

Overview of Intellectual Property Protection in the People's Republic of China

OUTLINE

Part I. The Laws and Regulations of the IP Protection in the PRC

Part II. Main Issues of the IP Protection in the PRC

Part I. The Laws and Regulations of the IP Protection in the PRC

Scope of the IP:

- Patent;
- Trademark;
- Copyright; and
- Anti unfair competition and trade secret protections.

Patent Law and Regulations

- *Patent Law of the PRC;*
- *Detailed Implementing Rules on the Patent Law of the PRC.*

Trademark Law and Regulations

- *Trademark Law of the PRC;*
- *Implementing Provisions on the Trademark Law;*
- *Provisions on Protection of Well-known Trademark.*

Copyright Law and Regulations

- *Copyright Law of the PRC;*
- *Implementing Provisions on the Copyright Law of the PRC;*
- *Regulations on the Protection of Computer Software.*

Other Laws and Regulations

- *Anti-Unfair Competition Law of the PRC;*
- *Provisions on Customs Protection of Intellectual Property;*
- *Criminal Law of the PRC.*

International Treaties and Conventions

- *Paris Convention for the Protection of Industrial Property;*
- *Berne Convention for the Protection of Literary and Artistic Works;*
- *Agreement on Trade-Related Intellectual Property Rights (TRIPs);*

- *Madrid Agreement Concerning the International Registration of Marks;*
- *Patent Cooperation Treaty (PCT).*

Main Issues of the IP Protection in the PRC

Protection of Patent

- Obtaining a Patent;
- The Administrative Authority;
- Protection Term of Patent;
- Remedies for Patent Infringement;
- Legislation Improvements on PCT Implementation.

Protection of Trademark

- Obtaining a Trademark;
- The Administrative Authority;
- Protection Term of Trademark;
- Remedies for Trademark Infringement;
- Legislation Improvements.

- **Well-Known Trademark Protections**
- **Implementation of the Madrid Agreement**

Protection of Copyright

- Obtaining a Copyright;
- The Administrative Authority;
- Protection Term of Copyright;
- Remedies for Copyright Infringement;
- Legislation Trend.

Protection of Trade Secret

- Obtaining a Trade Secret;
- Remedies for Trade Secret Infringement.

Litigation

- Jurisdiction
- Venue;

Either the court at the place where the tort is committed or where the defendant is domiciled may hear the case.

- Court System;

The Basic People's Courts / the Intermediate People's Courts / the High People's Courts / the Supreme People's Court.

General procedures for remedy

- Administrative Procedure;
Application by the IP right owner → Processing by the IP administrative authority;
- Civil Procedure;
Lawsuit raised by the IP right owner → Court hearing (First Instance / Second Instance)
- Criminal Procedure;
Providing clues by the IP right owner → Investigation by the police → Prosecution by the Prosecutor → Court Hearing (First Instance / Second Instance) .

Judicial Practices in China

- Investigation and obtaining evidence:
Property Preservation/Evidence Preservation/Preliminary Injunction
- Evidence: Notarization
- Court appearance