Establishing a Safeguard System for Intellectual Property Protection for Chinese Private Enterprises

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Chinese private enterprises have created substantial wealth in the recent years; as a result, private sector has been an important component of Chinese economy. The expedited globalization and informationization presents some challenges to Chinese private enterprises in the regime of intellectual property (IP) protection and management. As for many commercial activities, such as foreign trade, investment, merger and acquisition, IP may be of central concern for all the participants; therefore, to some extent, IP is always regarded as a crucial matter to enterprises’ survival and development. However, Chinese private enterprises seemly have not fully prepared for establishing a safeguard system for IP to date. This article first explores the problems and troubles that Chinese private enterprises have encountered in the regime of IP protection, which exist in legislation, enforcement, and enterprises’ management systems. It also analyses the elements that impede the progress of upgrading IP protection system. Finally, it proposes some suggestions to help private enterprises improve their level of IP protection respectively, from the view of enterprises, IP agents, government and local authorities.

Keywords: Enterprise, intellectual property protection, intellectual property management, enforcement

The market-oriented economic reform in China results in a substantial expansion of private initiative in economic activities. Although public sector dominates core and strategic areas including energy, metals, automobile and defense industries, the private sector displaces the state sector as a dominant player. Subsequently, private sector is recognized as an ‘important component of the socialist market economy’.

Although China has emerged as a leading centre for manufacturing industry due to low cost advantages and large highly-trained manpower pools, it is striving to assert the presence in the global market as a technologically developed economy. Therefore, China has implemented the ‘Strategy of Rejuvenating the Country through Science and Education’ since 1995, because of which private technology enterprises have emerged like bamboo shoots after spring rain. These private technology enterprises, unexaggeratedly, become the brightest stars in the economy and technology development in China. Until 2006, China had about 150 thousand private technology enterprises, and the total assets of them reached 7.56 trillion Yuan. More and more private enterprises expand their efforts to basic research and technology innovation; however, their core competency and competitive advantage still far lag behind that of large state-owned enterprises in China and advanced enterprises in developed countries. At present, enterprises having their own research institutions account for less than 25% of all the enterprises; the ratio of enterprises owning independent technologies only account for 0.03%; and about 90% of the enterprises have not filed any patent application. Meanwhile, private enterprises are faced with many other challenges, such as ineffective IP protection and management system, defective legislation and enforcement, insufficient guidance and support provided by the government and IP associates, and so on. This article discusses these problems that may be a barrier for constructing a safeguard system for IP protection. Next, it assesses particular circumstance of Chinese private enterprises. Based on the above analysis, this article finally offers some feasible strategies to help private enterprises conquer the difficulties.

Scope of Chinese Private Enterprises

In these years, private enterprises form a big stream of the private sector. But what is a private enterprise and what is not? Before discussing the questions related to private enterprises, scope of them shall be defined first. It is difficult to create an elaborative

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definition of ‘private enterprise’, because more and more state-owned firms, collective enterprises, town and village enterprises are being gradually corporatized with other state organizations, private individuals and private institutions. In practice, private enterprises in a broad sense include domestically funded enterprises along with state-owned enterprises, collectively owned enterprises, cooperative enterprises, joint-ownership enterprises, limited liability enterprises, shareholding enterprises, and others. Meanwhile, those enterprises funded from Hong Kong, Macau and Taiwan can also be categorized into the scope of private enterprises. Furthermore, in order to achieve an assessment of the relative size of the private sector, the National Bureau of Statistics (NBS) categorizes firms referring to the type of controlling shareholders. With this simple and strict standard, status of firms can be clarified after making a judgment whether the firm is controlled by the state, a collective, or a legal private entity. Therefore, if private entities or persons own the controlling shares in a firm, it can be classified into the private sector. This paper also uses this definition given by NBS.

**Challenges of IP Protection for Private Enterprises**

**Little Consciousness of IP Protection**

IP protection is the most important and general manner for safeguarding intellectual assets under the legal system. The new ideas and innovations can be protected by ways of patents, trademarks, copyrights, and trade secrets.2 With the globalization and expansion of technology transaction, IP protection has been one of the most important concerns at the international level. For example, Article 7 of the TRIPS Agreement states that ‘the protection and enforcement of intellectual property rights (IPR) should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations’.3 Moreover, importance of IPR has also been manifested for enterprises due to the frequency of cross-licensing and patent pooling arrangement, the substantial royalty fees obtained from strong IP portfolios, and large damage awards in high-impact IP litigation.2 The most typical example is IBM, who gains over $1 billion in patent licensing royalties annually from its patent portfolio. Similar instances can also be found everywhere in China. Unfortunately, even in such an environment, many Chinese private enterprises show little internal sensitivity to IP protection.

The majority of Chinese private enterprises’ awareness and consciousness of IP protection is especially weak. Quite a few of them attach importance to tangible assets; however, they underestimate the value of IPR including patents, copyrights, technological secrets, and so on. The substantial patent licensing royalties and competitive advantages brought about by technology expansion do still not inspire their sufficient motivation to regard IP as a strategic part of their business model. Some employees prefer publishing an academic article to filing a patent application in order to manifest their achievements promptly, but they do not realize that article publication usually results in the loss of novelty. According to the Patent Law of the People's Republic of China, the characteristics of novelty is requisite to grant a patent right. ‘Novelty’ means that, ‘before filing date of the application, no identical invention or utility model has been publicly disclosed in domestic or foreign publications or has been publicly used or made known to the public by any other means in the country, nor has any other person previously filed with the Patent Office an application describing an identical invention or utility model that was recorded in patent application documents published after the said date of filing’.4 In other words, article publication incurring the loss of novelty may directly lead to the failure of patent application in the future. Inevitably, a quantity of novel technologies costing innovators a lot of energy and money are utilized lawfully by other entities without any excessive expense.

The lengthy patent application procedure itself has become an obstacle for IP protection. It usually costs a lot of time to examine patent application so that many technologies owners are terrified by the sight of it. The Chinese Patent Law states that if an application for an invention patent is in conformity with the requirements of this law, it shall be published promptly after the expiration of eighteen months from the date of filing.4 Within three years from the date of filing an application, the Patent Administration Department will proceed to examine the application as to its substance upon the request of the applicant.4 Even though the average period for examining an invention patent has been reduced to 22 months recently, which is reported by the State Intellectual
Property Office of People’s Republic of China (SIPO), lengthy procedure often results in a reduction of IP asset value. Consequently, some holders of technologies show little interest in patent application.

In fact, validity and enforceability of a patent are more important than the patent grant itself, but few private enterprises are fully conscious of it. Compared with the number of patent applications and patent grants, the number of valid patents is a more accurate indicator for evaluating intellectual assets. The status of a valid patent, especially a valid invention patent, may substantially reflect the patentee’s capability of independent innovation and its market competitiveness. As for a valid patent, its validity and enforceability may be impacted due to inequitable conducts, the common of which is not paying correct annual maintenance fee in time. The payment of annual maintenance fee, which is required to maintain enforceability of a patent in China, generally depends on this patent’s commercial value. However, some private enterprises are only concerned about the amount of patent applications and grants, but disregard actual validity period and quality of patents. As for many patent cases, the actual validity period is much shorter than the validity term stipulated by the Chinese Patent Law because of the deteriorating patent quality, which may be generated from the procedure of patent application. In China, there are three types of patents: Inventions, utility models and designs. The examination for granting an invention patent is much stricter than the examination for the other two. An invention patent is to be issued only if no reason for rejection of the application is found after substantial examination; while, a patent for utility model or design can be granted after preliminary examination. Therefore, patent quality in many utility model and design cases is unsatisfactory due to insufficiency of novelty, inventiveness and practical applicability. According to the data collected and statistically analysed by SIPO, validity period of 66.3% patents granted in China is less than seven years, and that of only 17.5% patents is more than 10 years. Nevertheless, the two corresponding proportion mentioned above are respectively 41.9% and 29% in foreign countries.\(^5\)

**Insufficient Experience in Dealing with Lawsuits involving IP Issues**

The trial experience of the Chinese courts shows that more and more disputes involve IP issues. Based on the statistical data collected by the Supreme People’s Court of China, the amount of cases has greatly increased in these years. For instance, there were totally more than 54 thousand IP cases in the first instance accepted by basic and intermediate people’s courts from 2002 to 2006, which implied that the amount of technological cases had reached the culmination in the trial history.\(^6\) Furthermore, recent cases seem more complex than the previous because more special technologies and high-technologies are involved. The scope of disputes extends to plant variety rights, rights of discovery, protection of layout-designs of integrated circuits, protection for gene, and so on.

It is not exaggerated to say that plenty of private enterprises may be all adrift when they get entangled in lawsuits due to insufficient experience in dealing with plenty of litigation matters. Generally, troubles which private enterprises are faced with exist in the following aspects.

Above all, many private enterprises are reluctant to solving disputes and protecting IP through judicial proceedings. In China, judicial enforcement procedure and administrative enforcement procedure constitute the whole system of remedy for infringed IP. Both of them have advantages and disadvantages. As for the judicial route, it is a direct and final means for claiming remedies. If the disputing parties fail to achieve a mediation approach, or one of the parties is dissatisfied with the decision of IP administrative authorities, the judicial route can be regarded as a final option for settling the disputes. However, if enterprises choose to enter into judicial proceeding, they will be confronted with some risks of time consuming courses, difficulties in burden of proof, and high litigation cost. At the stage of initiating litigation, the plaintiff should bear a heavy burden of proof to attest to the ownership and validity of the IPR as well as evidence showing infringement of IPR.\(^7\) Meanwhile, the plaintiff must produce evidence to support its assertion of the amount of damages, which is an arduous task, because some important evidence that may prove the damages can not be simply acquired by the plaintiff alone, such as defendant’s account records, and it is not easy to prove the causation since damages may be induced by other existing market factors. Even if proof of evidence is prepared, disputing parties may be troubled with the lengthy judicial proceeding. For instance, under the Civil Procedure Act in China, cases in the first instance should generally be
concluded within 6 months from the date of filing, but may be extended another 6 months under special circumstances. Cases in the second instance should generally be finalized within 3 months but may also be deferred under special circumstances. In practice, most IP cases can be finished effectively; however, it is unsurprising that some cases involving patent infringement may evolve as a prolonged war if defendants take counterclaims against the validity of the alleged infringed patents, or courts decide on suspension of litigation or technology identification. If a case involves foreign factors, such as foreign parties in litigation, or the disputed assets located outside China, there is no similar regulation to limit the trial time. Table 1 shows the trial time of IP cases in the judicial system of Zhejiang Province in the previous years. The longest trial in the first instance lasted 588 days, and the longest trial in the second instance also lasted 222 days. Although the trial efficiency in civil procedure has been promoted greatly, the expectation of time consuming is still a palpable sense. Furthermore, courts have no authority to invalidate a patent, because the sole institution that can make such a decision is the Patent Reexamination Board in China. Just due to the factors mentioned above, many private enterprises, especially, medium and small enterprises, prefer to take actions through administrative procedure. To some extent, the administrative route can provide a quick, efficient and low-cost remedy, specifically when the case of infringement is clear, when there are minimal damages, and when it is not likely that the infringer will contest the infringement allegations. However, it should be noted that administrative authorities have the power to grant injunction against infringements immediately, but does not have ability to award damages or hold appeal procedure. In other words, administrative authorities may provide conciliation and mediation opportunities for remedies instead of making judgments. As a result, some private enterprises involving IP infringement often cannot obtain a satisfactory economic compensation in this way.

Table 1 — The analysis of trial time in Zhejiang judicial practice

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<thead>
<tr>
<th></th>
<th>Average trial time days</th>
<th>The longest trial time days</th>
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<tbody>
<tr>
<td>Hangzhou</td>
<td></td>
<td></td>
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<tr>
<td>Intermediate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court (first</td>
<td>2002  122</td>
<td>2002  588</td>
</tr>
<tr>
<td>instance)</td>
<td>2003  177</td>
<td>2003  570</td>
</tr>
<tr>
<td>Ningbo</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intermediate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court (first</td>
<td>2002  136</td>
<td>2002  299</td>
</tr>
<tr>
<td>instance)</td>
<td>2003  114</td>
<td>2003  457</td>
</tr>
<tr>
<td>Zhejiang High</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court (second</td>
<td>2004  100</td>
<td>2004  455</td>
</tr>
<tr>
<td>instance)</td>
<td></td>
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In many cases, the plaintiffs’ claims do not reasonably correspond with the damage which is suffered from infringement. Pursuant to the relevant provisions of the Chinese patent law and copyright law, damages for patent and copyright infringement are measured by four methods: Plaintiff’s losses suffered caused by infringement, defendant’s profits obtained as a result of the infringement, multiples of royalty when such injury or profits are difficult to ascertain; or statutorily allowed amount. The plaintiff’s losses can be calculated by the total of the infringing products sold in the market times the
reasonable profit of each infringing product. In practice, plaintiffs frequently find it difficult to prove the amount of their losses, defendants’ benefits or license fees or royalties. If they cannot prove their damage caused by the sued infringement successfully, their claims can not be supported by courts. Therefore, some of them have to select the last option to ask for statutory damages. Sometimes also, few private enterprises know about such litigation rules, which may lead to a big gap between their claims and the judgment made by courts.

The private enterprises’ capabilities of dealing with lawsuits are quite weak, so how can they go through the judicial procedure smoothly and stack up against those powerful competitors? Legal stipulations and marketing rules have been gradually illuminating the great significance of IPR for enterprises’ survival and development both at present and in future. Plenty of multinational corporations have already regarded IP protection as a strategic policy for holding market share; as a result, special departments are successively established to manage, protect, and take judicial actions for IPR. Some commissioners and experts are assigned for detecting IP infringement world-wide in order to protect their own IPR and defeat rivals. In contrast, only few Chinese private enterprises have been alert enough to such a powerful weapon. Some of them still stay at the stage of simple imitation that may incur legal actions with high possibility. Some of them do not intend to prepare comprehensively for answering lawsuits at all. Such poor preparation for complex lawsuits would inevitably lead to an unsatisfying result. According to the statistics provided by the Intermediate People Court of Nanjing, in the recent years, the cases involving IP issues, in which the Court disagreed with the claims of Chinese private enterprises, amazedly account for 83% of all the similar cases.

Absence of Reasonable Management System for IP Protection and Excellent Professionals

To some extent, the importance of IP management does not fade next to the importance of innovation and IP business activities at all. A favourable IP management system requires enterprises having procedures for the regular review of IP and associated commercial activities and procedures for providing advice on the options that are available for commercializing IP. Meanwhile, an IP management system should also have an ability of confronting potential infringement. Unfortunately, such a management mechanism is rarely established in numerous Chinese private enterprises. In many large-sized enterprises in developed countries, hundreds of professionals are well versed in managing and protecting for intellectual assets. They are serving as information collectors, specialized consultants, and legal service providers; at the same time, they are dedicated in studying the laws, ideology, economic status, and custom in different countries. With such an effective system, IP strategies can often be implemented in an optimal way. In comparison, IP management system in Chinese private enterprises still needs further improvement. Currently, majority of them adopt a management pattern of family structure, because they are invested by family members or close friends. Such a management pattern is prevalent due mainly to the tense structure, in which the investors and their family members are generally in charge of the most important departments directly. The modern and advanced principles are not popular in those household enterprises, where insufficient trust in other staff prevents talented experts from entering into the decision level. Especially, staff taking charge of IP matters should have professional knowledge and education background; but few of family members can qualify for this work. Even though some private enterprises engage managers for IP management and protection, quite a few of these managers only provide irregular services. To further exaggerate the situation, many enterprises do not employ an in-house patent lawyer or agent and do not normally retain outside patent counsel. How can such an unprofessional management system ensure necessary consultation?

In 2006, a questionnaire survey was conducted among the representative private enterprises in cities of Beijing, Tianjin, Shanghai, Chongqing, and provinces of Jiangsu, Zhejiang, Guangdong, Fujian, Liaoning, Jilin, Shanxi, Shandong, and Hainan. This questionnaire survey was carried out by the All-China Federation of Industry and Commerce, associating with the IP Center of Chinese Academy of Social Sciences and Watson and Band Law Office in Shanghai. The purpose of this investigation was to evaluate the management situation of IP protection. Totally, 535 private enterprises participated in this survey and submitted valid responses. Based on the data collected from them, it can be learnt that the management policies, management departments, surveillance and early warning mechanism for IP infringement have not been appropriately established. The private enterprises,
which have explicitly set forth the management policies, account for 45.6% of the total surveyed enterprises. With regard to the management department, 92 enterprises have a specialized department to deal with IP matters; while, 306 enterprises designate other department to cope with IP matters. Among all the surveyed enterprises, 146 enterprises unexpectedly have never taken IP strategies into account at all. Moreover, Table 2 shows most of them have not taken full advantage of the surveillance and early warning mechanism for IP infringement, and it also implies that IP protection has still not been regarded as a pivotal part of their business operation.

Large human resource potential will contribute to IP protection for the whole industrial sector. Unfortunately, professionals with abundant legal knowledge, experience and technological background are extremely rare in China. The persons who are strictly trained to be qualified for IP services are less than 1,000 annually. Additionally, flow of IP talents to foreign-invested enterprises and law firms sharpens the conflict of human resource shortage. Therefore, it is urgent for private enterprises to explore a way to gain positive control upon excellent human resources.

### Implications for IP Management of Private Enterprises

#### Accelerating the Construction of IP Management System

An effective IP management system can be used to improve the competitive capabilities, maintain economic value of technologies, and scout for potential infringements. As for Chinese private enterprises, top priority is to develop such a system to adapt to China’s economic transformation. However, this goal cannot be achieved overnight due to lack of some necessary conditions such as financial funding and professional staff. Therefore, enterprises must make feasible efforts progressively in order to promote their IP management system.

An enterprise should consider establishing a special IP managing department or finding outsourcing IP services depending on its capability, unless it has no intent to exploit or use IPR at all. However, in a world flooded with IPR anywhere, such an enterprise has to accept the unique fate of death in the market. Consequently, it is absolutely essential that some special personnel shall be assigned to take charge of IP matters and stipulate policies and regulations for IP protection. If possible, a separate confidential section can be set up as a branch of the IP managing department, which controls the technological secrets in the smallest scope and makes confidential provisions or agreements to clarify relevant obligations. In practice, a single IP managing department usually does not have adequate capability to cope with all the IP matters; so it shall associate with the research department and the business department to design IP strategies for the purpose of promoting innovation and securing IPRs. Management, as the impetus process, needs to set and communicate the goals and technological direction, and in turn helps scientists, researchers, patent lawyers, program managers and all other functionally involved employees identify and evaluate IPR.

Communicating with IP lawyers is indispensable to achieve a scientific management process. IP lawyers can add value to their clients’ endeavors by helping them commercialize their innovation, engage in a business negotiation, secure IP assets and deal with IP disputes. Because knowledge and expertise are the scarce resources for many private enterprises, especially for small enterprises, IP lawyers who are sounding board, a repository of experience, legal analysts, business strategists, and talented in creative problem solving are especially valuable. Firstly, lawyers may transform useful information into knowledge required by business people. To be optimally useful, information must be customized for the special business purpose. Customization means to refine information necessary to make the decision at hand and present

<table>
<thead>
<tr>
<th>Establishment of surveillance and early warning mechanism</th>
<th>No of enterprises</th>
<th>Percent (%)</th>
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<tbody>
<tr>
<td>None</td>
<td>255</td>
<td>48</td>
</tr>
<tr>
<td>Yes, with following activities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Built up a patent database which is refreshed frequently</td>
<td>78</td>
<td>15</td>
</tr>
<tr>
<td>Built up an invalid and usable patent database</td>
<td>37</td>
<td>7</td>
</tr>
<tr>
<td>Track the status of rivals' patent application and research on technology development</td>
<td>85</td>
<td>16</td>
</tr>
<tr>
<td>Keeps IPR under surveillance and focus on infringements</td>
<td>122</td>
<td>23</td>
</tr>
</tbody>
</table>

the result in a relevant way by assessing its relevance, value and reliability. In order to save substantial time and effort in information processing, the best way for enterprises is to leave this work to lawyers, who are quite qualified to perform information customization with their professional knowledge and skills. Secondly, IP lawyers are skillful in drafting legal files such as patent specifications and contracts. A good patent specification will describe the patent claim clearly, which facilitates the process of patent application and obtains the broadest possible protection for a patent. Meanwhile, a complete contract will specify all the eventualities, rights and responsibilities to reduce transaction costs of future disputes and misunderstandings. IP lawyers’ participation in drafting legal files, undoubtedly, benefits their clients in an optimal way. Thirdly, lawyers are experts to deal with lawsuits. On the one hand, IP lawyers can provide insulation from lawsuits involving IP issues; on the other hand, their sufficient experience may help clients out of difficulties in litigation. In case enterprises’ intellectual assets were involved in the risk of infringement or conflicts with others’ rights, lawyers may take legal action on behalf of them. However, in-house IP lawyers may not be affordable or cost-effective for many private enterprises due to the scarcity of IP lawyers in China. Therefore, private enterprises that do not choose to retain in-house IP lawyers, can regularly invite IP lawyers to give advices on IP matters, and ask for legal services if encounter an urgency. From the view of Chinese private enterprises, this professional legal service can be regarded as a regular external assistance for IP protection. Additionally, the similar external resources also include some experts and relevant associations which will be discussed in the later section.

After integrating IP managing resources, the IP managing department shall be dedicated to designing an IP strategy and actualizing it. Adopting an effective IP strategy and developing a strong IP portfolio will protect enterprises’ IPRs and block competitors from the market. At the design and development stage, copyrights and trade secrets can be immediately enforced; but once a product or service is developed, issued patents and registered trademarks can be used to protect technology and associated names and symbols. Private enterprises shall make a final decision based on the comprehensive consideration of the competitive environment and their occupied resources required for securing IPR.

The IP managing department also takes in charge of some regular work for IP protection. Firstly, it shall track the quality of IPR, maintain validity of their patent, check implementation of confidentiality agreements, and ensure IP ownership when conducting joint research. This information should be recorded in detail and reported to the decision-maker regularly. Secondly, the surveillance and early warning mechanism should be utilized actively. Private enterprises are expected to be equipped with an advanced patent database that is to be refreshed frequently. Such a database should include not only information of valid patents, but also that of invalid patents. Based on the information reflected in the patent database, enterprises can track the status of competitors’ patent application and learn the development in pertinent technological areas. Meanwhile, the system of surveillance and early warning renders enterprises to find out infringements and potential infringers in season so that their IPR can always be safeguarded. Thirdly, strengthening staff’s awareness and consciousness of IP protection through education and training is the responsibility of the IP managing department. The staff shall be educated to fully respect IPR and prudentially refrain from infringing other’s rights. With regard to the fact that employees get a better understanding of matters on their positions than others, they should be encouraged to address potential IP issues based on their learning or experience. Finally, private enterprises may recruit professionals who are specialized in collecting, viewing, and analysing IP data, in managing technologies, and enacting particular strategies for IP protection. Many difficulties in IP management are caused by the scarcity of such professionals. In view of this case, the IP managing department may lead efforts to introduce fresh talents, educate and cultivate existing skeleton staff, retain retired experts, or train professional by cooperating with other enterprises.

In sum, a functional IP management system will contribute to innovation and business matters. Some advanced private enterprises have learned the significance of IP management system and obtained benefits from it. The following case is an example that a Chinese private enterprise successfully protects its IPR, which plays an exemplary role for all the Chinese private enterprises.
Case Study: Leviton Manufacturing Co Inc v Zhejiang Dongzheng Electrical Co

Leviton Manufacturing Co is a Chinese private enterprise in Zhejiang province. In 2004, Leviton Manufacturing Co (plaintiff) filed a lawsuit against Zhejiang Dongzheng Electrical Co (defendant) and alleged that the defendant’s products had been infringing its patent. After the hard trial, the Court finally agreed with the claims of the defendant and issued a Markman Order to settle this dispute. Leviton, a leading North American producer of electrical and electronic products, usually adopts aggressive IP strategies to exclude competitors from the marketplace. Obviously, Leviton attempted to achieve this commercial purpose again by filing a lawsuit in this case. The success of Dongzheng can be regarded as a landmark in the history of IP protection for Chinese private enterprises. Dongzheng summarized its experience from this case and concluded that a proper IP management system may contribute to the work involving IP matters: stress the importance of innovation; searching similar and relevant patents before entering into foreign markets; retaining IP lawyers to analyse issues about patent infringement, invalidity, and unenforceability; and preparing for litigation composedly. Furthermore, the famous words from the President of Dongzheng encourage Chinese private enterprises to embrace the challenge of the IP world, which is ‘never back down, fight to the end’

Enhancing the Function of IP Agents, IP Law Firms, IP Associations and Industry Associations

IP agents and law firms provide a series of professional services, which include consultation, information collection, assessment, investment, application for patents, and handling of litigations. Sometimes, they also host training courses and seminars to address IP issues. Currently, there are totally about 600 patent agents and 5000 patent lawyers in China. Such groups are expected to expend extensively in the future.

The function of IP associations is to be recognized fully as well. There are numerous international and regional IP associations, whose objective is generally to improve and promote IP protection and enforcement, offer members with networking opportunities, and provide a forum to discuss legal issues in this field. However,

Table 3 — Surveyed private enterprises which are members of IP associations

<table>
<thead>
<tr>
<th>IP associations joined by enterprises</th>
<th>Number of enterprises</th>
<th>Percent (%)</th>
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<tbody>
<tr>
<td>Local IP associations</td>
<td>126</td>
<td>23.6</td>
</tr>
<tr>
<td>Chinese Trademark Association</td>
<td>37</td>
<td>6.9</td>
</tr>
<tr>
<td>The International Association for the Protection of Intellectual Property (AIPPI)</td>
<td>3</td>
<td>0.6</td>
</tr>
<tr>
<td>International Trademark Association (INTA)</td>
<td>2</td>
<td>0.4</td>
</tr>
<tr>
<td>Not joined any IP association</td>
<td>367</td>
<td>68.6</td>
</tr>
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Table 3 shows that the majority of private enterprises inquired in the questionnaire survey mentioned above have not been a member of any domestic IP association and only few of them have joined international IP associations. Furthermore, industry associations and chambers of commerce also contribute a lot to IP protection. They are aimed at providing information and advice for enterprises in the technological sector. On the one hand, they are dedicated to market investigation, market analysis and research projects; on the other hand, they usually attempt to act as coordinators to harmonize the benefits between enterprises and the government; and function as supervisors to maintain fair competition in markets.

From the former analysis, it can be learned that both IP agents and associations play an important role for private enterprises. Unfortunately, history of IP agents and associations in China is so short that the information provided by them is rarely regarded as an authoritative opinion and their cohesion is unstable. Many private enterprises do not have enough confidence in IP agents and associations; consequently, it is difficult for them to achieve stable expectation. In order to achieve better performance, a quantity of work shall be done. Above all, IP agents and associations may assist enterprises to make market investigation, conduct research regularly on competitors’ IPR, mediate disputes in the technology sector, and cope with special cases. Importantly, their nongovernmental character leaves them more free room to participate in commercial activities than the government and authorities. Frequent communication and high quality services will inspire enterprises’ confidence and trust in them. Moreover, they may become the information channel between Chinese private enterprises and the
Chinese government, which requires them to summarize and report the demand from industries to the government, participate in establishing an industry standard, and provide advices on IP legislation and enforcement from the view of the private sector.

Providing More Government’s Guidance and Assistance for Private Enterprises

The IP-orientated policies taken by the central government and local authorities will direct and encourage private enterprises to conduct research and implement IP strategies. These policies indicate both the direction of national IP strategy and the guidance for enterprises. Considering that the most prominent difficulty of private enterprises is the absence of financial fund and some resources, the government may award prizes to enterprises or provide financial support for innovation projects. Meanwhile, indicators used for assessing enterprises’ conditions should be clearly provided at advance, which may stimulus enterprises to pay more attention to IP matters. The indicators include number of patent applications, licensing cases and income, quality of patents and innovation research, number of joint researchers, number of consultations, and so on. Furthermore, in order to provide enterprises insulation from the commercial risks in international technological trade and investment, local authorities may associate with IP lawyers and technology experts to analyse and discuss pertinent issues, and give directions and advices for enterprises.

The governments shall guarantee an open and expedite information channel for innovation and IP protection. Currently, most IP information comes from the government and its departments. Compared with enterprises and individuals, the government holds more abundant resources including experts, fund, and information channels. Therefore, to some extent, the information collected by the government is always regarded as the most authoritative and effective. But, there is some query generated from incomplete databases because Chinese patent databases sometimes cannot be found in the worldwide databases, and worldwide databases often do not contain English translations of patent abstract or specifications of Chinese patents. These comments are quite valuable for the Chinese government to upgrade its work, such as accurate classification, careful edition, prompt reports, and information platform construction.

Some regulations are expected to be stipulated for supervising the service market of IP agents, IP law firms and industry associations. The regulation, the ultimate objective of which is to protect the rights of enterprises, will push service providers into ensuring the quality of services. Once enterprises benefits from services offered by them, the good reputation and trust will be constructed, which will in turn facilitate the work of each party.

All social forces should actively respond to the national IP strategies by initiating an educational propaganda. Local authorities and organizations may leverage news media, including newspapers, TV and Internet, to extensively publicize the knowledge about IP, and sharpen awareness of the whole society for IP protection. They can also cooperate with education institutions to teach students, future practitioners and consumers, to respect lawful rights. These directive actions will be in favour of a good environment for IP protecting.

Conclusion

In the era of innovation, challenges existing in the IP regime are inescapable for Chinese private enterprises. Although private enterprises have made some attempts, the level of IP protection lags far behind the step of industrial development. A safeguard system for IP should be established promptly by all the possible forces in the society. Especially for private enterprises, it is important to establish an appropriate IP management system, which will benefit them to promote innovation, exploit IPR with effective due diligence, detect infringements, and deal with lawsuits and disputes actively.

This article discusses the difficulties that private enterprises have encountered, and analyses the circumstance of IP regime in China. Based on plenty of investigation and researches, it proposes some strategies for improving the level of IP protection, which include upgrading enterprises’ internal management system, strengthening legislation and enforcement, and constructing service network and information platform for facilitating innovation and IP protection. Moreover, it points out that the central government and local authorities, IP agents, IP law firms, IP associations, industry associations, and chambers of commerce have obligations to provide necessary assistance for private enterprises to overcome obstacles.
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