensive goods—steps that help to protect U. Significant elements in the Special Report include the following: Trading partners on the Priority Watch List present the most significant concerns this year regarding inadequate or ineffective IP protection or enforcement or actions that otherwise limit market access for persons relying on IP protection. The IP issues in these countries will be the subject of intense bilateral engagement during the coming year. China is on the Priority Watch List for the 14th consecutive year. India also remains on the Priority Watch List this year for longstanding challenges in its IP framework and lack of sufficient measurable improvements, particularly with respect to patents, copyrights, trade secrets, and enforcement, as well as for new issues that have negatively affected U. Key concerns include poor border enforcement generally and, in particular, lack of customs authority to inspect or detain suspected counterfeit or pirated goods shipped through Canada, concerns about IP protections and procedures related to pharmaceuticals, deficient copyright protection, and inadequate transparency and due process regarding the protection of geographical indications. IP challenges in these countries also merit increased bilateral engagement in For Saudi Arabia, there are concerns regarding recent deteriorations in IP protection for pharmaceutical products, in addition to outstanding concerns regarding IP enforcement and the continued use of unlicensed software by the government. For the UAE, the placement on the Watch List is in response to longstanding concerns about the sale and transshipment of counterfeit goods and the establishment of collecting management organizations, as well as recent policy changes that may not provide adequate and effective IP protection for pharmaceutical products. Kuwait has not yet brought its copyright regime in line with its international commitments and still needs to make necessary improvements to the regulations implementing its Copyright and Related Rights Law. Tajikistan failed to address unlicensed software use by government agencies during the OCR. USTR highlights engagement with trading partners to address concerns related to IP protection and enforcement and market access barriers with respect to pharmaceuticals and medical devices so that trading partners contribute their fair share to research and development of new treatments and cures. For a fact sheet on USTR engagement on pharmaceutical and medical device issues, click here. The Special Report is an annual review of the global state of IP protection and enforcement. To read the Special Report, click here. USTR invited written submissions from the public through a request published in the Federal Register on December 27, On March 8, , USTR hosted a public hearing that provided the opportunity for interested persons to testify before the interagency Special Subcommittee of the Trade Policy Staff Committee about issues relevant to the review. The hearing featured testimony from witnesses representing foreign governments, industry, and non-governmental organizations. USTR offered a post-hearing comment period during which hearing participants could submit additional information in support of, or in response to, hearing testimony and posted on its public website the full transcript and video of the Special hearing. The December notice in the Federal Register—and post-hearing comment period—drew submissions from 39 non-government stakeholders and 23 trading partner governments. The submissions that USTR received are available to the public online at www.ustr.gov.

Chapter 5 : Intellectual Property Rights in China - Wong Fleming

State Intellectual Property Office - is the department responsible for operating the patent and design system in China.
China Trademark Office - is the department responsible for operating the.

The Chinese nation has a vast reservoir of creativity. The brilliant culture created by the Chinese people has exerted a deepgoing influence on the progress of human civilization. The intellectual property protection system emerged as a product of the development of human civilization and commodity economy and, in various countries, it has increasingly become an effective legal tool for protecting the interests of the owner of intellectual products, promoting the development of science, technology and the social economy, and allowing international competition. As a whole, China, however, for a variety of historical reasons, began work on its intellectual property rights protection system at a comparatively late date. Since the end of the s, China has done a tremendous amount of effective work in this field, covering in a little more than a dozen years a distance which took other developed countries scores of years, even a hundred years, establishing a relatively comprehensive legal system for the protection of intellectual property rights, thereby attracting worldwide attention for its achievements not only in establishing the system but also in enforcement. Today, intellectual property protection is an issue of universal concern in the international political, economic, scientific, technological and cultural exchanges. International bilateral and multilateral negotiations on this topic, especially the reaching of the Agreement on Trade-related Aspects of Intellectual Property Rights in the General Agreement on Tariffs and Trade GATT , have raised worldwide intellectual property protection to a new level. What measures has China taken to ensure its international commitment to intellectual property protection? A brief introduction to these issues will prove useful. It functions both as an important institution ensuring the normal running of the socialist market economy and as one of the basic environments and conditions for conducting international exchange and cooperation in science, technology, economy and culture. China considers the protection of intellectual property an important part of its policy of reform and opening to the outside world and of the building of its socialist legal system. Beginning in the late s, China has been formulating laws and regulations for intellectual property rights protection, and has been participating in activities organized by the relevant international organizations aimed at strengthening international exchange and cooperation in the field of intellectual property rights. Spurred on by its reform and opening up, China has carried on its intellectual property protection legislation at a speed never before known. On March 3, , the Chinese government submitted its application for admission to the World Intellectual Property Organization, and became a member state as of June 3, On December 19, , the Chinese government submitted its instrument of accession to the Paris Convention for the Protection of Industrial Property to the World Intellectual Property Organization and became a member state as of March 19, The Chinese government has also worked hard in helping to build up an international environment wherein intellectual property rights in integrated circuits are protected. The Chinese government presented its instrument of accession to the Madrid Agreement for the International Registration of Trademarks to the World Intellectual Property Organization on July 4, , and became a member state as of October 4, On January 4, , the Chinese government presented its instrument of accession to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms to the World Intellectual Property Organization, and became a member state as of April 30, On September 15, , the Chinese government submitted its instrument of accession to the Patent Cooperation Treaty to the World Intellectual Property Organization, becoming a member state as of January 1, In the s, international economic relations and the international economic environment have already undergone great changes. This signaled that a new international standard of intellectual property rights protection was taking form. The Chinese government actively participated in the negotiations and made unremitting efforts towards their final success. In order to meet the needs of the ever-wider opening up, China has consciously sought to fulfil its international obligations in intellectual property rights protection, endeavouring to bring its intellectual property protection level near the new international standards, and has taken many major measures to further raise its current level of intellectual property rights protection. Arpad Bogsch, Director-General of

the Organization, pointed out that "China had accomplished all this at a speed unmatched in the history of intellectual property protection. In order to better implement this principle, while improving its legal system, enforcing the laws earnestly and striking relentless blows at infringements and other unlawful practices, China has spared no efforts in publicizing and providing education about the intellectual property protection legal system and in accelerating the training of professional personnel in this field. In China the promulgation of every intellectual property law was followed by widespread publicity through the media and distribution of large quantities of educational video-tapes and separate editions of the law. Mean-while, governments at all levels ran legal knowledge forums and training classes so as to promptly make the relevant law known to all the people. After the revision of the Patent Law, for instance, millions of people throughout China attended such classes, the attendance in Hunan Province alone reaching , people. In order to speed up the training of personnel in this field, the Chinese government has, in close cooperation with related international organizations, sent people abroad to study or to attend training classes and seminars. Together with the World Intellectual Property Organization, China has held more than 30 training classes and seminars, with the attendance of over 3, people. Programmes in intellectual property rights education and research have also been initiated at over 70 institutions of higher learning throughout the country. China Has a High-Grade Legal System for Intellectual Property Protection Along with its progress in reform and opening up, China has made big strides in intellectual property protection. In accordance with its national conditions and current tendencies in international development, China has formulated and finetuned various laws and regulations on intellectual property protection, thereby constructing a socialist legal system for intellectual property protection with Chinese characteristics. The scope of the intellectual property rights protected in China and the degree of protection afforded have gradually conformed with international practices and the high degree of legal protection for intellectual property rights has been realized. In order to meet the requirements of the reform and opening up and of economic development, to more effectively crack down on trademark counterfeiting and stop acts of infringement, and to conscientiously protect the right to exclusive use of a registered trademark, in China revised both its Trademark Law and the rules for its implementation to expand the range of trademarks protected. Regulations on commodity trademarks were joined by regulations on the registration and management of service trademarks; in examination as to form, a revision procedure was added, and in examination as to substance, a written comment system was established to provide convenience for registered trademark applicants. In addition, the State Administration for Industry and Commerce has issued a series of regulations including the Regulations on the Administration of the Printing of Trademarks and the Procedures for Filing License Contracts for the Use of Trademarks. These laws and regulations fully and effectively guarantee the right to the exclusive use of Chinese and foreign registered trademarks. Proceeding from the needs of expanding the opening up and accelerating scientific, technological and economic development, first, the revised Patent Law expands the scope of patent protection: Third, the protection of patent rights has been further strengthened. In addition to extending the protection of a patented process to include products directly produced by that process, the law clearly stipulates that the importation of patented products requires the permission of the patent holder, thereby giving more effective protection to the rights and interests of patentees. Fourth, conditions for imposing compulsory patent license were re-stipulated. These measures mark the reaching of a new level of patent protection in China. The law provides that in addition to protecting the copyright of written works, oral works, music, operas, quyi folk art forms including ballad singing, story telling, comic dialogues, clapper talks, cross talks, etc , choreography, works of fine arts, photographs, films, TV programmes, video tapes, engineering designs, product designs and their descriptions, maps, sketch maps and other graphic works, China also protects computer software. China is among a select group of countries that have explicitly listed computer software as the object of protection by copyright laws. The State Council has, moreover, promulgated the Regulations on the Protection of Computer Software, providing the specifics whereby the laws protecting computer software will be implemented. These regulations, a necessary adjunct to the Copyright Law, came into effect in October China has a complete legal system for the protection of intellectual property rights. In investigating and dealing with the matter, the patent administrative authorities are empowered to order the infringer to stop all acts of infringement and compensate for any losses. Whoever

counterfeits a patented product or wrongly appropriates a patented technique will be ordered by the patent administrative authorities to cease all acts of counterfeiting, to provide the public with notification of his or her violation, and to pay a fine. In the case of serious violations, the criminal liability of the person directly responsible shall be investigated through application of relevant articles of the Criminal Law, and if found guilty, the person directly responsible shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or a fine. The party whose right has been infringed may also, at the place where the infringer lives or where the act of infringement took place, request an administrative department for industry and commerce at or above the county level to handle the matter. The relevant administrative department for industry and commerce has the right to order the infringer to immediately cease infringement and to compensate the party whose right has been infringed for its losses. If the act of infringement on the right to exclusive use of a registered trademark does not constitute a crime, the administrative department for industry and commerce may still impose a fine on the infringer. These regulations provide convenience to the litigants, and, moreover, ensure consistency, impartiality and seriousness in administrative law enforcement and judicial adjudication. If the counterfeiting of registered trademarks constitutes a crime, the person who committed the act shall be ordered to compensate the party whose right has been infringed for losses suffered and his criminal responsibility shall be investigated and dealt with in accordance with the law. If an enterprise or institution is guilty of criminally counterfeiting a registered trademark, the unit will be fined and the criminal liability of the person in charge and other people directly responsible for the counterfeiting shall be investigated and dealt with in accordance with the law. If a government employee knowingly covers up the criminal counterfeiting of a registered trademark or if a person charged with enforcing the law compromises the law for personal gain, his or her criminal malfeasance will be determined by law. The Copyright Law of China provides that the following acts shall be regarded as infringement: In such cases, the infringer shall bear civil responsibility for the cessation of the infringement, for the elimination of any negative effects caused by his actions, for offering a public apology, and for compensation for any losses. The copyright administrative authorities may confiscate their illegal income or impose a fine on them. With regard to illegal activities that gravely jeopardize the social order or seriously infringe on the legitimate rights and interests of a copyright holder or the holder of other intellectual property rights, in cases where such violations constitute a crime the criminal liability of the infringer shall be investigated and dealt with in accordance with the relevant laws. With the implementation of intellectual property laws, intellectual property rights are effectively protected in China. These laws are also actively encouraging invention and other forms of creation and fair competition. For instance, the protection of the right to the exclusive use of registered trademarks has resulted in the rapid growth of the number of trademarks registered by Chinese and foreign businessmen in China. By the end of , the number of effective registered trademarks had exceeded , Of these, , were domestic, with the remaining 60, coming from 67 countries and regions. Companies from the United States, for example, had only trademarks registered in China before ; by that number had soared to 16,, more than a hundred times the earlier figure. In , there were , applications for trademark registration annually in China, including more than , applications for new trademarks registration, among the highest number in the world. In addition, the Patent Law of China has greatly encouraged inventions and other creations in China, and has proved a magnet to patent applications from other countries and regions. On April 1, , the first day the Patent Law came into effect, 3, applications for patent rights were submitted. By the end of , the Patent Office of China had handled over , applications for patent rights. By the end of , , patents had been approved, including more than 20, invention patents, more than , utility model patents and over 20, exterior design patents. Today, it is earnest and fair in executing these laws, and much has been accomplished in this regard. These great achievements in the execution of the intellectual property rights protection laws and regulations are above all the product of comprehensive judicature and administration provided for in these same laws and regulations. Earnest execution of the law is the core of the administration of justice. Cases are tried strictly in accordance with substantive and procedural laws. Cases are heard in an open court, and a collegial system, a challenge system, a system whereby the court of second instance is the court of last instance, and a trial supervision system are practised. In this manner the hearing of intellectual property rights cases is centralized with the advantageous results that unity in executing

the law is ensured, experience in dealing with the law is amassed, and the quality of judicature in intellectual property rights cases is strengthened. For example, the inventor of a new "technique for sinking piling using drill holes," brought a suit against the Beijing Subway Foundation Engineering Company to determine ownership of the patent on the invention. The court decided that the defendant should pay the plaintiff. Intellectual property rights are important civil rights. In this way, the court provides the solid legal guarantees necessary for expanding international economic, technological and cultural exchange and cooperation. The two parties negotiated a settlement through mediation. The court, in addition, adjudged the defendant a civil sanction fine. In acknowledgement of this, the E. Houghton Company presented the court with a silk banner reading: Undeniable social effects have been achieved through the use of specific cases in the popularization of legal education and the dignity of the socialist legal system has been maintained. Administrative channels for intellectual property protection in China. Today, China has more than 50 patent offices established by local governments and more than 20 patent offices established by various ministries and departments under the State Council. The State Copyright Administration and local copyright administrative organs have been established in accordance with the Copyright Law. Trademark administration calls for unified registration of trademarks by the central government and level-by-level administration by the various local governments. Trademark administrative departments under the administrative bureaus for industry and commerce have been established at the central, provincial, city, prefectural and county levels; below the county level, there are administrative offices for industry and commerce. Today, there are well over 7, full-time trademark administration personnel throughout China, in addition to , part-time personnel. Chinese intellectual property rights administrative departments exercise their legally stipulated powers and functions to safeguard law and order within the field of intellectual property, encourage fair competition, mediate disputes, settle cases involving violations of intellectual property rights, and protect the interests of the broad masses of the people by maintaining a good social and economic environment. In China the administrative procedures for solving disputes concerning intellectual property rights are simple and convenient. Cases can be quickly filed for official examination and possible prosecution, investigation follows promptly, and efficiency in handling the case is high. This is advantageous to the owners of the rights. The patent administrative organs in China always treat patent violation claims seriously and deal with them without delay in accordance with the law.

Chapter 6 : Intellectual Property Protection in China

NPR's Scott Detrow speaks about intellectual property theft and tariffs with Dan Eberhart, CEO of Canary, an oilfield services company. It manufactures precision valves in the U.S. and China.

Christina Nelson on October 1, Foreign companies that do business in China should become familiar with the Chinese system for enforcing intellectual property rights. While enforcement of copyright protection is still difficult in China, it is possible to win court cases or protection through administrative rulings in the areas of patents, trademarks, and trade secrets. The second is the judicial track, whereby complaints are filed through the court system. Those who take the administrative route are almost exclusively Chinese. Set up in the provinces and some cities, these local government offices operate as a quasi-judicial authority and are staffed with people who specialize in their respective areas of IP law. The authorities can issue injunctions to bring a halt to the infringement, and they can even enlist the police to assist in enforcing their orders. But agency officials do not have the authority to award monetary damages. The court procedure in China is the most popular method chosen by foreign companies for IPR enforcement for two reasons. Second, administrative proceedings in China cannot award monetary damages. The time to trial in a Chinese court is usually less than a year from the filing of the complaint. The conventional time to trial in the United States is at least two years. However, in China, a court case for patent infringement is usually delayed to await the result of an invalidity determination, which is not decided by the court. Upon filing of the complaint and receiving a timely answer by the accused infringer, the court usually gives the parties a few months to submit their evidence in preparation for the trial. The court will usually forward a copy of the evidence submitted by one party to the other party, and may arrange a separate hearing to give both sides the opportunity to challenge the veracity of the evidence. The trial consists of opening statements by the parties, a court-conducted investigation of the evidence and witnesses, a debate usually under questioning by the court, and brief closing statements. After the trial, the court will issue a written decision unless the court requires further hearings. There is no discovery procedure, as there is in the United States, whereby revealing documents are produced, and development, sales, and profit information are revealed to the lawyers for the opposing party. Therefore, actual damages for infringement are difficult to determine given the lack of information on sales numbers and profits. Statutory damages are adopted in most cases. Because this amount is relatively insignificant and only reached in exceptional cases, IPR owners do not typically litigate in China for the purpose of recovering significant damages. Instead, they do so to secure a court injunction against further infringement. While on appeal, Schneider and and Clint settled. Because local protectionism is a concern in China whether in a local court or agency office , foreign companies should consider preemptively bringing a suit in whatever may be considered their home court in China. PRC law permits a party accused of infringement to bring a declaratory suit in its home court seeking a judgment of non-infringement. A foreign company accused of infringement could also file an invalidity challenge with SIPO as a way of warding off a patent infringement suit. Trademarks Two similar trademark cases are notable for their different outcomes. The first concerns Yi Jianlian, a famous basketball star in China. Yi filed a cancellation action with State Administration for Industry and Commerce SAIC and provided substantial evidence to establish his popularity in China before the filing date of the trademark. However, when former National Basketball Association superstar Michael Jordan took a similar matter to court in China, he lost. The United States and other countries even brought a World Trade Organization dispute over this matter in It seems that foreign business copyright holders have only achieved significant enforcement results when working in conjunction with Chinese law enforcement agencies as part of Chinese trade relations programs. Here are four litigation strategies to enforce IPR in China. Citing precedent in a non-precedential legal system Unlike the United States, which has a common law legal system based primarily upon past judicial opinions that interpret legislation, China is a civil law country. Chinese judges make rulings based directly on statutes without regard to other court decisions. The judges make their decisions autonomously by requesting and challenging evidence, questioning the witnesses, receiving briefs and hearing arguments from legal counsel, and even consulting their own experts. Judges in China do not

respond to precedent. These cases do not form a part of the law as they would under a common law system, but coming from the SPC they carry the weight of authority. Exploit local relationships In China, the courts are not independent of the government as in the United States. Court appointments are made by the local government, and the local government depends on local companies for employment and tax income. These relationships tie local businesses to the courts. In the United States, it is considered inappropriate for a litigant or a prospective litigant to get to know the judge to improve their likelihood of success in court. In China, however, conflict of interest is traditionally not a concern for Chinese officials. Foreign companies should try to establish contacts in the local government as well as the courts as part of doing business. Generally, the involvement of a Chinese lawyer or qualified agent to handle an IPR enforcement case in the court or before the local administrative authority will be a legal requirement. The goal for foreign companies should also be to identify local counsel with strong local relationships and a prominent reputation. Seek an early injunction from an administrative agency Administrative enforcement of IPR is a feature particular to China. Local authorities may not be able to hear complex or highly technical IPR cases; however, they should be able to handle simple patent, trademark, or misappropriation cases. Foreign companies should not overlook this enforcement route simply because monetary damages are not available. Damage awards in China are generally modest anyway, due to the lack of discovery and statutory award limits. Also, if the attempt at enforcement by the administrative authority fails, a company can sue the infringer in court. Obtain utility model patents China grants two levels of patents: Invention patents are similar to utility patents in the United States. Utility model patents are different in that they are not examined, have a term of only 10 years, and can only be directed to the structure of an apparatus. Because they are quick and inexpensive to obtain and granted without substantive examination, utility model patents are often dismissed as lower quality patents vulnerable to invalidation challenges. This misperception has led many foreign companies to pay little attention to or even exclude them from their patent portfolios. However, since utility model patent applications are not substantively examined before issuance, a utility model patent holder can be in position to take infringers to court in a matter of months or up to a year from filing the patent application. As demonstrated by the Chint v. Schneider Electric case, the consequence of infringing a utility model patent is no less devastating to the accused infringer than with a regular invention patent. Except in the area of copyright enforcement, there are procedures and remedies in China that are effective for enforcing the gamut of valid IPR. However, those procedures and remedies are China-centric, which is what foreign companies need to accept if they wish to enforce IPR in China. This article is intended to be informative and should not be interpreted as legal counsel for any specific situation.

Chapter 7 : How much has the US lost from China's intellectual property theft?

China has long been seen as the "world's factory," churning out low-quality manufactured goods and imitating products and business models from abroad.

Chapter 8 : NPR Choice page

In China, if a patent is contended to be invalid as a defense to infringement, that determination must be made by the State Intellectual Property Office (SIPO), China's patent office, and usually takes one to two years.

Chapter 9 : Intellectual property in China - Wikipedia

After many years of being lambasted for failing to protect intellectual and land property rights, China's leadership has finally taken action.